



Appeal Decision

Site visit made on 21 February 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04th April 2024

Appeal Ref: APP/T5150/C/23/3324662

First Floor Flats, 26 Temple Road, London NW2 6PP

- 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 Act).
 - The appeal is made by Mr Yacob Frankel of Riverbeech Limited against an enforcement notice issued by London Borough of Brent.
 - The notice was issued on 15 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the first floor of the premises to five flats.
 - The requirements of the notice are to:
 - STEP 1 Cease the use of the first floor of the premises as more than one flat.
 - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all additional kitchens, en-suite bathrooms/shower rooms and toilets.
 - STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include one kitchen, one bathroom/WC, one living room and three bedrooms, all located on the first floor of the premises.
 - STEP 4 Remove all debris and items, arising from compliance with the above steps, from the premises and remove all materials associated with the unauthorised change of use from the premises.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2)(f) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the following words from Schedule 4:

- STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include one kitchen, one bathroom/WC, one living room and three bedrooms, all located on the first floor of the premises.
- STEP 4 Remove all debris and items, arising from compliance with the above steps, from the premises and remove all materials associated with the unauthorised change of use from the premises.

and its substitution with the words:

- STEP 3 Remove all debris and items, arising from compliance with the above steps, from the premises and remove all materials associated with the unauthorised change of use from the premises.

2. Subject to the variations, the enforcement notice is upheld.

Preliminary Matter

3. The appeal was originally made on grounds (d) and (f). The appellant has withdrawn ground (d) argument that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. I have assessed the appeal accordingly.

The Enforcement Notice

4. Section 176(1) of the Act provides a wide ranging power to correct or vary the terms of an enforcement notice provided that it would not result in injustice to the parties.
5. The Council and the appellant had agreed that STEP 3 of the notice requirements could be deleted. STEP 3 would be excessive in terms of what is necessary to remedy the breach. I am satisfied that no injustice to the appellant or the Council would arise by me correcting the notice in terms I have set out in paragraph one.

Ground (f)

6. An appeal on ground (f) is that the requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach.
7. In this regard the notice requires the cessation of use of the first floor of the premises as more than one flat and the removal of partitions, items, materials including kitchens, en-suite bathroom/shower rooms and toilets. It is therefore clear that the purpose of the notice requirements falls within section 173(4)(a) of the Act – to remedy the breach of planning control.
8. It is claimed that the previous use of the appeal site was a House of Multiple Occupation (HMO) from 2015 up until 28 April 2017. Therefore, the appellant argues that the requirements are excessive and STEP 2 of Schedule 4 should be removed from the notice.
9. Section 173(4)(a) of the Act provides that a notice may require that a breach is remedied by discontinuing any use of land or by restoring the land to its condition before the breach, while section 173(5) gives power to require the alteration or removal of buildings or works, or the carrying out of any building or other operations.
10. It was held in *Murfitt*¹ judgement that where a notice is issued in respect of a material change of use, and works were carried out to facilitate the change of use, the notice may require that the 'ancillary' works are removed in order that the site is restored and the breach is remedied. A notice concerned with a material change of use may not only require the removal of works which would otherwise be immune, but also the removal of those which might have been permitted development if they had not been constructed to facilitate the alleged use.
11. The appellants submitted evidence with regards to the appeal premises being a HMO includes account statements, Assured Shorthold Tenancy (AST) agreements, housing benefit statements and applications, a Building Control notice (Ref: BA 15/6257), Housing Action letter, statutory declarations and

¹ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

documentation from the Council that they confirmed the premises was a HMO following a site visit.

12. The Council have queried the HMO use stating that the premises was registered as five flats on 19 June 2015 and that there is a question as to whether a HMO use at the appeal site was a sui generis HMO use, comprising at least 7 units, accommodating at least 7 persons.
13. The Statement of Common Ground (SoCG) states that it is an agreed matter between the parties that since 2015 the appeal premises has been used as a HMO and as flats. It further states that it is not agreed as to whether the last use prior to the use alleged in the notice is a lawful HMO.
14. The account statements do not specifically indicate that the appeal premises was a HMO. The Council state that the notice received under the building regulations of HMO conversion and housing benefit applications were made describing HMO accommodation in 2015, however, the housing benefit statements and the building regulation notice submitted by the appellant do not make reference to a HMO use. Some of the Greenpark ASTs include clauses prohibiting cooking within the rooms, whereas the Omega ASTs that were signed in August 2015 do not have these clauses and they describe each premises as one bed studio flats. The statutory declarations dated June 2023 do not make reference to the premises being a HMO although the statutory declaration dated January 2024 does state that the appeal site was laid out as a five room HMO with communal kitchen – each room having own en-suite with WC and shower.
15. There is insufficient evidence before me which establishes that the additional kitchens, en-suite bathrooms/shower rooms and toilets were installed specifically for a HMO use and not for individual flats. A self-contained flat would typically include a kitchen and bathroom facilities which these flats do have. The notice requirement in STEP 2 is to remove the additional kitchens, en-suite bathrooms/shower rooms and toilets and it is clear that this requirement goes no further than remedying the breach. Anything less than these removals would not fully remedy the breach.
16. I have had regards to the appellants statement of cases including reference to appeal decisions² and the *Brent v Reiner*³ judgement. I do not consider these other appeals directly relevant to this appeal, particularly as they do not deal specifically with ground (f) and the notice requirements are not directly comparable. The *Brent v Reiner*³ judgement held that when considering whether a building is in use as a HMO, or is comprised of self-contained flats, all evidence relating to actual use should be considered. As stated above, there is no compelling evidence that establishes that the matters detailed in STEP 2 of the requirements were installed specifically for a HMO use.
17. Accordingly, I conclude that the notice requirements are not excessive and the appeal on ground (f) fails.

Chris Baxter

INSPECTOR

² PINs reference numbers: APP/T5150/C/12/2173635; APP/Y5420/C/15/3004753; APP/Y5420/C/13/2193075; APP/U5360/C/19/3241370

³ Brent LBC v SSHCLG & Chaim Reiner [2020] EWHC 3620 (Admin)