



Appeal Decision

Site visit made on 18 September 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 19th October 2023

Appeal Ref: APP/U5930/C/22/3290382

41 Mornington Road, Leytonstone, London E11 3BE

- 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 Mrs Farhat Naseem Ajaz against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice, numbered 210403, was issued on 14 December 2021.
- The breach of planning control alleged in the notice is:
Without planning permission, material change of use of the dwellinghouse C3 use class to use as a mixed composite use consisting of a House in Multiple Occupation ('HMO') (C4 Use Class) comprising of 3 bedrooms on the first floor and 3 self-contained flats - 2 on the ground floor and 1 in the loft.
- The requirements of the notice are to:
 1. Cease the use of the property as a mixed composite use consisting of a House in Multiple Occupation ('HMO') (C4 Use Class) comprising of 3 bedrooms on the first floor and 3 self-contained flats - 2 on the ground floor and 1 in the loft and revert the property back to its previous authorised C3 Dwellinghouse use.
 2. Remove all fixtures and fittings associated with the use of the property mixed composite use consisting of a House in Multiple Occupation ('HMO') (C4 Use Class) comprising of 3 bedrooms on the first floor and 3 self-contained flats - 2 on the ground floor and 1 in the loft, including but not limited to, all signage, door locks and door numbers.
 3. Remove all additional kitchens and separate cooking areas from the property so that only one remains on the ground floor.
 4. Remove all forms of subdivision and partitioning within the property.
 5. Remove from the property all associated debris resulting from compliance with the above steps.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (b) (c) (d) (e) (f) (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mrs Farhat Naseem Ajaz against the Council of the London Borough of Waltham Forest. That application is the subject of a separate Decision.

Ground (e)

3. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that copies of the enforcement notice were not served as required by section 172 of the Act.

4. Section 172 requires that copies of the issued notice should be served on the owners and occupiers of the land to which the notice relates, and on any other person having an interest in the land being an interest which in the opinion of the authority is materially affected by the notice.
5. The Council's documents indicate that it served 5 copies of the notice by recorded delivery, with 4 going to the appeal property and 1 to a named individual at a separate address (Mr Ajaz Nawaz, who is the agent of the appellant). Of the 4 that were sent to the appeal property, 1 was addressed to "The Owner" and 2 were addressed to named individuals (the appellant and her agent, Mr Nawaz). The other was simply addressed to "The Occupiers".
6. The Council had issued a Planning Contravention Notice (PCN) upon Mr Nawaz on 29 April 2021 and which had asked a number of questions in relation to use and occupation of the property. Mr Nawaz responded on 7 May 2021. He identified the appellant as the freeholder and gave his and her separate addresses confirming neither were occupiers of the property. He identified the following occupiers (reproduced by the Council in its appeal statement):

OCCUPANTS OF THREE SELF-CONTAINED FLATS

Mr. Jacek Sebastian Szkalski & Ms. Magdalena Jolanta Bartnik [ground floor, front flat]

Mr. Dariusz Glowacz & Ms. Iga Biedrzynska [ground floor, garden flat]

Mr. Flavius Comsa & Ms. Lucia Mandan [loft flat]

OCCUPANTS OF THREE SEPARATE ROOMS WHO SHARE FACILITIES

Ms Ivanka Taneva (single)

Ms Slavia Rangelova (single)

Mr Aleksandar Andonov & Stoyanka Metodieva (couple)

7. The Council's appeal statement¹ is also clear that from 1 April 2021 the property had been formally registered with the Valuation Office Agency (VOA) under 4 different addresses at No 41 Mornington Road. These were:

FLAT GND FLR FRONT

FLAT GND FLR REAR

ROOMS 1ST FLOOR

FLAT 2ND FLR

These each were banded separately for Council Tax, with individual and separate Local Authority Reference Numbers. I have seen a copy of an individual Council Tax Bill sent on 7 October 2021 to Miss Iga Biedrzynska at her specific address of "Ground Floor Rear Flat, 41 Mornington Road". I have also seen a copy of an individual Council Tax Bill sent on 18 August 2021 to Miss Lucia Mandan and Mr Flavius Comsa at their specific address of "Second Floor Flat, 41 Mornington Road". I have also seen a copy of an individual Council Tax Bill sent on 2 November 2021 to Miss Magdalena Jolanta Bartnik at her specific address of "Ground Floor Front Flat, 41 Mornington Road".

¹ Paragraph 4.52; page 18.

8. Therefore, while I note that the Council says it sent a single copy of the notice to "The Occupiers" of the property as it considers it to comprise a single planning unit, it is a matter of fact that the property was occupied in effect as 4 addresses. Further, it is the Council's own appeal position – as reflected in the notice allegation and reasons for enforcement – that the property is occupied by distinct households not related to each other, and indeed so separate that there are 3 self-contained flats that do not share communal facilities. Indeed, the Council's appeal statement makes much of the 'so many unrelated individuals that live independently from one another' with their 'separate living patterns' in making its ground (a) arguments². It is improbable within this context that a single copy of the notice addressed to "The Occupiers" as a whole, delivered to the property in the post to the street door of the building (rather than separate copies to the 4 separate registered addresses), would be shared and seen by all occupiers who were legally entitled to receive a copy of the important legal document. I also consider that, within this particular context, the Council's apparent decision not to serve on named occupiers (using the information provided in the PCN response or from any other source) also contributed to that improbability³.
9. The Council says that Mr Nawaz was both mailed and emailed a copy of the notice and that he could have passed it on to the occupiers. Notwithstanding it was the Council's role to comply with service provisions of the Act, I have seen no substantive evidence that he did. Although it is clear from the evidence that he made occupiers aware of the enforcement action, that evidence indicates that he made occupiers aware of it some time past the date (14 January 2022) which was the deadline for making appeals against the notice. Further, I have seen communications from numerous occupiers confirming that they had not received (or had knowledge of) a copy of the notice issued and, within the context I have described, I entirely accept and believe what the occupiers say.
10. Accordingly, I am satisfied on the balance of probabilities that copies of the enforcement notice were not served as required by section 172 of the Act.
11. I have the discretion⁴ to disregard non-service in ground (e) appeals, provided that neither the appellant nor the person not served have been substantially prejudiced. However, I am very clear that the occupiers were substantially prejudiced - by the time they knew about the notice it was too late for them to appeal against it, in an enforcement action that would in most cases lead to the loss of their home were the notice requirements to become effective.
12. While the appellant has appealed, and while some occupiers have made written comments in connection to that appeal, those comments appear largely to be in response to the Mr Nawaz's contacts with them in respect to the ground (e) notice service issue. It seems likely to me that the occupiers, given the gravity of the situation, would have either made their own appeals (had s172 been satisfied) or else would have made more substantial and/or comprehensive representations into the appeal before me had they better understood the enforcement and appeal process. But I have concerns on that account.

² Paragraph 4.13; page 10.

³ The appellant has provided tenancy agreements and submits in evidence that the occupiers of the property at the time of notice service were the same as those detailed in his PCN response (save for a child since born to the tenants of the Second Floor Flat).

⁴ Section 176(5) of the Act.

13. Once the appellant had made her appeal, the Council's submissions suggests it sent a letter addressed to the "Owner/Occupiers" at 41 Mornington Road. The letter, dated 31 January 2022, set out the grounds of appeal and explained how comments upon it could be submitted to the Inspectorate under the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002. The letter explained that any comments should be received by 9 March 2022.
14. While I have seen a copy of the above letter, I have also seen a list sent by the Council of addresses it says it notified of the appeal. Curiously, the list does not include "41 Mornington Road" (the actual address in the letter that I have seen submitted into the appeal by the Council) but instead it lists "41a,41b,41c,41 second floor" Mornington Road. The latter could be referring to the HMO part of the property (albeit incorrectly as it is the first floor of the premises occupied in this way) and it might be presumed that a, b, and c relate to the self-contained flats at the property (although I did not find the property to be demarcated in this way on my site visit). However, the list is notably inconsistent with the letter I have seen since the list does not include a simple "41" – which is the only permutation of an address for 41 Mornington Road where I have seen a copy of a letter sent notifying occupiers of the appeal.
15. Therefore, I have significant doubt that this letter (or an equivalent version of it) – explaining the notice, the appeal made, the grounds of appeal, and how representations could be made into the appeal – was sent or reached all of the occupiers. The appellant says not, as supported by comments made by some of the occupiers in the communications I have seen. Therefore, I am not satisfied that they have had a full and fair opportunity to make full appeal representations, either under their own appeals or in association with the appeal before me. Accordingly, I will not exercise my discretion in this case to disregard non-service of the notice upon them.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed on ground (e). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to 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 need to be considered.

Andrew Walker

INSPECTOR