



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11th June 2024

Appeal Ref: APP/N5090/C/23/3328018

31 Woodstock Road, London NW11 8ES

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Cakir Ltd against an enforcement notice issued by London Borough of Barnet.
 - The notice was issued on 7 July 2023.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the Unauthorised change of use of the property from a single family dwelling (Class C3) to a 9 Unit House in Multiple Occupation (HMO Sui generis) and the unauthorised residential occupancy of the rear annexe for a maximum total occupancy of 16 people'.
 - The requirements of the notice are
 1. Cease the unauthorised use of the property as a House in Multiple Occupation and the residential occupancy at the rear annexe.
 2. Remove all doors, divisions and partitions; kitchen units, appliances; and associated plumbing and electric services, which facilitate the unauthorised large HMO and residential occupancy of the rear annexe.
 - 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 (the Act) (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - i) deleting the allegation in full and replacing it with 'without planning permission, the unauthorised change of use of the property from a single family dwelling house (Class C3) to a House in Multiple Occupation (HMO sui generis) and unauthorised residential use of the self-contained rear garden building.'
 - ii) deleting the words 'residential occupancy of the rear annexe' from requirements 1 and 2 and replacing them with 'unauthorised residential use of the self-contained rear garden building.'
2. Subject to the corrections and variations, the enforcement notice is upheld.

Preliminary Matters

3. The appeal is proceeding on ground (f) only and can be determined without a site visit based on the evidence before me.
4. The requirements should flow from the notice. The allegation 'includes unauthorised residential occupancy of the rear annexe' in addition to HMO (sui generis) use of the appeal dwelling. The reasons for the notice refer to use as a self-contained rear garden annexe. I will therefore delete the allegation in full and replace it with 'without planning permission, the unauthorised change of use of the property from a single family dwelling house (Class C3) to a House

in Multiple Occupation (HMO sui generis) and unauthorised residential use of the self-contained rear garden building’.

5. To provide consistency between the amended allegation and the requirements I will also delete the words ‘residential occupancy of the rear annexe’ from requirements 1 and 2 and replace them with ‘unauthorised residential use of the self-contained rear garden building.’ The amendments do not cause injustice to any party but provide clarity.

An appeal under ground (f)

6. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
7. As the first requirement of the notice is to cease the unauthorised use, the purpose of the notice is to remedy the breach. The appellant considers that the reasons for issuing the notice and the refusal of planning permission¹ can be addressed by removing rooms and occupants to have a less intensive development. However, with no ground (a) appeal, the planning merits of any alternative scheme fall outside the remit of this appeal. In the absence of evidence of any planning permission for the unauthorised uses, the notice needs to be complied with. The first requirement is not excessive to remedy the breach of planning control.
8. The second requirement refers to removing features which have facilitated the unauthorised use. Case law² sets out that where an enforcement notice is issued in respect of a material change of use and works were carried out to facilitate that use, the notice may require that the ancillary works are removed. Those works can include works that would otherwise be immune or not require planning permission provided that they are integral to or part of the making of the change of use. The works which are required to be removed are listed in the requirements. The appellant has not provided any reasons as to why the second requirement is excessive. The appeal under ground (f) therefore fails.

Other Matters

9. I am mindful that occupiers will need to seek alternative accommodation. The appellant was asked to clarify certain matters during the appeal process, including if was appealing under ground (g) as well as ground (f). However, the appellant’s response did not refer to ground (g). The time for compliance is therefore 6 months.

Conclusion

10. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

E Griffin

INSPECTOR

¹ 23/0498/RCU

² *Murfitt v East Cambridgeshire DC* [1980] JPL and *Caldwell & Timberstore Ltd v Buckinghamshire Council* [2024] EWCA Civ 467