



Appeal Decision

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/N5090/C/22/3305100

46 Friern Park, London, N12 9DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeal is made by Mr Riya Ramani against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 20 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to ten self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as ten self-contained flats.
 2. Remove all works that facilitated the change of use of the property by modifying the layout of the property in accordance with the proposed floor plan drawings (Nos. 1090-003-PL and 1090-004-PL Rev B) approved as part of planning permission reference 15/03836/HSE granted 24.08.2015.
Works to include:
 - a) The permanent removal from the property of all kitchen units, cooking facilities, sinks and worktops other than those shown on drawing Nos. 1090-003-PL and 1090-004-PL Rev B
 - b) The permanent removal from the property of all baths, showers basins and toilets other than those shown on drawing Nos. 1090-003-PL and 1090-004-PL Rev B.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Act.
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Decision

1. It is directed that the notice be varied by:
 - In Section 5(2) deleting all of the words therein and substituting instead:
“(a) Permanently remove from the property all kitchen units, cooking facilities, sinks and worktops other than those within 1 kitchen located on the ground floor;
 - (b) other than within 4 bath/shower rooms permanently remove all other baths, showers, basins and toilets within the property”.
2. Subject to the variations the appeal is dismissed and the enforcement notice is upheld.

Application for Costs

3. An application for costs was made against the appellant by the Council. This is subject of a separate Decision.

Procedural Matters

4. The appeal originally included ground (d) and had been arranged to be dealt with by way of an Inquiry. However, prior to the Inquiry taking place the appeal on ground (d) was withdrawn by the appellant and the parties agreed that remaining grounds (f) and (g) could be determined by the written procedure based on the evidence already submitted by the parties, and without the need for an accompanied site visit.

Appeal Site and Background

5. 46 Friern Park is a traditionally constructed semi-detached dwellinghouse with two storey side and rear extensions and alterations to the roof space added following the grant of planning permission in 2015.

Appeal on ground (f)

6. Section 173 of the Act states that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
7. Consistent with the alleged breach of planning control the notice requires the use as flats to cease and the "removal of all works that facilitated the change of use". Hence, the purpose of the notice is to fully remedy the breach of planning control, (s173(4)(a)).
8. The Courts have held that removal of fixtures and other items that were part and parcel of or facilitated an unauthorised material change of use can be a legitimate requirement, provided of course that such requirements are not excessive, that is to say they do not go beyond remedying the breach.
9. In this regard the Council have sought the removal of all kitchen units, cooking facilities, sinks and worktops, and all baths, showers, basins and toilets, other than those indicated on the proposed layout drawings for the 2 storey side and rear extension granted planning permission in 2015. This would in effect permit the retention of 4 bath/shower rooms across the 3 floors of the whole property along with a ground floor kitchen, all located in the positions indicated on the layout plans.
10. However, since the breach is a material change of use which relates to the whole house (and not just within the extension) the appellant's suggested alternative of simply requiring the same level of items to be removed from the house (as a whole), leaving the same number of bath/shower rooms to be retained including one kitchen, is not unreasonable. I accept the Council's intention that the kitchen should be restricted to the ground floor, since this would not be excessive in remedying the breach and would discourage the breach from re-occurring at any time in the future. As such, these alternative requirements would be less restrictive than as drafted in the notice and would also fully remedy the breach of planning control as alleged.
11. The appeal on ground (f) therefore succeeds to this extent and I will vary the notice accordingly.

The appeal on ground (g)

12. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 6 months. The appellant seeks a period of 9 months.
13. Although it is argued that notice would need to be given to tenants and works could only commence after tenants have left, there is no convincing evidence before me that any tenant would refuse or resist vacating the flats. Indeed, it may be that many if not all tenants might begin eagerly to look for alternative accommodation from the date of this Decision rather than waiting for eviction proceedings. Moreover, in the event of an appellant being forced in to taking eviction proceedings the Council also have powers to extend the period for compliance with the notice if they considered it necessary to do so.
14. After the use as flats ceases the notice would then be fully remedied solely by internal works of removal of fixtures and fittings. As such, and since I take no account of timing for any other works that an appellant may wish contractors to undertake at the same time as removals, I see no reason why the required works cannot be completed with the 6 months period.
15. For these reasons I consider that a compliance period of 6 months does not fall short of what should reasonably be allowed.
16. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR