
Appeal Decision

Site visit made on 11 January 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/N5090/C/21/3278359
12-12A Queens Way, London NW4 2TN

- 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 V Singhania against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 25 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the use of the property as a large scale (Sui Generis) House in Multiple Occupation.
 - The requirements of the notice are:
 - 1 Cease the use of the property as a House in Multiple Occupation.
 - 2 Restore the layout of the property back to that shown on plan 1601.QUEPL-006 Rev 4.1 from application 17/2857/HSE, including the removal of all kitchens including kitchen units, sinks, cookers and food preparation areas from the property other than the kitchen shown.
 - 3 Permanently remove from the property of all constituent materials resulting from the works in 2 above.
 - The period for compliance with the requirements is 6 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. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decision

1. It is directed that the enforcement notice be:
 - varied by the deleting the second requirement under section 5 (What you are required to do), and its replacement with: "Remove all kitchen fixtures and fittings from the first floor in their entirety including sinks, cookers and food preparation areas and restore the configuration of the property to the original layout before the breach of planning control occurred".
 - varied by deleting the words "6 months" within section 6 (Time for Compliance) and its replacement with "12 months".
2. Subject to these variations, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. I have also dealt with another appeal at 12A Queens Way (Ref: APP/N5090/C/21/3276372). That appeal is the subject of a separate decision.

4. Arguments relating to the planning merits of the development that has been undertaken can only be assessed in an appeal made on ground (a). As the fee was not paid for the ground (a) appeal within the prescribed timeframe, this lapsed, and the planning merits arguments put forward in the appellants' case have played no part in my decision.
5. The appellant states that "the certificate of service is not enclosed with all the documents". They further state that this is incomplete as no name has been given and therefore the notice should be dismissed. However, the schedule of persons served with the notice includes the owners and occupiers of 12 and 12A Queens Way. Furthermore, no ground (e) appeal has been lodged and the appellant has not clarified who they believe has not been served as required by s172. Therefore, there is no substantive evidence that parties with an interest in the land have been substantially prejudiced. Evidently, the appellant has received a copy of the notice and has made a valid appeal and therefore has not been substantially prejudiced. It is therefore not necessary for me to consider this further.

The appeal on Ground (f)

6. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
7. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear from the requirements of the notice which seeks to cease the use of the property as a House in Multiple Occupation (HMO) and the restoration of the property to its former layout as shown on the previously approved floor plan from planning application ref 17/2857/HSE¹.
8. The appellant states the second requirement of the notice, requiring the restoration of the layout of the property back to that shown on the approved floor plan is excessive. The appellant considers that given that the appeal site relates to a freehold property, internal alterations do not require planning permission. It is also stated that very large dwelling houses such as the appeal site would often be expected to have multiple kitchens.
9. S173(4)(a) provides that a Notice may require that the breach is remedied by discontinuing any use of land or by restoring the land to its condition before the breach took place. 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 any additional kitchens.
10. If the additional kitchen at first floor level existed as part of the lawful use of the property prior to the breach it would be reasonable to find that the requirements are excessive. However, from the evidence submitted the additional kitchen at first floor level is part and parcel of the unauthorised material change of use of the property to a HMO, and no substantive evidence

¹ Council ref: 17/2857/HSE approved on 22 September 2017 for a First floor front extension and part single, part-two storey side and rear extension with pitched roofs following demolition of existing garage. Extension to roof including 2no rooflights to front and rear elevation and 1no roof lights to both sides to facilitate a loft conversion (Amended Plans).

has been submitted to demonstrate otherwise. Therefore, notwithstanding that such internal works may not require planning permission in their own right, requiring the removal of the kitchen at first floor level is proportionate to remedy the breach, and it is not excessive to require this to be removed.

11. There is disagreement between the parties as to what the internal layout of the property was before the breach took place, with the appellant stating that the current internal layout was approved by building regulations on 1 February 2019. The Council refer to plan 1601.QUEPL-006 Rev 4.1 from planning permission ref: 17/2857/HSE to describe the layout of property when it was last a dwellinghouse, but I find this is overly prescriptive, particularly as there is no clear evidence to demonstrate that that was the layout before the breach took place. In these circumstances it would be sufficient for the second requirement of the notice to specify the removal of the first floor kitchen and 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 remove the existing second requirement and replaced with a new requirement seeking the above mentioned works which would remedy the breach.
12. I therefore conclude that the breach of planning control could be remedied by a lesser step and the requirements of the enforcement notice should be varied accordingly.
13. The ground (f) appeal therefore succeeds to this limited extent.

The appeal on Ground (g)

14. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 6 months in order to provide sufficient time to allow an alternative scheme to be appealed and to engage in further dialogue with the Council to find a mutually agreeable solution.
15. Current occupiers might find it difficult under current housing market conditions to find suitable accommodation, particularly in light of the Covid-19 pandemic. I also acknowledge that all occupiers need to vacate the premises in order to carry out the other requirements of the notice. I therefore consider that in the particular circumstances of this case, a 12 month compliance period is proportionate and reasonable. I shall therefore vary the period for compliance prior to upholding the notice to 12 months.
16. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with variations.

R Satheesan

INSPECTOR