The Planning Inspectorate

Appeal Decision

Inquiry held on 4 December 2012

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 2 January 2013

Appeal Ref: APP/X5210/C/12/2181502
34 Shoot Up Hill. London, NW2 3QB.

- 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 Kingscroft Estates LLP against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN11/0391.
- The notice was issued on the 3 July 2012.
- The breach of planning control as alleged in the notice is the erection of a building and its use as 24 self-contained studio flats.
- The requirements of the notice are to (a) demolish the unauthorised building or (b) cease the unauthorised use and build out and use the development as approved under planning permission dated 22nd December 2004 (Ref. 2004/3491/P) for redevelopment of the site by the erection of 4x3-storey 4 bedroom terraced houses (NB: the existing building can be re-arranged as 4 terraced single family dwelling houses but must entail the removal of all kitchen facilities from rooms except in the front room of the ground floor of each separate house and all bathrooms from the basement and ground floor and one from the second floor of each separate house).
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (f), and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Preliminary matters

1. At the start of the inquiry, the Council and the appellant advised that each party had reviewed its case in the light of all the written evidence submitted and had undertaken some informal negotiations with each other. Without prejudice to its own case, the Council recognised that if the four properties were returned to four separate dwellinghouses, as required by the notice, each property in Class C3[1] could subsequently be converted into a 'house in multiple occupation' (HMO) within Class C4 under the provisions of Schedule 2, Part 3 Class I of the Town and Country Planning (General Permitted Development) Order, 1995 as amended. The Council considered that the exercise of this permitted development right was still preferable to the unauthorised state of the buildings being converted into self contained studio flats as addressed in the notice.

[1] As defined in the Town and Country Planning (Use Classes) Order 1987, as amended.

2. The appellant company also considered, again without prejudice to its case, that a requirement to remove all of the in-room kitchen facilities and the establishment of a communal kitchen in all four 'dwellinghouses', which could facilitate HMO accommodation, was not unacceptable.

3. In these circumstances, the Council asked me to consider varying the notice to revise the requirements, in effect, to only require the removal of all of the 'kitchenettes' in each studio flat and the establishment of a communal kitchen in each of the four properties. The Council recognised that this variation would result in the bathroom facility in each room being left unchanged, but did not consider that this was inappropriate for an HMO. Further, both of the main parties agreed that the notice should be corrected to refer to 25 and not 24 self contained studio flats as that is the number that were alleged to have been formed and in use when the notice was issued.

4. The main parties also agreed that I could make this correction and these variations to the notice without causing injustice to either party.

5. Finally, the appellant indicated that if the notice was corrected and varied as the Council had intimated, the appeal on grounds (d) and (f) would be withdrawn. Further, in respect of the appeal on ground (g) the appellant indicated that the period of compliance if set at 1st October 2013, was acceptable to the appellant.

Appeal on ground (g)

6. In the original appeal on this ground, the appellant considered that the period for compliance at six months was too short, and said that a period of one year should be allowed as the building is occupied by tenants on one-year tenancies.

7. However, given that the Council requests that I vary the notice and impose a requirement that the remedial works are undertaken by the 1st October 2013, the appellant now accepts that this period is appropriate.

8. Under this ground, I consider that it is important that a reasonable period should be allowed in order to afford sufficient time for the appellant/occupier to make the changes to each self contained flat or to enable the owner/occupier to find alternative accommodation, while the works are being carried out, so as to minimise disruption to home life. On the other hand, the unauthorised development should not be allowed to remain longer than necessary. The removal of this unauthorised development is in the public interest. In my view, a period of some 10 months would strike a reasonable balance between these two competing interests. This would not place a disproportionate burden on the appellant /occupier so as to result in a violation of their rights. Although the parties requested an actual date for the completion of the works, I can vary the period of compliance to 10 months to have the same effect.

9. Given that the notice will be varied to an appropriate period, the appeal on this ground fails.

10. In the light of the above, I concluded that I did not need to visit the site.

Conclusions

11. For the reason given above, I will correct and vary the notice as requested by the parties, but otherwise the appeal is dismissed on ground (g) and the corrected and varied notice will be upheld.

Decision

12. I direct that the enforcement notice is corrected by:

- in Section 3 – delete "24" for the number of self contained studio flats and substitute "25";

and varied by:

in Section 5 - delete all and substitute:

(i) Cease the use of the land as 25 self contained flats;

(ii) Remove the self contained studio flat from the ground floor front of 34(a) (front means facing King Croft Road);

(iii) Remove from all remaining 24 flats all cooking facilities;

(iv) Install at the ground floor front of 34A, 34B, 34C and 34D, a kitchen /diner of at least 15 sq. metres floor area.

In Section 6 – delete "6 months" as the period for compliance and substitute "10 months".

13. Subject to these corrections and variations the appeal is dismissed and the enforcement notice, as corrected and varied, is upheld.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Westmorland-Smith	of Counsel, as instructed by Mishcon de Reya, Solicitors.

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Atkinson	of Counsel, as instructed by the Head of Law, London Borough of Camden.