



Appeal Decision

Site visit made on 15 March 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 May 2022

Appeal Ref: APP/T5150/C/21/3270508

8 Union Road, Wembley HA0 4AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alpesh Patel against an enforcement notice issued by the Council for the London Borough of Brent.
- The notice, numbered E/21/0051, was issued on 28 January 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from THREE to SEVEN flats.
- The requirements of the notice are:
 - STEP 1 Cease the use of the premises as no more than THREE flats.
 - STEP 2 Remove all kitchens from the premises, except for THREE. For the avoidance of doubt only ONE kitchen should be present in each of the THREE flats.
 - STEP 3 Remove all bathrooms from the premises, except THREE. For the avoidance of doubt only ONE bathroom should be present in each of the THREE flats.
 - STEP 4 Remove all internal partitions and remove all items, materials, and debris associated with the unauthorised change of use from the premises.
 - STEP 5 Alter the internal configuration so that the premises is laid as THREE flats. Each flat should contain ONE bathroom, ONE kitchen and ONE lounge. This is to ensure that the internal layout of the premises is restored as before the unauthorised change of use took place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

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

In Schedule 1 THE LAND OR PREMISES AFFECTED, the deletion of the words '8 Union Road' and the substitution of the words '8B Union Road'.

In Schedule 2 THE ALLEGED BREACH OF PLANNING CONTROL, the deletion of all the words, and their substitution with the words 'Without planning permission, the change of use of ONE flat to Five flats'.

And varied by:

In Schedule 4 WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH OF PLANNING CONTROL:

- *In STEP 1, delete the words 'THREE flats' and substitute the words 'ONE flat'.*
- *In STEP 2, delete all the words and substitute the words 'Remove all but ONE kitchen from the premises.'*
- *In STEP3, delete all the words and substitute the words 'Remove all but ONE bathroom from the premises.'*

- *Delete STEP 5.*

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

Matters concerning the notice

2. The notice alleges that the use of 3 flats located at 8 Union Road has been changed to a use as 7 flats. The appellant claims that No8 is split into 3 separate units identified as 8A, 8B and 8C, which I saw to be the case. Where a material change of use is alleged, it is necessary to identify the extent of the planning unit. *Burdle* provides 3 criteria for determining what the planning unit is, the third of which is:

Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.

3. While 8A, 8B and 8C are all used for residential purposes, they are physically separate and distinct uses from one another. The allegation therefore relates to 3 separate planning units.
4. The Council's evidence confirms that planning permission was granted on 6 February 1970 to convert No8 into 2 flats ('the 1970 PP'). A lawful development certificate ('the LDC') was granted for use of part of the ground floor as a self-contained flat¹. The 1970 PP relates to 8A and 8B and the LDC relates to 8C. There is no dispute that 8A and 8C are self-contained flats, and both occupy floor space on the ground floor of the premises separate to 8B.
5. The lawful use of 8A and 8C is therefore as individual self-contained flats, use Class C3. There is no evidence before me to suggest that 8A and 8C have been put to any other use than as a single dwellinghouse since that planning permission or lawful development certificate were granted. The use of 8A and 8C does not constitute a breach of planning control and they should be excluded from the matters alleged.
6. For clarity the land or premises affected by the notice should be varied so as to refer to 8B Union Road only. The map attached to the notice does not need to be varied as the land to which the notice relates remains within the premises identified by the bold black line. The steps required to be taken need to be varied to refer to the retention of one kitchen and one bathroom. Step 5 is superfluous and will be deleted.
7. The correction and variation of the notice as described above will reduce the burden of proof for the appellant and the extent of the works required to comply with the notice will not change. Both main parties' cases address the remaining matters alleged in detail. No injustice will arise from my correction and variation of the notice in this manner, and I shall proceed on that basis.

Preliminary matters

8. When entering the property at ground floor level there are 2 access doors leading off a lobby. One door accesses 8A Union Road and one opens on to a staircase which provides access to 8B Union Road. Flat 4, 8B is accessed off the

¹ Council application reference 09/2372 granted 16 February 2010

first landing and Flats 1, 2 and 3 are accessed from the second landing. The staircase continues up to Flat 5, which is in the roof space. The indicative plans provided by the appellant do not accurately depict the layout of the 5 flats at 8B. For example, and of most relevance, the staircase leading up to Flat 5 is shown on the plan to be located within what I saw to be the bedroom of Flat 3.

9. The Council's case² identifies numerous operational developments that allegedly represent a breach of planning control. These operational developments do not form part of the matters alleged in the notice and are not therefore before me for consideration. Should the notice be upheld, once the requirements have been complied with, planning permission would be treated as having been granted by virtue of s73A of the Act³ in respect of those operational developments identified by the Council⁴.

Appeal on ground (d)

10. To succeed on this ground, the appellant needs to show that the matters alleged as corrected have become immune from enforcement action due to the passage of time. The relevant period is 4 years, and the material date is 28 January 2017. Any 4-year period of continuous use is relevant. The onus of proof is on the appellant and the relevant test is the balance of probability.
11. Tenancy agreements and Council Tax documentation is not proof of residential occupation. However, even if I were to accept that it is, 4-years continuous use would still need to be shown. There is no dispute that 8B was divided into 4 flats at some point. Council Tax records suggests that the use as 4 flats occurred sometime around the middle of 2008. The copies of tenancy agreements provided date back to 2009, but they do not cover any continuous 4-year period for any of the 4 flats. The Council's officer report for the LDC includes an annotation that the first floor, 8B, is being used as 4 flats at that time. The evidence relating to when the use as 4 flats began is imprecise and ambiguous, and no evidence is provided to show any continuous 4-year period of occupation.
12. Planning permission for a proposed loft conversion at 8B was allowed on appeal in January 2015⁵. The existing and proposed plans submitted with that proposal show 8B laid out as a single dwellinghouse. It is less than likely that incorrect plans were submitted without the appellant's knowledge. Copies of tenancy agreements provided for Flats 3 and 4 cover the period when that application and appeal were being progressed. The Council's officer report for that application shows that consultation letters were sent to the occupiers of Flats 1, 2, 3 and 4, 8B Union Road. Evidence relating to the use of 8B at the time the loft conversion was being considered is therefore contradictory.
13. The appellant claims the loft conversion, which is in use as Flat 5, was completed after receiving Building Regulations approval in 2015. The Building Regulations Completion Certificate is dated 1 June 2016 and does not confirm that it relates to the creation of a dwelling. Furthermore, Flat 5 was not registered with the Valuation Office until 20 October 2018.

² Paragraph 2.15 of the Council's Appeal Statement

³ Town and Country Planning Act 1990 as amended

⁴ Section 173(11) of the Town and country Planning Act 1990

⁵ Appeal reference: APP/T5150/A/14/2225332

14. A copy of a tenancy agreement suggests that Flat 5 was tenanted between 10 December 2015 and 1 December 2016. It would be unlikely that a tenant would occupy a flat without a Building Regulations Completion Certificate in place. Further tenancy agreements show Flat 5 was not let again until 12 May 2019. It has not been explained why the 4 tenancy agreements covering the period 12 May 2019 to 1 July 2021 overlap to differing degrees. While overlapping agreements may be because of tenants leaving before their tenancy expires, at least 2 overlapping agreements are signed by the same tenants.
15. The appellant's response to the planning contravention notice ('PCN') confirms that the loft conversion works were carried out between September 2014 and October 2015. In the PCN, the appellant also confirms that Flat 5 was not brought into use until April 2019, which would correlate with the tenancy agreement covering the period 12 May 2019 to 12 May 2020. Evidence provided by the appellant to show 4 years continuous occupation of Flat 5 is therefore imprecise, ambiguous and, in places, contradictory.
16. While the appellant's own evidence does not have to be corroborated, it does have to be precise and unambiguous. For the reasons given above, I do not find the appellant's evidence to be precise and unambiguous. The appellant has therefore failed to show, on the balance of probability, that the premises have been used as 5 flats, or even 4 flats, for any continuous period of 4 years. The appeal on ground (d) fails.

The appeal on ground (g)

17. To succeed on this ground, it needs to be shown that the period specified in the notice to comply with the steps required to remedy the breach falls short of what should be reasonably allowed. The appellant argues that 6 months is too short to ensure that tenants, some of whom are vulnerable people, have secured alternative accommodation. They claim that the steps required to remedy the breach will require extensive works in removing the kitchens and bathrooms, which is likely to take some time after vacant possession is achieved. The appellant also highlights a shortage of suitable builders and building materials. The appellant suggests a period of not less than 1 year would be reasonable.
18. I have nothing beyond mere assertions to support the appellant's stance that vacant possession could not be achieved, and the works could not be completed within the time afforded. It has not therefore been shown that the period falls short of what should reasonably be allowed.
19. The appeal on ground (g) fails.

M Madge

INSPECTOR