



Appeal Decision

Site visit made on 13 July 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal Ref: APP/T5150/C/19/3224326

Flats 1-5, 125 High Road, London NW10 2SL

- 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 Rashed Khan against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 28 January 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises to five flats.
- The requirements of the notice are STEP 1 Cease the use of the premises as five flats; STEP 2 Remove all kitchens and cooking facilities and all bathrooms and remove all other fixtures, fittings and other paraphernalia associated with the unauthorised use from the premises; STEP 3 OR Carry out works so that the internal layout reflects the approved plans DRG. No. -04, DRG. No. -05, DRG. No. -06 attached to this notice.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. The notice requires the use of the premises as “five flats” to cease. In the interests of clarity, the notice should be corrected so as to simply require the use of the premises as flats to cease. I am satisfied that this correction can be made without causing injustice to the parties.

The appeal on ground (d)

2. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in relation to the alleged change of use. In order to succeed on this ground it would be necessary for the appellant to show, on the balance of probability, that the use of the property as five self-contained flats had commenced at least 4 years before the notice was issued, that is by 28 January 2015, and had continued in such use over a four-year period. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity.
3. In support of the appeal, the appellant claims that internal building work began in 2014, with the residential flat use commencing after a Council inspection¹

¹ In relation to planning application 14/4862 (change of use from a doctor’s surgery to a 3 bedroom dwellinghouse). According to the Council the site visit was undertaken on 21 January 2015.

- but before 27 January 2015. He says that the officer report for that application confirmed the property was a three-storey mid terrace dwelling; had been vacant since 2014; had a habitable room and was overgrown at the rear.
4. The Council says that the officer report refers to the current use of the site as a surgery, with no reference to flats being present; that the site visit undertaken on 21 January 2015 indicated that the layout of the property was still as a doctor's surgery; that it is therefore unlikely that works could have been undertaken and the alleged use commenced in the short timespan between the site visit and the beginning of the immunity period; that a planning application in 2015 for a dormer extension did not show the layout as flats; the dormer needed to provide the floorspace for the loft flat did not appear on aerial photography dated June 2015 and for the first time only in April 2017; external photographs suggest non-occupation of certain rooms during the immunity period; Valuation Office records indicate that the property was rated as a single dwelling in August 2015.
 5. The appellant's case is lacking in any persuasive evidence that the use of the property as flats commenced on or before 28 January 2015. I am not persuaded that reference in the officer report, relating to the change of use, to the property being vacant since 2014 and to the presence of a habitable room in the second floor / loft area, indicates the presence of flats within the building.
 6. By contrast, it seems to me that the Council has been able to provide documents that contradict the appellant's claim. These include the lack of reference to flats in the 2015 planning application drawings; the undisputed aerial photographic record for the dormer extension and the 2015 Valuation Office record. This contradictory evidence is further supported by the lack of evidence of flats at the time of the Council's site visit in January 2015. On the balance of probability, I also concur with the Council's point that carrying out the dormer alteration would have made the loft uninhabitable. Therefore, even if it could be demonstrated that the use of this loft flat commenced before this time, that use is likely to have been interrupted.
 7. I therefore conclude, on the balance of probability, that the appellant has failed to substantiate the claim that the use of the property as five flats commenced on or before 28 January 2015, or that such use has continued over the entire immunity period. The ground (d) appeal therefore fails.

The appeal on ground (f)

8. The ground is that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control. With regard to the unauthorised change of use the objectives of the notice are to discontinue the use of the land and to restore the land to its condition before the breach took place or to secure compliance with drawings approved as part of planning permission Ref 15/1439. It follows that the purpose of the notice is to remedy the breach.
9. The appellant states that the STEP 2 requirement is unclear and lacking in precision. This step requires the removal of kitchens and cooking facilities and bathrooms, fixtures, fittings and other paraphernalia associated with the unauthorised use, namely as flats. Alternatively, there is the option to follow

STEP 3 which allows for reversion to the single dwelling house use layout permitted by the Council.

10. The notice does not state precisely which facilities, fixtures, fittings and paraphernalia should be removed and their whereabouts. However I am not persuaded that there should be any difficulty identifying miscellaneous articles and facilities, fixtures and fittings relating to the use of the building as flats and that were not related to the previous lawful use of the premises. I consider the requirements to be sufficiently precise and not readily open to misinterpretation.
11. The appellant has referred to the property being licensed by the Council as a House in Multiple Occupation (HMO) and that this would make the requirements of the notice excessive. However the licensing regime is an entirely separate system of regulation to that of planning control. It does not therefore justify the claim that the requirements are excessive on the basis that a license exists for a 9 person HMO, in the absence of planning permission for such a use.
12. Given that the purpose of the notice is to remedy the breach of planning control, this can be achieved by ceasing the use of the property as flats and by restoring the land to its condition before the breach took place or by complying with planning permission. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail, with the exception of the correction warranted, as referred to above.

The appeal on ground (g)

13. The ground of appeal is that the time given to comply with the requirements is too short. The appellant raises the concern that it would not be possible to evict the flat occupiers and then carry out the necessary works within the compliance period.
14. I have not been provided with any documentary evidence from the appellant setting out the tenancy arrangements currently in place. However I am mindful that at present the regulations concerning assured shorthold tenancies require at least a four-month notice period to be given.
15. When allowing for additional time to secure the necessary internal modifications to be undertaken it therefore seems to me that an eight-month compliance period would be reasonable.
16. The enforcement notice, which will be upheld, will interfere with the tenants' rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. I conclude, taking into account the Council's reasons for issuing the notice and the aforementioned considerations, that the time available to tenants to seek alternative accommodation would be reasonable and would not result in a disproportionate burden.
17. For the above reasons the appeal on ground (g) succeeds to this limited extent and the notice is varied accordingly.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, subject to a correction and variation.

Formal Decision

19. It is directed that the notice be corrected by:

the deletion of the word "five" in STEP 1 of Schedule 4.

20. It is directed that the enforcement notice be varied by:

the deletion of the words "3 months" in Schedule 5 and the substitution of the words "8 months" instead.

21. Subject to this correction and variation the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR