



Appeal Decision

Site visit made on 26 September 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/T5150/C/22/3304607 45 and 47 Kingsway, Wembley HA9 7QP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Shelly Andon of Ablegrange Wembley Limited against an enforcement notice issued by London Borough of Brent.
- The 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 nursing home and attached single family dwelling house to the supported living accommodation, comprising thirteen independent units (Use Class C2).
- The requirements of the notice are to:
 - Step 1 Cease the use of the premises as supported living accommodation, comprising thirteen independent units.
 - Step 2 Remove all kitchens/cooking facilities, except TWO.
 - Step 3 Remove all bathrooms, except TWO.
 - Step 4 Remove all items, materials and debris associated with the unauthorised change of use from the premises and restore the premises back to a nursing home and single family dwellinghouse as existed prior to the unauthorised use commencing.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is varied by:
 - the deletion of Steps 2, 3 and 4, from Schedule 4 of the Notice,
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Ground (f)

3. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. The enforcement notice seeks the cessation of the use and the removal of internal works, and as such the purpose is clearly to remedy the breach. This is confirmed within Schedule 4 of the notice.
4. The appellant contests steps 2 and 3 of the notice, which require the removal of all kitchens/cooking facilities, except two and the removal of all bathrooms, except two, from the appeal site. The Council states that no information has been provided to show that the additional facilities were in existence prior to the breach of planning control taking place and that their removal is reasonable to remedy the breach.

5. Nonetheless, I am conscious that the notice requires the cessation of the unauthorised use. While in many cases it may be reasonable to require the removal also of other features that facilitate the use, in this case I do not find this to be necessary. The uses in operation before the breach occurred were a care home and a dwelling. It appears to me eminently reasonable for both uses to include more than one kitchen/cooking facility, or bathroom, particularly in the case of the care home. As such, while the case¹ cited by the Council sets out that facilitating works can be removed, in this instance I find that the removal of all but one kitchen/cooking facility and bathroom from each of the premises goes beyond what is reasonable. There is a requirement to cease the unauthorised use, and this is sufficient to remedy the breach of planning control.
6. Furthermore, while not mentioned by the appellant, I also have concern over step 4 of the stated requirements. This states:

"Remove all items, materials and debris associated with the unauthorised change of use from the premises and restore the premises back to a nursing home and single family dwellinghouse as existed prior to the unauthorised use commencing."
7. This requires that following cessation of the unauthorised use that the use of the premises revert to a nursing home and single dwelling, essentially requiring the active resumption of two previous lawful uses. This is beyond the scope of an enforcement notice. Furthermore, as the requirements in respect of the removal of physical features from the appeal site is also being deleted, there is no need to require the removal of items, materials, and debris.
8. As a result, I find that the requirements as set out in steps 2 to 4 (inclusive) are excessive and go beyond what is reasonable to remedy the breach. The appeal on ground (f) succeeds to this extent.

Conclusion

9. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it.

Martin Allen

INSPECTOR

¹ Kestrel Hydro v SSCLG & Spelthorne BC [2015] EWHC 1654 (Admin), [2016] EWCA Civ 784.