The Planning Inspectorate

Appeal Decision

Site visit made on 12 August 2013

by David Leeming

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 September 2013

Appeal Ref: APP/Y5420/C/13/2190701
100 Myddleton Road, London N22 8NQ

- 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 appeal is made by Subash Kantilal Mehta against an enforcement notice issued by the Council of the London Borough of Haringey.
- The Council's reference is UCU/2012/00326.
- The notice was issued on 6 December 2012.
- The breach of planning control as alleged in the notice is the material change of use of the ground floor to three self contained flats.
- The requirements of the notice are: Cease the unauthorised use of the ground floor as self contained flats.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be quashed.

Reasons

2. At the site visit it was noted that the ground floor of the property contained four flats. Since it appeared that the allegation of the notice was incorrect, the opportunity was given to the parties to comment on this matter and the representations made by both parties have been taken into account.

3. The weight of the evidence, including that supplied by interested third parties in email exchanges with the Council, supports the conclusion that there were four flats in existence on the ground floor at the time the enforcement notice was issued. That being so, as the Council accept, the allegation in the notice is incorrect. The alleged breach should have read: Without planning permission, the material change of use of the ground floor to four self contained flats.

4. The planning history shows that prior to the issue of the enforcement notice the appellant had sought a certificate of lawful use or development in respect of three flats, annotated A, B and C on a plan submitted to the Council with that application.

5. In serving the notice the Council were apparently under the mistaken impression that there were two rather than three flats at the rear on the ground floor, plus one at the front in the former shop unit. There is no dispute between the parties that the latter flat is a more recent development. In this

respect, the appellant has confirmed that this is not the subject of the appeal on ground (d) against the enforcement notice.

6. The powers in section 176(1) extend to making significant changes to the terms of the notice to provide an accurate description of the alleged breach, including broadening the scope of the notice, subject only to ensuring that the correction does not cause injustice. In this case the requirement of the notice is simply to cease the unauthorised use of the ground floor as self contained flats. So, given that there were four such flats at the time of issue, a correction of the allegation to refer to four would not, on the face of it, cause injustice to the appellant or the Council.

7. Notwithstanding the above, there are nevertheless implications arising from a failure to serve the notice on all the occupiers. No appeal has been made against the notice on ground (e), that copies of the notice were not served as required by section 172 of the Act as amended. However, the Council advise that one of the four flats was not served with the enforcement notice as, in addition to the appellant, only three envelopes were delivered to the property.

8. The requirement in section 172 is for a copy of an enforcement notice to be served on the owner and on the occupier of the land affected, 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. Section 329 deals with the mechanics of service. However, that is not the central issue. This is whether, given that not all those who should have been served had been served as required by section 172, that fact can be disregarded pursuant to section 176(5) on the basis that neither the appellant nor the person(s) who had not been served as required would be substantially prejudiced as a result.

9. The Council advise that the notices served on the occupiers were addressed to the Occupier, Flat 1, Flat 2 and Flat 3. However, as noted above, the rear three flats are known as A, B and C. There is no numbering on any of the doors and it is unclear what the front flat is known as. Also, the front door through which the notices were served acts as a common entrance to both the ground floor and upper floor flats at the property. A number on this front door denotes the property as 100A Myddleton Road. In these circumstances it is unclear whether copies of the notice addressed to the occupiers of Flats 1, 2 and 3 would have been seen by the occupants of the ground floor studio flats A, B and C. In any event, since only three envelopes were addressed to the occupants, the Council acknowledge that it is unclear whether the occupier of the front ground floor flat was served with the enforcement notice.

10. Turning therefore to the question of possible prejudice, an allegation of a material change of use of the ground floor into four separate self-contained flats is one of the creation of four separate planning units, in each case attracting the 4 year immunity period under section 171B(2). There is thus not only an expectation of 4 separate occupiers but also potentially separate grounds of appeal from each.

11. The Council refer to the judgement in *Mayes, Waite and Oubridge v Secretary of State for Wales and Dinefwr Borough Council* [1989] JPL 848. In that judgement the Court found that the correct test was would those persons entitled to be served have found themselves in a different position had they been correctly served. The finding in that case was that there was no realistic prospect that the position would have been any different. However, that case

involved members of a community, not occupants of separate self contained flats. It was found that no appellant or other person within the community who had not been properly served had been substantially prejudiced by the failure to serve.

12. Although the Council acknowledge that it is unclear whether the occupant of the front ground floor flat was served, they state that it is their understanding that this tenant moved away after the service of the notice without appealing it. In that event, the Council contend that no substantial prejudice has arisen from the failure to properly serve the notice. However, the flat in question was clearly being occupied at the time of the site visit and no evidence has been presented to demonstrate that there was a change of tenant after service of the notice.

13. Moreover, unlike in *Mayes*, in the present case there is uncertainty as to which of the occupants were served with the notice, if indeed any truly were. There is no dispute that the notice was not served as required by section 172. Even if it is true that the tenant of the front ground floor flat left after the issue of the notice, the failure of service has deprived at least one of the tenants of the opportunity to pursue an appeal under ground (a), given that the appellant has chosen not to pursue this option, or to present their own case on any other ground.

Conclusions

14. For the above reasons, it is concluded that the failure of service in this case has resulted in substantial prejudice to those who should have been served. The notice is therefore being quashed and there is no need to determine grounds (d) and (g) on which the appeal was made. In the circumstances, without prejudice to the interests of the appellant, it is now for the Council to consider whether to issue a subsequent notice under the power available to them in section 171B(4)(b) of the Act.

David Leeming

INSPECTOR