



Appeal Decisions

Site visit made on 18 June 2024

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 19 August 2024

Appeal A Ref: APP/T5150/C/23/3329210

All flats at 215 and 215A Kilburn High Road, London NW6 7JG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr. H Mangera against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 31 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the upper floors of the premises from TWO to FOUR flats and the erection of a first and second floor rear extension to the premises.
- The requirements of the notice are to:
 - STEP 1 Cease the use of the premises as more than TWO flats.
 - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised use, including the removal of additional kitchens, bathrooms/ shower rooms and toilets.
 - STEP 3 Demolish the unauthorised first and second floor rear extensions to the premises.
 - STEP 4 Restore the internal configuration of the original internal layout before the unauthorised change of use and development took place. For the avoidance of doubt, this should be as indicated in the attached floorplan at Appendix I and section plan in Appendix II attached to this notice.
 - STEP 5 Remove all items, debris and materials associated with the unauthorised change of use and development from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (c), (d), (e), (f), (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B: APP/T5150/C/23/3336043

Appeal C: APP/T5150/C/23/3336044

215, 215A, 215B, 215C, 215D Kilburn High Road, London NW6 7JG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal B is made by Mrs Mumtaz Mangera and Appeal C is made by Mr H Mangera against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 15 November 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a shop and two flats to a shop and four flats and the erection of a first and second floor rear extension ("the unauthorised change of use and development").
- The requirements of the notice are to:
 - STEP 1 Cease the use of the premises as a shop and more than two flats.
 - STEP 2 Demolish the unauthorised first and second floor rear extension to the premises.
 - STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use and development took place. For the avoidance of doubt, this should be as indicated on the attached floor plan at Appendix I and at section plan in Appendix II attached to this notice.

STEP 4 Remove all items, debris, materials, arising from the compliance with the above steps, from the premises.

- 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).

Summary of Decision: The appeals are allowed and the enforcement notice is quashed

The Appeals on Ground (e)

1. The ground of appeal is that the notices were not properly served on everyone with an interest in the land. The appellants state that as the owners of the freehold of the property they were served notice of the Enforcement Notices in accordance with the legislative process. However, in both cases, four other notification letters were sent to "All flats 215 and 215A" and a notice was also posted on the shared access door into the property. However, notices were not served on the ground floor shop.
2. The requirements relating to the service of an enforcement notice in S172(2) of the Act provide that an enforcement notice shall be served on the owner and occupier of the land to which it 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. Furthermore, S176(5) of the Act states that if a person who was required to be served was not served, that fact may be disregarded if neither the appellant nor the person required to be served has been substantially prejudiced by the failure to serve. I can understand the argument with respect to the previous enforcement appeal and my colleague Inspector's conclusions on the correct addresses of the appeal property, but the appellants have clearly not been substantially prejudiced because, as freeholder of the whole property, they have been made fully aware of the enforcement notice and have subsequently submitted an appeal.
3. Therefore, the appeals on ground (e) do not succeed.

The Appeals on Ground (b)

4. The ground of appeal is that the breaches of control alleged in the enforcement notices have not occurred. To succeed on this ground, it would need to be demonstrated that the developments as alleged have not occurred as a matter of fact. The appellants have only addressed the matter of the change of use with respect to the appeals under ground (b) and therefore I take it that there is no dispute with respect to the erection of a first and second storey rear extension.

Appeal A

5. With respect to Appeal A the address of the property in question is identified as "All flats at 215 and 215A Kilburn High Road, London NW6 7JG" and the alleged breach of planning control is *"the material change of use of the upper floors of the premises from TWO to FOUR flats and the erection of a first and second floor rear extension to the premises"*. It is clear to me that there remains confusion about the address identified in the Notice and the parts of the building to which the Enforcement Notice relates.
6. The "upper floors" are not specifically defined in the Notice, but there are now 4 flats occupying all floors of the property above ground level which are served

by a communal entrance and staircase from the ground floor entrance onto Kilburn High Road. For the Notice to be correct the part of the building previously occupied as two flats must also be the same part of the building now occupied as four flats.

7. The appellant contends that at the time the enforcement notice was served the matter alleged had not occurred because there had been a change of use from one flat and part of the retail unit and rear extension. Indeed, at the previous appeal¹ the Inspector reasoned that *"it therefore appears that the alleged change of use to 4 flats would have, in part, been from retail use and not only from 2 flats as alleged"*. In addition, as a consequence of the precise wording used to describe the previous alleged breach of planning control, consideration of the material change of use was restricted to those parts of the building that have not been extended as part of the alleged breach. That concern remains because part of the alleged material change of use incorporates the extension the subject of the Notice and is not just contained within the original building. It is noteworthy that the address on the enforcement notice the subject of this current appeal has changed, but the allegation with respect to the alleged change of use from two to four flats has not; neither has reference to the erection of a first and second floor rear extension.
8. With the previous appeal my colleague Inspector concluded that the *"top floor of the previous building comprised a single flat (Flat 2) prior to the breach. Flat D occupies the same part of the building so there does not appear to have been a change of use involving the top floor which continues to include only one flat"*. He adds *"This is a significant matter because Flat D is a distinct planning unit and it indicates that the change of use from 2 flats to 4 flats alleged in the notice has not occurred"*.
9. According to the evidence before me now the main parties have agreed that the Notice should give the address using 215 Kilburn High Road. However, the Council has chosen not to use this, but to refer to all flats at 215 and 215A Kilburn High Road. Although I can see from submitted drawings that none of the flats that exist match the previous 2 flats in terms of size, layout and position, that does not automatically mean they are unlawful. In line with concerns previously articulated in writing by my colleague Inspector there remain problems with what is alleged. The material change of use that has occurred is not restricted to the precise address identified, nor as a matter of fact has there been a material change of use from two to four flats if Flat D is a distinct and separate planning unit.
10. Therefore, there is insufficient evidence before me to deviate from the previous conclusions that the breach alleged in the notice has not occurred as a matter of fact and the Appeal A on ground (b) succeeds. In these circumstances the appeal on grounds (c), (d), (f) and (g) do not fall to be considered with respect to the alleged change of use.

Appeals B and C

11. The alleged breach of planning control on the notice dated 15 November 2023 has changed to *"the material change of use of the premises from a shop and two flats to a shop and four flats and the erection of a first and second floor rear extension"*. The address of the land or premises affected has also

¹ APP/T5150/C/22/3300902

changed. Even though the previous Inspector has previously concluded that *"Flat D is a distinct planning unit and it indicates that the change of use from 2 flats to 4 flats alleged in the notice has not occurred"*, the allegation still refers to a material change of use from two flats to four flats. That cannot be correct as a matter of fact.

12. Again, it had previously been agreed between the main parties that the correct address should be "215 Kilburn High Road", but the Council has identified that as the land or premises affected. However, the description of the alleged breach has changed to include *"the material change of use from a shop and two flats to a shop and four flats"* to ensure that the whole of the property in question is covered.
13. Consideration of the material change of use of the premises remains restricted to the original building rather than the extended building and that is not correct. I have reviewed in detail the evidence before me, including drawings and there is insufficient for me to deviate from the previous conclusions that the change of use alleged and as precisely described in the notice has not occurred. Therefore, Appeals B and C succeed. In these circumstances the appeals on grounds (c), (d), (f) and (g) do not fall to be considered with respect to the alleged change of use.

Conclusion

14. I have considered whether the Notices can be amended to correct the part of the property to which the alleged breach has occurred or whether it could be changed to clarify that part of the alleged breach is contained within the existing building, which includes the first and second floor rear extension. However, in these circumstances where the appellants have appealed on ground (b) and dispute whether the alleged breaches have occurred, it would cause injustice if I changed the addresses of the premises affected and the allegations.
15. For the reasons given above I conclude that the appeals should succeed on ground (b). In these circumstances the other grounds of appeal do not need to be considered.

Formal Decision

16. The appeals are allowed and the enforcement notices are quashed.

A A Phillips

INSPECTOR