



Appeal Decision

Site visit made on 10 November 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Appeal Ref: APP/Y5420/C/20/3258728

2 Farningham Road, London N12 0PP

- 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 Jacob Schreiber (estate of) against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 31 July 2020.
 - The breach of planning control as alleged in the notice is the material change of use to a House in Multiple Occupation (sui generis use).
 - The requirements of the notice are:
 1. Cease the use of the property as a House in Multiple Occupation;
 2. Remove from the property any internal door locks into habitable rooms facilitating the use of the property as a House in Multiple Occupation;
 3. Remove any partitions facilitating the use of the property as a HMO; and
 4. Remove from the property any resultant debris.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. No further action is taken.

Reasons

2. The appellant argues that having regard to the Court of Appeal's judgement in *Miller-Mead v MHLG* [1963] 2 QB 196, the Notice does not specify the required steps with the precision needed to satisfy section 193(3) of the 1990 Act. Furthermore, it is not clear which partitions facilitating the use the Notice requires to be removed and, in any case, partitions should not be removed as they define the rooms that could be used for a C3 use.
3. The Council directs the Notice at remedying the alleged breach of planning control and states that the requirements are clear and unambiguous and do not exceed what is necessary to achieve the purpose. In support of their case the Council seeks support from *Somak Travel Ltd v SSE and Brent LBC* [1987] JPL 630 where it was found that an enforcement notice could require the removal of an internal spiral staircase which was not in itself development, because it had facilitated the change of use of a first floor flat into offices associated with the existing ground floor office. However, that misses the point of concern with respect to the current appeal which is not whether the Notice can require the removal of physical features that are not themselves development. Instead, the argument is that the requirements are not clear or precise with respect to the partitions to be removed.

4. Under s176(1)(a) powers of correction apply to any defect, error or misdescription in the enforcement notice – and therefore not just to any such problem in the recital of the breach. Powers of correction may be exercised in respect of any errors, including requirements. Any corrections or variations to the Notice may be made even if they would make the Notice more onerous, so long as there would be no injustice to either the appellant or the local planning authority.
5. In this case, it is not at all clear which partitions the Council requires to be removed as they are not identified in the Notice or on plan. Furthermore, the Council has not adequately addressed this lack of clarity through the appeal process. That being the case, I do not see how I could vary the requirements or even bring clarity to the requirements because in my judgement, to do so would not only make the Notice more onerous but would also cause injustice to the appellant. Consequently, I find the Notice to be a nullity.

Conclusion

6. I have concluded that the Notice is a nullity and in these circumstances the appeal under the grounds set out in section 174(2) 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.

Formal Decision

7. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under s188 of the Act.

A A Phillips

INSPECTOR