



Appeal Decision

Site visit made on 24 January 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal Ref: APP/T5150/C/22/3300902

Flats A-D, 215A Kilburn High Road, LONDON NW6 7JG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr H Mangera against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/22/0019, was issued on 4 May 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the upper floors of the premises from two to four flats and the erection of a first floor rear extension to the premises.
 - The requirements of the notice are: (1) Cease the use of the premises as four flats; (2) Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets; (3) Demolish the unauthorised first floor rear extension to the premises; (4) Restore the internal configuration to the original internal layout before the unauthorised change of use and development took place; and (5) Remove all items, debris and materials associated with the unauthorised change of use and development from the premises.
 - The period for compliance with the requirements is: 6 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Act. 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 address

2. The residential part of the building comprises Flats A, B, C and D and the address given in the notice is 215A Kilburn High Road. The parties agree the notice should have given the address with the number 215 instead.
3. Copies of the notice were served on "The Owner/Occupier/Anyone with an interest in land at, Flats A-D, 215A Kilburn High Road, London, NW6 7JG" although the means of service has not been specified. The fact of the appeal confirms the appellant understood that the notice concerned land in which he had an interest. However, I cannot be equally confident that all occupiers of the flats, if they received a copy of the notice, would have understood it was meant for them and affected land they had an interest in.
4. Photographic evidence confirms that tenants occupying flats A and B have used postal addresses including 215, not 215A, and while another occupier of Flat A had used 215A, they were no longer a tenant when the notice was issued.

5. A planning contravention notice issued in February 2022 had used the address "Flats A-D, 215A Kilburn High Road, London NW6 7JG". The response came under cover of a letter with the heading "Re: 215 Kilburn High Rd, NW6 7JG" but it seems the opportunity to clarify the address was not taken.
6. Consequently, and while an appeal has not been made on ground (e)¹, there must be doubt as to whether copies of the notice were served in accordance with the requirements of section 172(2) of the Act.

The change of use

7. The notice alleges a material change of use from 2 flats to 4 flats and the erection of an extension. My consideration of the material change of use is therefore restricted to those parts of the building that have not been extended as part of the alleged breach of planning control ("the previous building").
8. The change of use is alleged to have been made in respect of "the upper floors of the premises" but this is not defined in the notice. However, the 4 flats now existing occupy all floors above ground level and have a communal staircase leading to a ground floor entrance from Kilburn High Road. It is clear from the wording of the alleged breach of planning control that, for the allegation to be correct, the part of the previous building now occupied by the 4 flats must also be the part formerly occupied by 2 flats.
9. Planning permission was granted for the conversion of the "upper floors" into 2 flats in 1992² ("the 1992 permission") but the drawings approved at that time have not been provided. What constituted the upper floors of the previous building, comprising 2 flats, is therefore a matter of conjecture, although logically it must have included the top floor, now occupied by Flat D.
10. The appellant contends, in the appeal on ground (c), that the uppermost flats, Flats C and D, benefit from the 1992 permission. If that were correct, and those flats occupy all the "upper floors" of that permission, it would follow that Flats A and B, occupying what the appellant calls the intermediate level, were not formed as part of a change of use from 2 flats.
11. The appendices to the notice confirm the Council's view that the residential part of the previous building comprised a 1-bedroom flat on the top floor (Flat 2) and a 2-bedroom flat on the floor below and in part of the intermediate level (Flat 1). The appellant appears to confirm some of this, stating that Flat B occupies part of what used to be Flat 1.
12. The appellant also states that Flat A occupies what used to be a mezzanine area used by a shop on the ground floor. A comparison of cross-section drawings from 2002 (Appendix II to the notice) and 2019 (058_215KHR/A300 revision P1) appears to bear this out. The later drawing shows a different staircase leading to the ground floor, incorporating a landing. This landing appears to now be part of Flat A and some of it occupies a part of the building annotated 'shop' in the 2002 cross-section. It therefore appears that the alleged change of use to 4 flats would have, in part, been from retail use and not only from 2 flats as alleged.

¹ That copies of an enforcement notice were not served, as required by s172 [of the Act]

² 92/1053, granted 26 May 1992

13. The top floor of the previous building comprised a single flat (Flat 2) prior to the breach. Flat D occupies the same part of the building, so there does not appear to have been any change of use involving the top floor, which continues to include only one flat. This is a significant matter because Flat D is a distinct planning unit and it indicates that the change of use from 2 flats to 4 flats alleged in the notice has not occurred, even if that has not been argued in an appeal on ground (b)³.

The extension

14. The drawings forming the appendices to the notice confirm there was an extension at first floor level to the rear of the premises prior to the breach. However, that extension did not span the width of the building, as the first floor rear extension currently does, so the extension alleged in the notice is either an enlargement or a larger replacement. Whichever is correct, the appellant does not contest that an unauthorised extension has been erected or claim that it is not development requiring planning permission.
15. However, the premises are also extended to the rear at second floor level, occupied by part of Flat C. The uniformity of external facing materials in views from Waterloo Passage indicates that the first and second floor rear extensions were erected in a single operation. It therefore appears the notice does not accurately describe the operational development that took place.
16. Correction and variation to include the second floor rear extension in the breach and to require its removal would make the notice more onerous and thereby cause injustice. However, while the notice cannot be corrected or varied in this way, compliance with the requirement to demolish the first floor extension (Step 3) would inevitably entail demolition of the second floor extension above. The appellant would thus have to remove something he had not been able to seek planning permission for in the appeal on ground (a), giving rise to injustice. That injustice could be avoided if the notice were varied by deleting Step 3.
17. While the notice could be varied to avoid injustice in respect of the operational development, a significant mismatch between the alleged change of use and what appears to have occurred would remain. That is apparent from the facts, even though an appeal has not been made on ground (b). Because of that, and in view of the doubt I have expressed about the service of copies of the notice, I am not convinced that the appeal can be determined without loss of natural justice.

Conclusion

18. For the reasons given above, I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control and the land where the breach of planning control is alleged to have taken place.
19. It is not open to me to correct these errors in accordance with my powers under section 176(1)(a) of the Act since injustice would be caused if I did so. The enforcement notice is invalid and will be quashed.
20. I further conclude, for the reasons given, that people with an interest in the land may have been substantially prejudiced by the non-service of the notice.

³ That (the matters stated in the notice which may give rise to the breach of planning control) have not occurred

This is not a case where I can exercise the power to disregard any non-service in accordance with section 176(5) of the Act.

21. In these circumstances, the appeals on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Act and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

Mark Harbottle

INSPECTOR