



Appeal Decision

Site visit made on 2 August 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd SEPTEMBER 2022

Appeal Ref: APP/U5930/C/21/3283395

Land at 64 Templeton Avenue, London E4 6SP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ded Vuksanaj against an enforcement notice issued by Waltham Forest London Borough Council.
 - The notice, numbered ENF/210401, was issued on 24 August 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from a Class C3 (dwellinghouse) use to separate self-contained flats and any works undertaken or items brought onto the Land which facilitate this unauthorised use.
 - The requirements of the notice are to:
 - 1) Cease the use of the Land as separate self-contained flats;
 - 2) Remove from the bedroom at front first floor level the kitchenette, including the sink, fridge, all cooking equipment and drainage connections to the kitchenette;
 - 3) From the remainder of the property, remove all but 1 kitchen, including the removal of all sinks, cookers, fridges, kitchen cabinets and drainage connections associated with those kitchens;
 - 4) Remove all WC/shower/bathrooms, including toilets, sinks, shower units, bath units, and associated fixtures, fittings and drainage connections from the property so that only 2 bathrooms remains in the property; and
 - 5) Following compliance with Steps 1) – 4), remove from the Land all resultant removed items, waste materials and detritus.
 - The period for compliance with the requirements is within three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is allowed and the enforcement notice is corrected and then quashed.

The Notice

1. In addition to a material change of use of the land, the allegation also states 'and any works undertaken or items brought onto the land which facilitate this unauthorised use'. I am concerned that the recipient of the notice would be unclear about what those works or items might be.
2. For assistance in understanding the allegation, I turn to the requirements of the notice. This describes items that I saw in certain kitchen areas of the property, as well as items of bathroom furniture, fixtures and fittings. However, such items are more likely than not to be part and parcel of the material change of use alleged in the notice, rather than being any other type of works the notice might refer to. Furthermore, the evidence before me does not point to any other works that might be those referred to in the notice. It

would, therefore, appear that the second part of the allegation serves no useful purpose.

3. In view of the above, I find the second part of the allegation to be vague. For the sake of clarity I will correct the notice to remove this part of the allegation. In doing so I am satisfied that the correction will not cause injustice to any party.
4. In addition to the above, I note that the notice does not specify the number of self-contained flats that have been provided as a result of the material change of use alleged. Whilst I also find the notice to be ambiguous for this reason, it is appropriate in this case to consider this matter under the ground (b) appeal.

Ground (b)

5. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appear to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant must demonstrate that the matters stated in the enforcement notice have not occurred.
6. The allegation, corrected as I intend, is of a material change of use of the land from a dwellinghouse to self-contained flats. As noted above, the notice does not specify the number of self-contained flats alleged to have been provided within the building. Whilst the Council has described in its evidence various parts of the building, it has not provided any clarification with regard to the number of alleged units within the property. This leaves the notice ambiguous with regard to the alleged breach. Accordingly, if I am to determine that there has been a material change of use of the appeal building to self-contained flats, it is important that I discern the number of flats provided in this case.
7. I am mindful that the distinctive characteristics of a dwelling-house are its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Having viewed the building occupying the appeal site I can see that it has recently undergone some works of refurbishment. In certain parts of the property I observed what appeared to be newly fitted kitchen areas with new, unused appliances¹. There were small bathrooms off each of the larger rooms² in the building; some of which had not yet been fully fitted out³. Two of the larger rooms had within them what could be described as a kitchen area⁴. Two other rooms in the building were also fitted out as a kitchen only.
8. Of particular note were the boarded up floor to ceiling openings in rooms to the rear of the property, at both ground and first floor. These rooms were clearly incomplete and could not safely be used as habitable rooms. It appeared to me that these rooms were in this condition awaiting the construction of an extension to the property, as I have seen referred to in the evidence.
9. Whilst I acknowledge that the property as a whole provides an abundance of facilities required for day-to-day private domestic existence in various locations within it, I was unable to distinguish the separate self-contained flats that are

¹ Some appliances still retained their protective wrapping.

² En-suite bathrooms, only accessed via the room itself.

³ Some bathroom fittings had not yet been fitted to some of the bathrooms.

⁴ Some kitchen cupboards, a sink, etc.

described in the notice. Indeed, I note that the Council acknowledges that in the property 'there is no physical separation between the separate units'. Having viewed the property I can agree with this. For example, at the visit I noted that the large front ground floor and first floor rooms each accommodate an en-suite bathroom and a small kitchen area. However, these kitchens had no means of cooking food. I could see that access from these parts of the house to a more fully fitted ground floor kitchen at the back of the property was possible, although access to this kitchen was via the stairs and main hallway, which were open to the remainder of the building.

10. Similarly, the second floor of the building has within it facilities that are required for day-to-day private domestic existence. However, this second floor was not self-contained. Access to the kitchen on this floor was via the second floor landing, which again was open to the remainder of the building.
11. In turning to the occupation of the building, I note the Council's reference to two occupiers and its suggestion that they occupy two of the self-contained units within the building. Whilst the appellant acknowledges that there are two occupiers, he suggests that they live as a couple. Evidence from these tenants confirms this and explains that they occupy two rooms within the building. That they do not occupy the whole property is understandable, given the incomplete condition of some of the rooms in the building. Indeed, I am not persuaded that the layout of the property at present lends itself to two or more self-contained flats.
12. It may well be the case that, once complete (either with or without the extension), or if further internal works to the layout of the property were undertaken, the property would lend itself to providing the self-contained flats described in the notice. However, under the ground (b) appeal I must determine whether or not the matters alleged in the enforcement notice have occurred. Having regard to all matters above, including the facilities within the building, its layout and the evidence of its occupation, I find that as a matter of fact and degree the material change of use of the property from a Class C3 (dwellinghouse) use to separate self-contained flats has not occurred. For this reason the ground (b) appeal must succeed.
13. In concluding as I have, I have not identified from the evidence before me whether or not some other breach of planning control has occurred that might substitute the allegation in the notice. Accordingly, I must quash the notice in this case.

Conclusion

14. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b).
15. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (c), (f), and (g) do not need to be considered

Formal Decision

16. It is directed that the enforcement notice is corrected by the deletion of the words 'and any works undertaken or items brought onto the Land which facilitate this unauthorised use' from part 3.

17. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

J Moss

INSPECTOR