



Appeal Decision

Site visit made on 21 January 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2025

Appeal Ref: APP/D1780/C/24/3342050

9 Castle Street, Southampton SO14 6GZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Massoud Yeganegy against an enforcement notice issued by Southampton City Council.
 - The notice was issued on 7 March 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to four serviced apartments.
 - The requirements of the notice are: (i) Cease the use of the land as four serviced apartments; (ii) Remove the fixtures and fittings that solely facilitates (*sic*) the use of the land as four serviced apartments; and (iii) Remove all resulting materials from complying with step (ii) above from the land.
 - The period for compliance with the requirements is three months.
 - 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 fee has 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 has lapsed.
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Decision

1. It is directed that the enforcement notice be varied by deleting 'four' in paragraph 5, steps (i) and (ii) and after 'apartments' in step (ii) inserting 'by removing the three extra kitchens including the kitchen cupboards and work surfaces, sinks and drainers and the ovens, hobs and extractors.' Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Step (i) of the enforcement notice requires the alleged use as four serviced apartments to cease. Step (ii) also makes reference to the use as four apartments. Given that the number of apartments is already specified in the allegation however, it is not necessary to also make reference to that number in the requirements. In addition, this may lead to uncertainty—for example whether the notice requires the cessation of any future unauthorised use of the land for a lesser or greater number of apartments. Consequently, I shall vary the notice to delete references to the number of apartments in the requirements. In doing so, I am satisfied that there would be no injustice to the Council or the appellant.
3. The requirement in step (ii) to remove the fixtures and fittings that solely facilitate the use as apartments is sufficiently precise. Since kitchens and bathrooms might reasonably be described as fixtures and fittings, there is no uncertainty. In the context of the alleged unauthorised use, a more detailed description of exactly which fixtures and fittings must be removed is not

necessary. Furthermore, the appellant can have little real doubt as to what this step would entail, as they described the works which were undertaken to facilitate the unauthorised use. Accordingly, having regard to the principles set out in established case law¹, the notice specifies the steps required to be taken with the precision needed to satisfy s173(3) of the Act.

4. There is no deemed planning application arising from an appeal made on ground (a) and the relevant fee has not been paid. Therefore, planning merits considerations are not before me in this appeal.

Ground (f) appeal

5. The ground of appeal is that the requirements of the enforcement notice are excessive.
6. The appeal property comprises a mid-terrace residential building, in which the living accommodation is arranged over two floor levels. There is no dispute that there are four separate, self-contained apartments at the property. Each unit provides one-bedroomed accommodation. Unit 1 on the ground floor has its own bathroom, along with a fitted kitchen which includes a hob, oven and extractor, a sink and drainer, work surfaces and cabinets. Unit 2, also on the ground floor, has its own separate bathroom and kitchen facilities. In addition, units 3 and 4 on the first floor each have their own separate bathroom and kitchen facilities.
7. An enforcement notice can have the purpose of remedying the breach of planning control, including by requiring the land to be restored to its condition before the breach took place. It can also have the purpose of remedying any injury to amenity caused by the breach. Although the notice does not state as such, its primary purpose must be to remedy the breach. The notice requires the unauthorised use as apartments to cease, along with removal of the fixtures and fittings which solely facilitate that use together with the resulting materials. Compliance with those requirements would result in the property being restored to its condition before the breach took place.
8. The available evidence shows there was a ground floor kitchen and bathroom in the same position in unit 2, along with a bathroom in the same position as that in unit 3, when the property was previously in use as a single dwelling. An enforcement notice cannot require the removal of works that were undertaken for a different, lawful use and which could be utilised in that other lawful use if the unauthorised use ceased. However, the notice does not purport to require the removal of any works other than those which are integral to and solely for the purpose of facilitating the unauthorised use. Accordingly, there is no need to vary the notice to clarify that removal of the kitchen and bathrooms described above is not within the scope of the requirements.
9. The Council did not object to the two extra bathrooms remaining and there is no sound reason why I should do so. Following cessation of the unauthorised use, removing the three extra kitchens and the associated materials would in my view be sufficient to remedy the breach. The foregoing actions would prevent the use as apartments, therefore representing the minimum steps necessary to restore the property to its condition prior to the breach taking place.

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225

10. Moreover, the notice cannot take away the appellant's lawful rights to undertake works which fall outside the definition of development in s55(1) of the Act. It is entirely possible that future occupiers of the dwelling would appreciate the convenience of each bedroom having ensuite facilities. This raises the realistic prospect of the two extra bathrooms being removed only to be re-installed more or less immediately following compliance with the notice. Also in this regard, I am conscious that enforcement action is meant to be remedial, not punitive.
11. Therefore, in conjunction with the other requirements, limiting the scope of step (ii) to only require removal of the three extra kitchens would afford a more proportionate remedy to the breach. That being the case it will be necessary to vary step (ii) further, to ensure there is sufficient certainty over precisely which fixtures and fittings are required to be removed in order to comply with the notice. There would be no injustice in varying the notice accordingly.
12. The ground (f) appeal succeeds to the limited extent set out above.

Ground (g) appeal

13. The ground of appeal is that the time allowed for complying with the notice requirements falls short of what is reasonable.
14. I am given to understand that the property was subject to a letting agreement which ended in October last year. Therefore, the appellant's reasons for seeking to extend the period for compliance have largely been overtaken by events. The appellant confirmed that three months would afford adequate time for the remedial works to be carried out.
15. The ground (g) appeal fails.

Conclusion

16. 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.

Stephen Hawkins

INSPECTOR