



Appeal Decision

Site visit made on 26 August 2022

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2022

Appeal Ref: APP/A1530/C/21/3270102

Land at Park Mews, 5 Military Road, COLCHESTER, CO1 2AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Green against an enforcement notice issued by Colchester Borough Council.
 - The notice was issued on 1 February 2021.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the conversion of 10no flats to 27no bedsit/studio apartments.
 - The requirements of the notice are to:
 - i. Convert the 27no bedsit/studio apartments back to its lawful use of 10no flats as approved under planning application F/COL/05/1380 (for the avoidance of doubt a copy of the approved plans are attached to this Notice).
 - ii. Remove all debris from the land that may have occurred during the conversion process (i) above and leave the land in a clean and tidy condition.
 - The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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DECISION

1. The enforcement notice is quashed.

REASONS

The Land

2. The Land to which the notice relates is described as Park Mews, 5 Military Road, Colchester. The site location plan attached to the notice identifies the Land as a rectangular shaped area, which is occupied by a building except for a slither of land at the rear. The plan gives the address as Central Park Mews. On site this is the name of the building, indicating that a correction is required to the address in the notice. Additional matters to do with the definition of the Land are considered in the ground (b) appeal.
3. The planning history shows that on 8 November 2005 planning permission was granted for the conversion of former commercial building to 10 flats including alteration to roof (F/COL/05/1380). The building identified was equivalent to the building shown on the notice plan.
4. A retrospective application for conversion of 10 flats to 27 bedsit/studio accommodation was refused planning permission on 9 April 2020 (ref 200037). The application was a resubmission of a previous application that had been refused on 25 November 2019 (ref 192193). The site location plan identifies a smaller building footprint than shown on the enforcement notice (the eastern

end was not included). The plans show a typical flat, where the ground floor was subdivided into two studio units and with a third unit on the floor above.

Appeal on ground (e)

5. The issue is whether a copy of the enforcement notice was served in accordance with section 172(2) of the 1990 Act; and if not whether substantial prejudice has been caused by the failure to do so either to the appellant or to any other person required to be served.
6. Section 172(2) of the 1990 Act states that a copy of the enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the local planning authority, is materially affected by the notice.
7. The Council say that the notice was hand delivered to the appellant at his normal place of work. The appellant does not dispute that the notice was correctly served on him. However, he maintained that the covering letter¹ did not clearly state on whom the notice had been served and therefore it was not possible to know whether the legal requirements were met.
8. The covering letter, in the last paragraph, stated that the parties on whom the enforcement notice was served were: The Land. This refers to the fact that the Council posted a copy of the notice on the Land, rather than serving an individual copy on the occupier(s)/tenant(s) of each of the bedsits. The Council had attempted to ascertain who occupied the units by serving a Planning Contravention Notice but the appellant failed to respond.
9. Section 329 of the 1990 Act, service of notices, allows for a copy of an enforcement notice to be affixed conspicuously to some object on the premises. On the site visit the Council confirmed that the notice was posted at the pedestrian gate into the site on the Military Road frontage, which is accessed by steps from the footway. The appellant, when considering the accessibility of the site in the ground (a) appeal, stated that the tenants have entered into an agreement with the appellant that they would not have a motor vehicle. Therefore the tenants may be expected to use the pedestrian gate, more especially when the alternative vehicle gate is closed.
10. However, the pedestrian gate is very near the entrance to the property Central Park Court, numbered 5 Military Road on the plan attached to the notice. The building containing the units being enforced against is within the larger Central Park property and is sited a short walk from the pedestrian gate, not directly next to the gate. Also, the notice was issued at the beginning of February 2021 when hours of daylight are shorter leading to a risk that the notice would not be easily visible. In view of these factors tenants might have missed seeing the notice or not understood which property it related to. I conclude that the notice was not affixed conspicuously to an object on the premises and it was not served in accordance with section 172(2) of the 1990 Act.
11. The appellant has not identified or explained what prejudice to the occupiers has arisen as a result of the inadequate means of service. The appeal was made on all available grounds except ground (c), that there has not been a breach of planning control. Given that the appellant is the owner of the Land

¹ Appellant's document Appendix L

and knows the detailed history of the premises, the probability is that he is best placed to present a case on appeal. In the event the enforcement notice is upheld it is the owner of the Land who is liable if there is a failure to take the required steps by the end of the compliance period.

12. I also note that the tenancy agreement, provided by the appellant and which each tenant is required to sign, states that the period of the tenancy is based on a week by week rolling contract at the start of the tenancy. Unless the landlord or the tenant has brought the tenancy to an end at, or before, the end of the period, the tenancy will continue on a week by week basis until terminated. Whilst the appellant stated tenants rarely move on there is no evidence to support this statement. Even if all the tenants had been served individually with a copy of the notice the provisions of the tenancy would allow for new tenants to occupy the unit within the period to appeal.
13. In view of these considerations I conclude that the failure to serve the notice in accordance with section 172(2) of the 1990 Act has not caused substantial prejudice to the appellant or to any other person required to be served. The appeal on ground (e) fails.

Appeal on ground (b)

14. The issue is whether the matters stated in the alleged breach of planning control have occurred as a matter of fact.
15. The breach of planning control alleged to have taken place is described as the conversion of 10no. flats to 27no. bedsit/studio apartments. In my view the description should refer to a material change of use in order to be consistent with the meaning of development set out in section 55 of the 1990 Act. The probability is that internal works to bring about the subdivision or conversion into smaller units facilitated the change of use. The description is capable of correction in this respect. The ground (b) appeal is directed at the reference to 10 flats in the allegation and the definition of the Land.
16. The appellant stated that the appeal site consists of a building which was converted into 27 bedsits/studios following the grant of planning permission for the conversion of 10 luxury apartments². However, the appellant maintains that the appeal relates to the conversion of 9 out of the 10 apartments, the tenth unit being converted to two apartments in 2013. More particularly the appellant's representations indicate that the eastern end of the building (referred to as the area edged in blue) was divided into two flats and that the 27 units are in the remainder of the building (area edged in pink)³.
17. The Land covers the length of the building block sited at the rear of 16 to 25 Shrubland Road. On the site visit the eastern end of the building appears as two storey and is distinct from the lower building element adjoining. Each entrance door on the lower building provides access to three units. I was able to see the internal arrangement with two units on the ground floor and one above. The probability is that all the 27 units are contained within the lower building. This conclusion would be consistent with the site plan submitted with two retrospective planning applications, where the red line of the application site does not include the eastern end of the building. The plans of the front elevation show nine entrance doors.

² Appellant's statement of case paragraph 2.1 and 3.1

³ Plan at paragraph 2.6 of appellant's appeal statement

18. The issue of the notice followed the refusal of planning permission. The notice relates to the same development and the allegation repeats the description of development used in the application. The appellant has accepted that the application was incorrect in stating conversion of 10 flats.
19. All these matters indicate that the matters stated in the alleged breach of planning control have not occurred as a matter of fact in so far as the 27 bedsit/studio apartments were not formed from 10 flats and the Land concerned was smaller in area than shown on the notice plan. The appeal on ground (b) succeeds to this extent.
20. I have considered whether the enforcement notice could be corrected to address these errors. When a material change of use is alleged to have occurred there is no necessity to state the previous use and therefore the reference to the 10 flats could be deleted. The Land shown on the plan would need to be revised to omit the eastern end of the building (the element at the rear of 16 and 17 Shrubland Road). The plan would show a reduced area, not an increase in area. On the face of it these corrections would not cause injustice to either the appellant or the Council.
21. However, the considerations set out above have implications not only for the wording of the allegation but also for the wording of the requirements. The Council chose not to simply require the unauthorised use of the building to cease. Step (i) relies on the description and plans approved under planning application F/COL/05/1380. As set out above that permission was for the conversion of the building to 10 flats, the building being the entire block (the areas edged in blue and pink). A reduction in the site area would mean the "10no flats" would be incorrect. In addition, the appeal representations raise three further matters regarding the details of the application, commencement of the approved development and whether the permission is still extant.
22. The planning officer's report for application ref 200037 stated that application F/COL/05/1380 was subsequently amended (080561) with minor alterations to internal layouts and the insertion of non-openable high level windows within the rear elevations of units 4 to 10 inclusive and a rear door within unit 7 to be used solely for the purposes of occasional maintenance and repair⁴. It may be that the plans attached to the notice require amending at the least.
23. Case law has confirmed that if an enforcement notice requires compliance with a planning permission, the permission must be valid and extant. The development approved under application F/COL/05/1380 had to commence within 5 years of the decision date of 8 November 2005. The appellant's evidence on the sequence of events in relation to the formation of the two units, the 9 units and the 27 units is ambiguous and lacking precision. There is inconsistency on whether or not the 2005 permission was implemented. Overall, there is insufficient evidence for me to conclude whether or not the 2005 permission is extant and whether the approved 10 flat scheme is the lawful use.
24. Assessment of the ground (f) appeal would consider in detail whether the requirements are excessive to achieve the purpose of the notice. Suffice to say if the purpose of the notice is to remedy the injury to amenity, rather than to remedy the breach of planning control, it would not be permissible to require

⁴ Appendix I to the Appellant's statement at paragraph 6.1. See also amended plans in Appendix F

the alternative 10 unit scheme because this development would fall outside the scope of the deemed planning application in ground (a).

25. In summary, to get the notice in order corrections to the requirements would be necessary. The necessary corrections may make the requirements more onerous which would cause injustice to the appellant, or in the alternative injustice may be caused to the Council if the former lawful use of the building is not reflected or details of any relevant planning permission are not specified correctly.

Conclusion

26. For the reasons given above, the enforcement notice does not specify with sufficient clarity the land where the breach of planning control is alleged to have taken place, the alleged breach of planning control and the steps required for compliance.
27. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
28. In these circumstances, the appeals on the grounds set out in section 174(2)(d), (a), (f) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Diane Lewis

INSPECTOR