
Appeal Decision

Site visit made on 1 September 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11th October 2021

Appeal Ref: APP/A5270/C/20/3261498

66A Northfield Avenue, West Ealing W13 6RR

- 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 Anne Lomax against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 8 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the first and second floor to 3 self-contained flats and an additional room.
 - The requirements of the notice are
 1. Cease the use of the first and second floor as self-contained flats.
 2. Remove the kitchen and drainage connections from each self-contained flat.
 3. Remove the bathroom and drainage connections from each self-contained flat
 4. Remove all internal doors, locks and partitions which facilitates the use of the first and second floor as self-contained flats and
 5. Remove all resultant debris
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:

(i) Deleting the allegation in full and replacing it with "Without planning permission, the material change of use of the first and second floor to self-contained flats."

(ii) Deleting requirements 2 and 3 in full and substituting them with

"2. Remove all but one kitchen with their drainage connections from the appeal property."

"3. Remove all but one bathroom with their drainage connections from the appeal property."

2. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

3. An accompanied site visit was undertaken with the parties present. The Inspector was able to see the existing layout of the appeal property including the kitchens and shower rooms. However, the notice was issued in September

2020 and the breach of planning control had occurred prior to that date. Whilst undertaking a site visit provides context, the notice relates to the use that had occurred with associated facilities prior to September 2020.

The allegation

4. The allegation refers to the "material change of use of the first and second floor to 3 self-contained flats and an additional room". The appellant who is professionally represented has not pursued a ground (b) appeal as she accepts that a breach of planning control has taken place. At paragraph 2.4 of her statement, she states that the original dwelling has been converted into 2 self-contained flats not 3. She refers to each self-contained flat (rooms 1 and 2 on the layout plan provided) as having their own kitchenette with sink, mini fridge, and hob cooking facilities as well as an ensuite. The appellant considers that rooms 3 and 4 were then shared facilities which included a larger kitchen and freezer.
5. The Council's view is that the breach consists of the change of use to 3 self-contained flats each of which had the necessary basic amenities for day to day living which are a toilet, personal washing facilities and cooking facilities. The information provided by the appellant within her response to the Planning Contravention Notice confirmed that the appeal property was occupied in May 2020 by a single male occupant, the appellant and a female occupant with her partner who had been unable to move out due to lockdown.
6. Photographs taken by the Council on the 2 July 2020 show that rooms 3 and 4 were occupied and had a bed, toilet, shower room and cooking facilities. Even if room 3 did contain a shared kitchen, which may or may not be used by individual flat occupiers, a material change of use to self-contained flats has still occurred in rooms 1 and 2. Similarly, I note that the appellant has referred to using lodger agreements which refer to shared facilities as well as exclusive use of a bedroom rather than tenancy agreements when she is in occupation. However, if the exclusive room contains the basic amenities for day to day living, a lodger agreement does not alter the nature of the change of use that has occurred. Both the single male and female occupant are named on the list of the history of the appeal property as having had lodger agreements and the layout of the appeal property at the time of the Council's visit supports occupation by in three self-contained flats.
7. However, with regard to the wording of the breach of planning control, the allegation does not need to specify the number of flats, it can simply allege a "material change of use to self-contained flats." I am satisfied that such an amendment does not cause either party injustice as the substance of the allegation remains the same and is not disputed by the appellant i.e. a change of use to self-contained flats has occurred.
8. The words "and an additional room" are superfluous when the allegation refers to use as self-contained flats on the first and second floors and the additional room is the only room on the second floor. I am satisfied that this amendment does not cause injustice to either party given the limited grounds of appeal and the appellant has confirmed that to be her view.

An appeal under ground (f)

9. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
10. It is necessary to therefore establish what the purpose of the notice is. The requirements include removing the kitchens and bathrooms from each of the self-contained flats and removing all internal doors, locks and partitions which facilitate the use of the first and second floor as self-contained flats. The purpose of the notice is therefore to remedy the breach of planning control.
11. The appellant refers to works referred to in the requirements not needing planning permission and not being contrary to planning policy. However, case law has established that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use even if such works might not constitute development, be permitted development or be immune from enforcement so that the land is restored to its condition before the change of use took place.
12. The existing layout plan submitted by the appellant in support of the appeal shows three kitchens. The room on the 2nd floor also has a shower room and there are 3 further en-suites on the first floor. The appellant does not dispute the need for steps 1, 4 and 5 but does consider that the requirements to remove all the kitchens and bathrooms to be excessive as this would leave the original dwellinghouse with no kitchen or bathroom.
13. Section 57(4) of the Act allows reversion to the last lawful use following the issue of an enforcement notice. However, this right does not extend to a past lawful use when there has been one or more intervening unlawful uses between it and the use alleged. Although the Council says that there is no right to revert to the lawful use which was single dwelling use, it has not clearly stated what other intervening unlawful uses have taken place. I therefore do not share the Council's view that the appeal property cannot revert to use as a single dwellinghouse.
14. With regard to which kitchen would remain, other than complying with the terms of the notice, the internal layout of the appeal property is a matter for the appellant. She has, in any event, indicated that she would retain the larger kitchen in room 3, if permitted to do so. I do therefore consider that a requirement to remove all kitchens is excessive given the previous use of the appeal property. I will therefore amend the notice to allow one kitchen to remain.
15. The appellant has asked for the requirement to remove all bathrooms to be deleted so that all four bathrooms would remain. However, there is limited evidence before me to show that additional bathrooms were installed before the unauthorised change of use took place. The appellant refers to an original bathroom and states that additional en-suites were added in 2012 but there is no evidence to support that in terms of invoices or plans or supporting statements. It is also not clear what the internal layout or actual use of the appeal property was at that time in view of the list of previous occupants supplied. Having regard to the evidence before me, I do consider that a

requirement which refers to bathrooms is not excessive and should not be deleted in full. However, the appellant has asked for a bathroom to remain if the request to delete the requirement in full is not successful.

16. For similar reasons to allowing the retention of a kitchen, I do consider it excessive to remove all bathrooms and one bathroom can be retained. Whilst the appellant refers to having to revert back to primitive bathroom arrangements, it is a matter for the appellant to decide which of the bathrooms remains. The appeal under ground (f) therefore succeeds in part with regard to permitting one bathroom and one kitchen to remain and I will amend the notice accordingly.

An appeal under ground (g)

17. An appeal under ground (g) is that the time for compliance is not reasonable. The current period for compliance is 3 months. The appellant has suggested that a period of 6 months should be allowed to evict the tenant and to carry out work without financial hardship. The agreement provided to the Council in May 2020 indicated that only one month's notice is required to terminate the tenancy. There is no evidence from the appellant as to when that notice was served or why that one month's notice cannot be complied with particularly when the appellant has not challenged that the use has to cease in her limited grounds of appeal.
18. The appellant agrees that the work required is not excessive and within the capabilities of a jobbing builder but also with the services of a plumber and an electrician. Whilst the appellant refers to not suffering financial hardship, the limited nature of the grounds of appeal together with the time taken to determine the appeal means that the appellant has had some time to plan financing at least part of the required works. Similarly, whilst the appellant refers to the ongoing Covid pandemic affecting timeframes, restrictions have now been lifted. The Council has referred to its powers under Section 173A of the Act to extend the period for compliance, should the Council be satisfied that there is a justifiable reason to do so.
19. I therefore consider that the existing 3 month period for compliance is reasonable and an appropriate balance between compliance in the public interest and the matters raised by the appellant. The appeal under ground (g) therefore fails.

Conclusion

20. For the reasons given above, I consider that the appeal should not succeed. I shall vary and correct the enforcement notice prior to upholding it.

E. Griffin

INSPECTOR