



Appeal Decision

Site visit made on 7 October 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2022

Appeal Ref: APP/N5090/C/21/3282824

Land at 10 Bibsworth Road, London N3 3RP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Homayoun Aminnia against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/1345/19, was issued on 11 August 2021.
- The breach of planning control as alleged in the notice is Without planning permission the sub-division of the property into three self contained flats.
- The requirements of the notice are to:
 - 1 Cease the use of the property as self-contained dwellings and restore the land to the state it was before the breach of planning control, as shown in plans (existing ground Floor Plan EX-1, Existing First Floor Plan, EX-2 and Existing Second Floor Plan EX-3 from planning application 21/2883/FUL). The works to include the removal of all but one kitchen and removal of all but two bathrooms.
 - 2 Permanently remove all constituent material resulting from the necessary works carried out in point 1.
- The period for compliance with the requirements is: 8 months.
- The appeal is made on the grounds set out in section 174(2)(a), (f), (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.

Summary Decision: No further action is taken.

Formal Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act (as amended) (hereafter, the Act).

Preliminary Matters

2. It is common ground between the main parties that planning permission was granted for the sub-division and extension of the appeal property to two flats¹. However, the enforcement notice seeks to attack the subsequent sub-division of the building to three self-contained flats. The property, as built and occupied, is comprised of three separate flats, one on each floor of the building. The ground floor flat is accessible independently of access to the flats at first and second floor, which share a common external entrance and an internal access stairwell.
3. In the second and third reasons for issuing the notice, the Council refer to 'the third planning unit' but this is not a term explained elsewhere within the notice, in the Council's delegated report or on the drawings before me. Rather, the

¹ LPA Ref No: 18/6919/FUL

accommodation provided on each floor of the building is described in varying terms by both parties. However, it is possible to identify through a process of deduction from the totality of the submissions to which unit the notice is referring with regard to 'the third planning unit'.

4. The Council has clarified that the plans referred to in the notice's requirements as being 'from planning application 21/2883/FUL' should read 'EX1-1...', 'EXI-2...' and 'EXI-3...', rather than as set out within the notice. I have determined the appeal accordingly.

The enforcement notice

5. The enforcement notice's first requirement requires the cessation of the use of the property as self-contained dwellings and to restore the state of the land (in this case, building) to the state that it was prior to the breach of planning control. Helpfully, the notice's requirements state that this should be as shown on a set of plans named / numbered as 'existing ground Floor Plan EX-1', 'Existing First Floor Plan, EX-2' and 'Existing Second Floor Plan EX-3'² from a previous planning application³. It goes on to state that the works are to include the 'removal of all but one kitchen' and the removal of 'all but two bathrooms'.
6. The plans referred to in the notice show a ground floor flat with a second flat, accessed via a separate door at ground floor leading to a staircase, at first and second floor levels. The plans are annotated in part showing the room names.
7. Thus, within the ground floor flat an open-plan area providing living room and kitchen area is shown, in addition to which there are two further larger unnamed rooms, one with a bath/shower room accessed from within it, and a smaller independently accessible bath/shower room. Within the upper floor flat, the plans show two bedrooms (one with ensuite facilities), a bath / shower room and an open kitchen / living room. A further flight of stairs leads to the second floor, within which there is shown a bedroom / storage room with an ensuite bathroom.
8. On the face of it, the notice's requirement to restore the building to the layout shown on the specified set of drawings seems that it should be straightforward. However, the notice's subsequent requirement to remove 'all but one' kitchen would be at odds with the detail and layout shown on the specified plans, which show two kitchens. Moreover, as the unauthorised use currently accommodates three kitchens, one within each flat, the notice is also unclear as to which additional kitchen it is that it seeks the removal of.
9. Similarly, the requirement to remove 'all but two' bathrooms is equally confusing and ambiguous in that it does not specify which two bathrooms should be subject to the notice's requirements. Moreover, to comply with this part of the requirement would be at odds with the requirement to restore the building's layout to that shown on the specified plans, which shows a total of five bathrooms across the building's three floors.
10. Section 173 of the Act sets out what is required of an enforcement notice. Amongst other things, section 173(3) states that a notice shall specify the steps which the local planning authority require to be taken to achieve, wholly or partly, the purposes set out at s173(4) (a) or (b). From that, the person

² Note the clarification provided by the Council and described in paragraph 4, above regarding plan numbers.

³ LPA Ref No: 21/2883/FUL

- upon which the notice was served must be able to tell, with reasonable certainty, what steps are required to be taken to remedy the alleged breach.
11. In the judgment of *Miller-Mead v MHLG* [1963] 2 WLR 225, the importance of clarity was highlighted in the case where the construction of an enforcement notice was so ambiguous and uncertain that the owner or occupier could not determine or interpret what steps had to be taken to remedy the alleged breach. The appropriate test is whether the notice, as regards amongst other things the necessary remedial steps, is 'hopelessly ambiguous and uncertain'. Should that be the case, the notice would be a nullity.
 12. For the reasons I have set out, the actions set out at requirement (1) regarding the restoration of the land to its state prior to the breach of planning control, compliance with the stated plans and the removal of some kitchens and bathrooms, are directly contradictory. The appellant could not therefore know from the notice which kitchen or bathrooms are required to be removed in order to comply with the notice, or indeed whether the written requirement to remove 'all but one kitchen' and 'all but two bathrooms' takes priority over the requirement to restore the land to the state shown on the specified plans. With reference therefore to *Miller-Mead*, it seems to me that the appellant could not know 'with reasonable certainty what steps he had to take' to comply with the notice's requirements.
 13. The appellant has appealed against the enforcement notice on grounds (a), (f) and (g). These grounds being, respectively, that planning permission should be granted for what is alleged in the notice; 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach; and that the time for compliance is too short. However, as I have concluded, on the basis of the evidence before me, that the notice is a nullity, these grounds of appeal, as set out in s174(2) of the Act, do not fall to be considered.
 14. The notice's first requirement also requires the cessation of the use of the property 'as self-contained dwellings'. However, the Council's officer report confirms that planning permission exists for two flats whilst the reasons for issuing the notice refer to the creation of three, or the third, units. However, as I have already concluded that the notice is a nullity, it is not necessary for me to consider this matter further.

Conclusion

15. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in section 174(2)(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.

G Robbie

INSPECTOR