



Appeal Decision

Site visit made on 5 March 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Appeal Ref: APP/N1730/C/23/3324672

39A Kingsway, Blackwater, Camberley, Hampshire GU17 0JJ

- 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 Penelope Hill on behalf of APE Properties Ltd against an enforcement notice issued by Hart District Council.
 - The enforcement notice was issued on 23 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use from a single family dwellinghouse (Class C3) to four separate C3 units of residential accommodation (known as Flats 1, 2, 3 and 4) on the Land.
 - The requirements of the notice are:
 - (a) (i) Cease using the Land as four separate residential units and remove all of the kitchens and cooking facilities except for one kitchen and
 - (ii) Reinstate the use of the Land to a single family dwellinghouse (Class C3)Or
 - (b) Carry out the development in accordance with planning permission 18/01699/FUL.
 - The period for compliance with the requirements is 6 months for Step (a)(i); 9 months for Step 5(a)(ii); and 12 months for step 5(b).
 - The appeal is proceeding on the grounds set out in section 174(2) (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:

- corrected by deleting the existing requirement (a) and (b), under section 5 (what you are required to do) and replacing them with:

“a) Cease the use of the property as more than one residential unit and remove all of the kitchens and cooking facilities except for one kitchen.

Or

b) Carry out the development in accordance with the terms (including conditions and limitations) of planning permission ref: 18/01699/FUL”.
- varied by deleting the period for compliance specified within section 6 (Time for Compliance) and its replacement with “ For Steps a) and b) above, twelve months after this notice takes effect”.

2. Subject to this variation and correction, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary matters

3. The requirements of the notice, under section 5 (What you are required to do) are poorly worded, in so far as requirement (a)(i) states "Cease using the Land as four separate residential units". However, it would be better if the notice did not require the use as x number of self-contained residential units to cease, because that does not prevent the use for three or two flats to remain. It should therefore state "Cease the use of the property as more than one residential unit". Furthermore, the requirement (a)(ii) of the notice goes too far in requiring a use to take place. Whilst it is generally acceptable for a notice to require that the land is returned to its condition prior to the breach, it should not require a previous use to be reinstated, which goes beyond remedying the breach. My understanding of the notice is not affected by these minor errors, and nothing within the appellant's submission indicates to me that it has been misunderstood by them. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

The appeal on Ground (f)

4. 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".
5. The enforcement notice requires either (a) the use of separate self-contained flats to cease together with the removal of all of the kitchens except for one kitchen or (b) that the site is altered to accord with the approved planning permission ref: 18/01699/FUL. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity. As the notice does no more than seek remedy of the breach, it is not excessive.
6. The appellant states that they would prefer to carryout requirement b) but the current layout of the flats and the windows and doors do not follow the planning permission 18/01699/FUL. The appellant considers that reconfiguring the building both externally and internally to comply with the approved scheme would involve significant works, wasting building resources, as well as reducing the floor space for the two first floor flats. Therefore, the appellant requests that the requirements be varied to revert the ground floor to one flat only, whilst maintaining the internal staircase, layouts of the two first-floor flats as well as the external windows and doors.
7. However, given that the ground (a) appeal has lapsed, I cannot assess the planning merits of the case, and I must take the notice at face value. The notice has been issued to remedy the breach of planning control. That would not be achieved by the alternative steps outlined by the appellant, as it would not remedy the breach of planning control and planning permission would still be required by the revised scheme advanced by the appellant. I also note that planning permission has recently been refused for this revised scheme (Council ref: 23/01426/FUL).

8. On this basis, the Ground (f) appeal is misconceived and fails.

The appeal on Ground (g)

9. 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 to 18 months, since the property is currently occupied by tenants, and therefore additional time is required to allow the tenants to vacate the property and carry out the remedial works. In my view 12 months would strike a more reasonable and proportionate balance in this instance. I shall therefore amend the period to 12 months for compliance with the notice. I also note that the Council have powers under s173A(1)(b) to extend any period for compliance, a matter entirely at their discretion, without prejudicing their right to take further action.

10. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

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

R Satheesan

INSPECTOR