



Appeal Decision

Site visit made on 27 September 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 11 January 2022

Appeal Ref: APP/C5690/C/21/3274075

Land at 126 Loampit Vale SE13 7SN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ephesus Ltd against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice, numbered ENF/19/00018, was issued on 1 April 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Property from a commercial unit on the ground and lower ground floor and 1 self-contained flat on the upper floors to four (4) self-contained residential dwelling units (flats).
 - The requirements of the notice are:
 - A
 - 1. Cease the use of the property as more than one self-contained flat.
 - 2. Remove all kitchen fixtures and fittings and all internal partition walls, which facilitate the residential use of the Property as more than one self-contained flat.
 - 3. Revert the commercial unit back on the ground and lower ground floor to its previous layout as attached below as indicated in drawings 02 and 03 (March 2018) as shown in planning approval DC/19/113955).
 - 4. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the property and its premises.
 - Or
 - B.
 - 1. Alter the property in accordance with the approved planning application drawings reference DC/19/113955 granted on the 30 December 2019.
 - 2. Remove all material, debris, waste and equipment resulting from compliance with the above requirement of this notice from the property and its premises.
 - The period for compliance with the requirements is 6 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f), (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The site visit was arranged as an accompanied visit and should have been attended by a representative of the Council and the appellant. However, the Council did not attend the visit and could not be contacted. As the appellant's representative was willing to show me the internal layout of the building, I chose to conduct the visit as an access only visit. The appellant's representative was present, but only to provide access to the various parts of the building. There was no discussion of any aspect of the appeal.

2. During the visit, I was not able to see the layout of the first floor of the property. I had, however, been provided with a set of 'as built' plans¹ showing the layout of each floor. The parties later confirmed that the layout of the first floor was as shown on the as built plans.

The Notice

3. The requirements of the notice provide an option to either return the use of the premises back to its original use (option A) or 'alter the property in accordance with the approved planning application drawings reference DC/19/113955'² (option B). Based on the evidence before me this planning permission appears to be extant and capable of implementation.
4. In drafting the notice as it has, the Council has recognised that the permitted scheme can be implemented. Indeed, such a requirement would comply with section 173(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which sets out as one of the purposes of the steps specified in an enforcement notice as being to remedy the breach by making the development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. However, whilst the notice has been drafted to require alterations 'in accordance with the approved planning application drawings', it does not explicitly require compliance with the conditions and limitations of the DC/19/113955 planning permission.
5. Having considered the appellant's evidence, they have clearly understood that the intention of the option B requirements is to allow the premises to be used in accordance with the DC/19/113955 planning permission. I do not, therefore, consider any injustice would be caused by varying Part 5.B.1. of the notice³ to include compliance with the conditions and limitations of the DC/19/113955 planning permission. Such a variation would be in the interests of precision and so as to avoid any doubt as to what is required by the notice.
6. On a separate point, with regard to option A the appellant suggests that the requirement to cease the use of the property as more than one self-contained flat is ambiguous in that the notice fails to confirm the required layout for the single self-contained flat. I note that requirement 5.A.3. of the notice specifies how the ground and lower ground floors are to be laid out and used. It is, therefore, plain that the self-contained flat required by 5.A.1. is to be provided on the upper floors of the property. Indeed, the appellant acknowledges that, prior to carrying out the works to provide 4 self-contained flats, the first, second and loft floors of the property were used as a single residential unit. That the notice does not specify the precise layout of the flat or include the remaining plans showing the former layout of the upper floors⁴ does not, in my judgement, leave the recipient of the notice without the necessary degree of certainty as to what he is required to do to remedy the breach of planning control.

¹ Plans submitted by the appellant and referenced 001, 002, 003, and 004.

² For the Alterations and conversion of 126 Loampit Vale SE13, to provide a commercial unit (A1 or A2 use) on the ground floor with storage on the lower ground floor and 1 one bedroom self-contained flat, together with the part excavation of the rear to create a light well, installation of a roof light in the rear roof slope and the configuration of the upper floors to form 1 two bedroom flat.

³ Using the powers transferred to Inspectors under section 176(1)(a) the 1990 Act to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice.

⁴ Plans numbered 04 and 05 provided by the appellant.

7. I acknowledge that the reference in plan 02 to a bedroom on the lower ground floor is odd. However, the only use referred to in requirement 5.A.3. is a commercial use on the ground and lower ground floor. Furthermore, reference to the plan is only for the purposes of indicating the required layout. Indeed, there are a substantial number of internal walls and rooms on the lower ground floor that facilitate its use as a self-contained flat. It would appear that many of these did not exist prior to the breach of planning control taking place. The plan assists in demonstrating which are to be retained and which are to be removed in order to remedy the breach. In my judgement it is more likely than not that the recipient of the notice would be reasonably certain of what he is required to do to comply with this requirement.
8. Finally, I do not find the requirement (repeated at 5.A.1. and 5.B.2.) to remove from the site material, debris, etc. resulting from compliance with earlier requirements to be vague. Having an understanding of the works required to comply with the earlier requirements, the material, debris, etc. resulting from these works would be obvious. I do not, therefore, find fault with the notice in this regard.

Ground (f)

9. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. As noted above, the requirements of the notice provide an option to either return the use of the premises back to its original use or use the property in accordance with the approved scheme of development. As such, the purpose of the notice must be to remedy the breach of planning control that has occurred.
10. Many of the points raised by the appellant under the ground (f) appeal question the validity of the notice. Accordingly, I have considered these in the section above on 'the notice' and have concluded that, save for one variation, the matters raised by the appellant do not render the notice defective. Neither do the points raised lead me to conclude that the requirements of the notice exceed what is necessary to remedy the breach of planning control.
11. Notwithstanding the above, the appellant has pointed to a further option as an additional requirement of the notice, rather than an alternative or lesser step. They suggest a combination of a partial implementation of the DC/19/113955 planning permission, allowing for the approved commercial unit and residential unit on the ground and lower ground floors, and the original residential unit on the first, second and loft floors. The evidence before me suggests that the original residential unit was as shown on the existing plans⁵.
12. Having compared these existing and the proposed plans⁶ for the upper floors of the property, there appears to be very little difference between the two. Both show a single self-contained residential unit across the three upper floors, which is a use permitted by the DC/19/113955 planning permission. As such, it might well be the case that a use of the upper floors as a self-contained residential unit in a layout consistent with the existing plans accords with the approved scheme. In which case either option A and the appellant's suggested

⁵ Plans reference 04 and 05 approved by reason of the DC/19/113955 planning permission.

⁶ Plans reference A14 and B15 approved by reason of the DC/19/113955 planning permission.

third option would be one and the same, or the appellant could implement the suggested third option, regardless of whether or not the notice includes it as an option in the requirements.

13. Alternatively, if it is the case that the third option would not accord with the approved scheme and would, therefore, require planning permission, as the appeal has not been made on ground (a) I am not able to consider varying the notice to include this additional requirement within the remit of this ground (f) appeal. This is regardless of whether or not the third option might also achieve the purpose of remedying the breach of planning control.
14. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach of planning control in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice are reasonable and proportionate, and do not exceed what is necessary to remedy the breach of planning control. For these reasons, the appeal under ground (f) should fail.

Ground (g)

15. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of 6 months from the date the notice takes effect.
16. The appellant says that the existing residential units are subject to ASTs (I have assumed that these are assured shorthold tenancy agreements). In this regard I acknowledge that within the period given the appellant would need to terminate or not renew the agreements, as well as carry out the necessary works to comply with either option A or option B. However, I have not been provided with the details of the term of the tenancy agreements or the likely timescale for securing the vacation of the property, such that I could conclude that the time given in the notice would not be sufficient.
17. Furthermore, whilst restrictions imposed at the start of the Covid-19 pandemic might well have had an effect on construction activity and the availability of building and construction materials, I have no substantiated evidence to suggest that these problems prevail to the extent that a longer period is now required.
18. I acknowledge that the appellant has until December 2022 to implement the DC/19/113955 planning permission. This does not, however, justify the continued use of the premises in breach of planning control until that time, particularly as the alteration of the premises to comply with the DC/19/113955 planning permission is one of two options open to the appellant in this case.
19. As the appellant has not provided any substantiated evidence to show that the requirements of the notice cannot be complied with within the period given, I have no reason to conclude that the period specified in the notice fall short of what should reasonably be allowed. For this reason, the ground (g) appeal should fail.

Overall Conclusions

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

Formal Decision

21. It is directed that the enforcement notice is varied by the substitution of the words 'approved planning application drawings reference DC/19/113955' with the words 'scheme of development approved by the planning permission reference DC/19/113955 and the conditions and limitations of that planning permission' in part 5.B.1.
22. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR