



Appeal Decision

Site visit made on 30 November 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/T5150/C/21/3284001

711 A-E & 713 D-G North Circular Road, Neasden, London, NW2 7AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Sean Patterson against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/19/0735, was issued on 23 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to nine flats.
 - The requirements of the notice are: STEP 1 Cease the use of the premises as nine flats. STEP 2 Remove all kitchens and cooking facilities from the premises. STEP 3 Remove all bathrooms from the premises, except TWO, from the premises. STEP 4 Remove all other fixtures, partitions, fittings and other paraphernalia associated with the unauthorised use from the premises. STEP 5 Remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. It is directed that the enforcement notice is varied by: adding to STEP 2 the words "*except for one in each of the buildings numbered 711 and 713*"; and by deleting from STEP 3 the words "*except TWO, from the premises*" and replacing them with the words "*except for one in each of the buildings numbered 711 and 713*". Subject to these variations, the appeal is dismissed, and the enforcement notice is upheld.

Background to the Appeal

2. Nos 711 and 713 are a pair of conjoined buildings on the North Circular. They have a mix of commercial uses on the ground floor and currently 711 contains five flats, one on the ground floor, 3 on the first and 1 in the roof while 713 has four flats, 3 on the first floor and 1 in the roof. There would seem to be no dispute that historically both buildings each had a single flat on the upper floors, possibly including the roof space - but I have no specific evidence for the size of those flats. Nevertheless, there is an established residential use on the upper floor of each building.

The Appeal on Grounds (b) and (c)

3. Both these grounds have been pleaded in error as the arguments for both are that the flats are immune through the passage of time, which I shall deal with below under ground (d).

The Appeal on Ground (d)

4. This ground is that the conversion to 9 flats took place 4 or more years before the issue of the enforcement notice, and the use as separate flats has been continuous for the same period, that is since 23 August 2017.
5. A considerable amount of evidence has been provided, some of which is the same for all the flats. Rental income records have been provided for all the flats, but this consists only of a typed table showing dates and amounts paid up until 2017 after which it is copies of a handwritten notebook and then another handwritten note that Brent Council allocated new addresses for all the flats in 2018. This means that Flat A became 711A etc, so the new addresses have been retrospectively written on the old rental sheets. Interestingly a typed table is then provided for 2019-20 showing gross receipts for each flat but they are called 'rooms' not flats. None of this is particularly convincing and could have been drawn up at any time.
6. Secondly there is a letter from the appellant's accountant, but all that tells me is that a certain amount of rental income was received each year for the combined properties. Not what the use of the properties was.
7. Thirdly there are council tax records for each flat. The appellant argues that three of the flats have paid council tax since at least 2017 and so are lawful, but that is not necessarily the case. Evidence of paying tax is not the same as evidence of occupation so the council tax records are not in themselves determinative, although they are suggestive of use.
8. However, the records are themselves problematic. For Flat 711A for example the first bill is for the period 1 April 2019-2020. There is a separate sheet with a single line saying, 'charge for period 1 Apr-2018 to 31 Mar 2019'. There is a handwritten note saying this is backdated council tax, but there is nothing to tie it to a particular flat or even building? However, taking at face value it means council tax was paid from April 2018 on 711A. The other flats are similar, 711B is backdated to 2011, 711C is backdated to 2015, 711D is backdated to 2013, 711E to April 2017, 713D is listed from October 2019, 713E from January 2019, 713F from November 2019 and 713G backdated to November 2017. The council tax records thus suggest only 711B, 711C, 711D and 711E were flats prior to August 2017.
9. Various tenancy agreements have been provided, but they provide a very patchy record. For 711A there is a single TA dated October 2018. For 711B there is one dated 9 September 2017. For 711C there is one dated 16 April 2017. For 711D there is one dated 2020. For 711E the oldest one is dated 2018. For 713D the oldest is 21 September 2017. For 713E there is one for 2018. For 711F the oldest is dated 2018 and for 711G it is 2020. The tenancy agreement evidence thus suggests only 711C was actually occupied before August 2017.
10. As the Council point out, much of this evidence is uncertain as the flats are sometimes identified only as 711. This uncertainty also carries over to the last

tranche of evidence which is various letters and documents provided to show people were resident in the flats. There are no letters or other documents for 711A, B, or D. Most of the others are addressed only to No 711 which is of little help. However, there is a job centre letter addressed to 711C in 2014 – although a later one is just addressed to 711; a 2016 NHS letter is addressed to 711C. There is also a driving licence addressed to 713F, but that is all.

11. It might be possible to construct from all this a picture of the 9 flats that is suggestive of occupation since before 2017, although whether each flat was continuously occupied is far from certain. However, light is thrown on this by the PCN response from the appellant in March 2020. This states the use is a mix of flats and bedsits. 711 comprised 4 bedsits and 1 flat and 713 comprised 3 bedsits and 1 flat. In addition, there is an HMO licence from September 2019 for the two properties describing them as 9 self-contained flats along with a communal bathroom and kitchen, which is quite different from the PCN reply. The Council accuse the appellant of deliberate misdirection in applying for an HMO when he claims they are flats, but to me this is just indicative of the general level of confusion surrounding the appeal. It remains a mystery why one would apply for an HMO that contained self-contained flats. However, it does suggest, along with all the other evidence that the use of the 'flats' has been fluid. Some possibly have been occupied continuously but not necessarily as separate dwellings, but as part of an HMO, others clearly seem to have gaps in the occupancy evidence. There is also confusion as to which flats are which. Taken all together I cannot say that the appellant's evidence is cogent and clear, it is better described as ambiguous and incomplete. Consequently, the appeal on ground (d) is not made out, that all nine units have been occupied as single dwellings for a period of 4 years prior to the issue of the notice.

The Appeal on Ground (f)

12. The allegation is the creation of 9 flats. Even if there is evidence that some of them were occupied for 4 years, and I am not convinced there is, that does not make them lawful, especially as they are spread across two buildings. It might be possible to determine that, for example, No711 had contained 5 flats that had become lawful due to the passage of time and so issue a lawful development certificate covering the whole building, but at best the evidence suggests that any flats that do meet the tests are scattered through the two buildings. An HMO is not part of the allegation at all so I cannot consider that. If the appellant wants to apply for planning permission for a variety of flats and an HMO that is for him to take up with the Council but cannot be a part of this appeal.
13. However, it is clear that both buildings were occupied on the upper floors as dwellings prior to the conversion to separate units and that is the lawful use. Therefore 2 bathrooms and 2 kitchens can be retained, one each in 711 and 713 and I shall vary the requirements to make that clear.

The Appeal on Ground (g)

14. I accept that all the flats are occupied, but none of the tenants need be made homeless as the buildings could continue as an HMO, and there is currently valid licence for just that. It might be difficult to secure the services of builders at the moment, but there is no evidence that nothing can be done for 6 months. There would not seem to be any valid reason to extend the compliance period.

Other Matters

15. The appellant argues the notice is a nullity as some of the flats are lawful, but that is not the case, as explained above. I do not consider the allegation needs correcting, it is clearly directed against the 9 flats in the two buildings at 711 and 713. It is entirely up to the appellant which kitchen and bathroom he retains in each building the notice does not need to specify which ones.

Simon Hand

INSPECTOR