



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2021

Appeal Ref: APP/T5150/C/20/3250104

8 Birse Crescent, London NW10 1SJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Farukh Hussain against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 27 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a house in multiple occupation (HMO).
 - The requirements of the notice are:
 - Step 1 Cease the use of the premises as a House in Multiple Occupation (HMO) and its occupation by more than one household.
 - Step 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets.
 - Step 3 Restore the internal configuration of the premises to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen, dining room and lounge on the ground floor, bedrooms on the upper floors, a bathroom on the first floor, and a WC on the ground floor.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by the deletion of the last sentence of Step 3. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the appeal documents, a decision can be reached on the papers.¹

The ground (f) appeal

3. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of a notice are set out in section 173 of the Town and Country Planning Act 1990 (the Act) and they are to remedy the breach of planning control (S173(4)(a)) or to remedy injury to

¹ Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals – England, November 2020 states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit.'

- amenity (S173(4)(b)). In this case the Council require the HMO use to cease. The purpose of the notice is therefore to remedy a breach of planning control.
4. In making an appeal on ground (f), the onus is on the appellant to specify any lesser steps that would remedy the breach of planning control. The appellant submits that the requirements of the notice would remove his permitted development (PD) right to use the property as a small HMO for up to six people and refers to the *Mansi*² principle. He also submits that use by six people would be a lesser step that could be taken to comply with the notice.
 5. I find the appellant's first premise is not the case as S54(7) of the Act permits reversion to the previous lawful use upon compliance with a notice but only if the last use was lawful. I have not been provided with any information from the parties which would dissuade me from a finding that the last lawful use of the appeal site was as a Class C3 dwelling house. In addition, the Council's completed questionnaire indicates that there are no Article 4 Directions, which remove PD rights, pertaining to the property.
 6. Therefore, upon compliance with the notice, and reversion to the previous lawful use, the appellant could then exercise his PD rights under Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 to change the use of the property from a Class C3 dwelling house to a Class C4 HMO.
 7. The PD right set out in Class L only applies to a change of use from a Class C3 dwelling house and that is why it would not be lawful for the appellant to change from a large HMO to a Class C4 HMO. The Council's wording of the notice does not prevent the appellant's future intentions, it is the wording of legislation that controls this and thus there is no conflict with *Mansi*.
 8. As such, in order to remedy the breach of planning control, the appellant needs to comply with the requirements of the notice. This means ceasing the HMO use and removing everything that facilitated that use, such as the additional kitchen, the additional bathrooms and all the subdivisions. Use by six unrelated people would not remedy the breach of planning control. This is because the breach of planning control is the making of a material change of use to an HMO use. Allowing a Class C4 use would not undo that initial action of making a change of use to an HMO and would not address all the harm caused by the development, as set out in the reasons for issuing the notice. Furthermore, the Class C4 use would not be lawful without full compliance with Class L.
 9. The Council describe the layout of the property as it was when it was a dwelling but I find this is overly prescriptive and it would be sufficient for the notice to specify the restoration and configuration of the premises to the original layout before the breach of planning control occurred. I shall therefore direct that the notice be varied to delete the last sentence of Step 3.
 10. The appellant's remaining submissions, namely a new internal layout to improve living conditions, the provision of a management plan, the existence of an HMO licence and the need for HMO accommodation fall to be considered within a ground (a) appeal. This is because they are arguments made to

² *Mansi v Elstree RDC* [1964] 16 P and CR 154

support a planning application. However, no ground (a) appeal has been pleaded by the appellant.

11. In the absence of any other submitted lesser steps and, having regard to the above reasons, the appeal on ground (f) fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

D Fleming

INSPECTOR