
Appeal Decision

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/21/3279969

51 Brent View Road, London NW9 7EJ

- 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 Michael Fitzgerald against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 30 June 2021.
 - The breach of planning control as alleged in the notice is without Planning Permission, the sub-division of the property, in to 7no self-contained units.
 - The requirements of the notice are:
 - 1 Cease the use of the property as self-contained flats.
 - 2 Restore the interior of the building to its last lawful state. The restoration should match the approved drawing plan no. 200723/10 PD of approved application reference, 20/3421/192.
 - 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.
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Decision

1. It is directed that the enforcement notice be:
 - varied by deleting the second sentence of requirement 2 under section 5 (What you are required to do) which states: "*The restoration should match the approved drawing plan no. 200723/10 PD of approved application reference, 20/3421/192.*"
 - 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.

Procedural Matters

3. I have not undertaken a site visit given that one of the occupiers of the appeal site was in Covid isolation on the day of the visit. However, having reviewed the evidence I do not consider a site visit is necessary to determine the current appeal, which relates solely to grounds (f) and (g). This is considered appropriate given that there is no ground (a) appeal, and I am not considering

the planning merits of the development. As both parties have been provided the opportunity to comment, I am satisfied that neither party would be prejudiced by this.

The appeal on Ground (f)

4. 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".
5. 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 include the cessation of the use as self-contained flats and the restoration of the property to its last lawful state.
6. The appellant states the requirements of the notice are excessive since the restoration of the layout to match plan no. 200723/10 PD of approved certificate of lawfulness application¹ goes beyond what is necessary to remedy the breach of planning control. The appellant therefore states that this part of the notice should be omitted since the appellant is within their legal rights to have a layout of the property of their choosing so long as the use remains as a single dwelling house.
7. It is clear that there must have been fairly extensive internal works carried out to create the 7 self-contained units, and those works are part and parcel of the unauthorised use. 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.
8. The plans submitted as part of the approved certificate of lawfulness application illustrate the condition of the land, as a dwellinghouse before the breach took place. From the evidence submitted it appears that the works the subject of this certificate of lawfulness application have been implemented².
9. However, I am mindful that the appellant states that the cessation of the use of the property as self-contained flats and the restoration of the interior of the building to its last lawful state would remedy the breach. They also state that they could have an alternative interior layout so long as the use remains as a single dwellinghouse. There is therefore an obvious fallback position that if the property was returned to the layout as shown on the approved floor plan under application ref: 20/3421/192, as required by the notice, the appellant could then amend the layout of the property to a different layout whilst maintaining its lawful use as a dwellinghouse. Therefore, with this right available as an obvious and realistic alternative that could be achieved at less cost and disruption, it is considered that the steps required by the Notice to be taken are excessive in terms of remedying the breach and achieve no useful purpose. I shall therefore direct that the notice be varied by deleting the second sentence of requirement 2. This would remedy the breach of planning control, in line with s173(4)(a) of the Act.

¹ Council ref: 20/3421/192: Roof extension involving rear dormer window with Juliette balcony and 2no front facing rooflights approved on 26 August 2020.

² As outlined in section 1 of the Council's appeal statement.

10. 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.
11. The ground (f) appeal therefore succeeds to this limited extent.

The appeal on Ground (g)

12. 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 to 12 months in order to provide sufficient time to allow all tenants to vacate the property and to carry out all necessary works, particularly in light of the impacts which Covid 19 and Brexit have had on the supply and availability of builders.
13. 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.
14. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

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

R Satheesan

INSPECTOR