



Appeal Decision

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2025

Appeal Ref: APP/N5090/C/25/3359069

Land at Flat 2, 63 Hamilton Road, London, NW11 9EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Ezra Cohen against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 10 December 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of one flat to two self-contained flats.
 - The requirements of the notice are to:
 1. Cease the use of the flat as two self-contained flats.
 2. Remove all works that facilitated the change of use of the property by modifying the layout of the property to accord with the proposed 1st and 2nd floor plans on drawing No. 63HR-PL-FLT-01-A, approved as part of planning permission reference 21/1095/FUL, granted 24.05.2011.
The works of restoration to include the permanent removal from the property of all kitchen units, cooking facilities, sinks, and worktops other than those shown on drawing No. 63HR-PL-FLT-01-A.
 - The period for compliance with the requirements is five 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).
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - The deletion of the date “24.05.2011” in requirement 2 of schedule 5 and its substitution with 24.05.2021”.
 - The deletion of 5 months and the substitution with 6 months as the period for compliance.
2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

The Appeal on Ground (f)

3. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.
4. Planning permission was granted in May 2021 for the use of No 63 Hamilton Road as two flats (ref: 21/1095/FUL). Approved drawing number 63HR-PL-FLT-01-A shows Flat 2 spanning both the first and second floors of the building.
5. The breach of planning control alleged in the notice is the material change of use of Flat 2, into two self-contained flats [one at first floor level and another in the roof space]. Requirement 1 of the notice, which the appellant agrees to, is to cease the use of the flat as two self-contained flats.

6. Requirement 2, in short, is to remove all works that facilitated the change of use of the property by modifying it to accord with the above referenced planning permission and drawing. The works of restoration are specified to include the permanent removal from the property of all kitchen units, cooking facilities, sinks, and worktops other than those shown on the drawing.
7. Having regard to the breach of planning control and the requirements, the purpose of the notice is evidently to remedy the breach. The appellant considers that the notice is excessive for that purpose and that all that needs to be required is the removal of one kitchen, thereby leaving only one kitchen for the lawful dwelling so it would not be possible to use the same as two dwellings.
8. However, in effect, requirement 2 does the same thing, as the plans only show one kitchen and it is not suggested that the appellant wishes to retain the roof level kitchen instead of the kitchen in the first floor flat, or that he wishes to install a kitchen in a different place to that shown on the approved floor plan.
9. Moreover, in the case of *Murfitt*¹ it was held that where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the same, the notice may require that the 'ancillary' works are removed in order that the site is restored to its previous condition and the breach remedied. It was further held in *Somak Travel*² that an enforcement notice could require the removal of works which did not amount to development at all but had facilitated an unauthorised material change of use.
10. An additional kitchen at roof level clearly facilitates the material change of use of Flat 2 into two flats. The notice is therefore able to require the removal of all kitchen units, cooking facilities, sinks, and worktops other than those shown on the approved floor plan, which is on the first floor.
11. The appeal on ground (f) fails.
12. I note that requirement 2 states that planning permission reference 21/1095/FUL was granted on 24 May 2011. That is clearly a typo, and the year should be 2021. I am satisfied that I am able to correct that part of the requirement without injustice to either party.

The Appeal on Ground (g)

13. The ground (g) appeal is that the five months given to comply with the notice is too short. A period of 12 months is requested as notice would need to be served on the tenants and, in the event that tenants refuse to vacate the premises, time would be needed for eviction proceedings.
14. Whilst no evidence is provided of the notice period required to be given to occupants in their respective tenancy agreements, I am mindful that they would need to leave the property in advance of removing the facilitating works, thereby shortening the available notice period and the time for residents to find alternative accommodation.
15. Nevertheless, a period of 12 months is unjustified. Instead, a period of six months would strike a reasonable and proportionate balance between any difficulties and

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

² *Somak Travel v SSE & Brent LBC* [1987] JPL 630

disruption the appellant and tenants may encounter, and the public interest in this case.

16. The appeal on ground (g) succeeds to that extent.

Richard S Jones

INSPECTOR