



Appeal Decision

Site visit made on 3 October 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/A5270/C/21/3276223

344 Oldfield Lane North, Greenford, Middlesex UB6 8PT

- 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 Mithun Babbar on behalf of Equicap against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 15 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of dwelling house to eight self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the premises as self-contained flats;
 2. Remove the kitchen and drainage connections from each of the self-contained flats;
 3. Remove the bathroom and drainage connections from each of the self-contained flats;
 4. Remove all internal doors, partitions and locks which facilitate the use of the premises as self-contained flats; and
 5. Remove all resultant debris.
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (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 as amended have lapsed.
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Decision

1. It is directed that the enforcement notice is:
 - varied by deleting the words “five months” within section 5 (What you are required to do) and its replacement with “nine months”.
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Procedural matters

3. I was unable to undertake an internal inspection of the appeal site as the appellant failed to attend the accompanied site visit on 3 October 2023. This was the Planning Inspectorate’s third attempt to carry out an internal site inspection following two previous visits that were cancelled by the appellant. Accordingly, this appeal will be determined on the basis of the evidence before me, which is considered appropriate given that there is no appeal on ground a) and I am not considering the planning merits of the development. Both parties

were subsequently written to explaining the change in procedure, and therefore I am satisfied that neither party would be prejudiced by this.

The appeal on ground (b)

4. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. The appellant states that the appeal site is not being used as a flatted development consisting of 8 units, as the occupant of each room would not be able to solely live confined to their bedroom to undertake the necessary everyday activities. Whilst the appellant accepts that there are kitchenettes in each of the rooms, they argue that none of the rooms have ensuite sanitary facilities and therefore it is impossible for each room to operate as a separate self-contained flat.
5. Whilst there is no definition of a dwellinghouse within the Act, case law has established that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. This is a question of fact and both actual use and the physical characteristics needs to be considered.
6. My attention has been drawn to the recent planning history of the site where planning permission has been refused twice for the 'change of use of single family dwellinghouse (Use Class C3) to House in Multiple Occupation (Large HMO) comprising 8 rooms' (Council ref: 204115FUL and 202771FUL). Planning permission was also refused for the 'change of use of existing house (Use Class C3) to residential institution (Use Class C2). All applications were refused on the basis that the layouts with bathrooms provided for each of the units suggested separate flats. Indeed, the drawings indicated that all units of accommodation would have access to their own living/sleeping areas, kitchens and ensuite facilities. None of these refusals were appealed.
7. Furthermore, photographs of the internal layout submitted by the appellant on the 16 March 2020 (Appendix 15 of the Council's appeal statement) appear similar to the layouts indicated in all three refused applications. Internal doors between the individual units and the bathrooms (as shown in application refs: 202771FUL, 204115FUL and 212014FUL) appear to have been installed. which strongly indicate that there is direct internal access between each unit and its bathroom. Indeed, the photographs submitted clearly show that the bathroom doors are visible for units 1, 4, 5 and 8.
8. On the 23 March 2021, the case officer had a telephone conversation with the owner of the property. The owner confirmed that the bathrooms and kitchens were first installed in September 2020 and that the first tenants moved into the property in December 2020. The owner also stated that each 'room' has its own washing machine and dryer and that the communal areas in the property are the hallways and the garden.
9. Furthermore, planning enforcement officer had a telephone conversation with the tenant of Flat 7 on 18 February 2021. The tenant stated that she had her own sleeping, kitchen and bathroom facilities and that there were 8 flats and 8 occupants in the property. She also stated that there was no communal space in the property, that she has been living in the flat since October 2020 and that she signed a 12-month contract (Appendix 14 of the Council's appeal statement). The tenant also confirmed in writing to the Council's Local Tax and

Accounts Receivable Team that the floor plan, which shows an internal door to the bathroom accurately reflected her unit (Appendix 12 of the Council's appeal statement).

10. In addition, Foxtons marketing brochure for the second-floor unit (Appendix 19 of the Council's statement) both confirms in writing and clearly shows an ensuite bathroom for the unit.
11. Furthermore, the presence of a secondary door to the bathrooms which provide access to the hallways does not in itself indicate that the units are not self-contained, especially as these could be locked by the tenants of the units preventing access from the hallways. Indeed, the photographs of the bathrooms provided by the appellant, show locks are installed on the bathroom doors. As such, based on all of the above, the appellant's contention that each occupant would be required to leave their rooms to undertake their hygiene routines is incorrect.
12. The appeal form also states that an internal site inspection is essential to see the internal layout. However, the appellant has failed to provide internal access on three separate occasions during the appeal process. I also note that the Council state that two earlier appointments during the Council's own enforcement investigation were cancelled by the appellant. As such the appellant has failed to substantiate their claim regarding the layout of the premises. Nevertheless, during the site visit I was able to observe an intercom system at the front of the premises containing 8 separate doorbells including numbers from 1 to 8, which adds further weight that the allegation has occurred as a matter of fact.
13. The appellant has referred to a number of appeal decisions (APP/P4605/X/18/3203392 and APP/T5150/C/18/3203606) where Inspectors found that an element of shared facilities (shared kitchens and or bathrooms) meant those premises were not self-contained flats. However, for the reasons outlined above this has not been demonstrated on the case before me. As such, these other decisions do not lend support for the current appeal development.
14. Therefore, based on all of the evidence submitted, despite the presence of a shared communal garden and outbuilding, the 8 units of accommodation appear to be able to function independently from one another, and they each contain the facilities for day-to-day living. In addition, the appellant has confirmed to the Council that the tenants moved into the property in December 2020. This is corroborated by the tenant of Flat 7 who has stated that there are 8 flats and 8 tenants within the premises.
15. As such, having carefully considered all of the evidence before me, I conclude, on the balance of probabilities, as a matter of fact and degree, that a material change of use as alleged in the notice had occurred when the notice was issued. There has therefore been a breach of planning control and the limited evidence put forward in support of the contention that the breach has not occurred falls well short of discharging the burden of proof.
16. Accordingly, the appeal on ground (b) must fail.

The appeal on Ground (f)

17. The appeal on this ground is "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 (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
18. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear from the requirements of the notice which seeks to cease the use of the property as self-contained flats together with the removal of kitchen, bathroom, drainage, internal doors and partitions which facilitated the change of use to self-contained flats.
19. The appellant states that requirement 1, requiring the cessation of the use of self-contained flats is not precise and does to outline how to facilitate this. The appellant also considers that requirement 2 is excessive and unnecessary and that it is not unreasonable to have kitchen and drainage connections within a bedroom in an HMO. They further state that there are no bathrooms within the units/bedrooms and therefore requirement 3 is also excessive. It is also stated that requirement 4 is excessive as internal walls are not development, locks on bedroom doors are not uncommon for HMOs, and that no internal walls or partitions are in place which facilitate any self-contained flats.
20. S173(4)(a) provides that a Notice may require that the breach be remedied by discontinuing any use of land or by restoring the land to its condition before the breach took place. As such, in order to remedy the breach of planning control, the appellant needs to comply with the requirements of the notice. This means ceasing the use as self-contained flat and removing everything that facilitated that use, such as any additional kitchens, bathrooms, drainage connections and internal partitions including doors and locks.
21. If the additional kitchens, bathrooms, drainage connections, and internal walls, doors and locks existed as part of the lawful use of the property prior to the breach it would be reasonable to find that the requirements are excessive. However, from the evidence submitted, which include appendix 4 and 15 of the Council's appeal statement which shows the layout of the property before and after the breach took place, these internal features, fixtures and fittings are all part and parcel of the unauthorised material change of use of the property to self-contained flats and no clear evidence has been submitted to demonstrate otherwise.
22. I have also found under the ground (b) appeal, on the balance of probabilities that a material change of use of the dwellinghouse to eight self-contained flats has occurred. Notwithstanding that these internal works may not require planning permission in their own right, a notice directed at a material change of use, as is the case here, may require their removal to remedy the breach.
23. Therefore, it is not excessive to require the removal of the additional kitchens, bathrooms, drainage connections, and internal walls, doors and locks. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
24. Therefore, the appeal on ground (f) fails.

The appeal on Ground (g)

25. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 5 to 12 months, since the property is currently occupied by tenants, and additional time is required to allow the tenants to vacate the property and carry out the remedial works. It is further stated that there is a backlog of contractors following the previous year of lockdowns.
26. However, the last lockdown was some time ago. Nevertheless, I appreciate that all tenants need to vacate the premises in order to carry out the other requirements of the notice. In my view 9 months would strike a more reasonable and proportionate balance in this instance. I shall therefore extend the period from 5 to 9 months for compliance with the notice.
27. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

R. Satheesan

INSPECTOR