The Planning Inspectorate

Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2020

Appeal Ref: APP/X5210/C/19/3242982
Land at 89 Messina Avenue, London NW6 4LG

- 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 Mr Maurice Lawee (Messina Limited) against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice, numbered EN19/0654, was issued on 1 November 2019.
- The breach of planning control as alleged in the notice is without planning permission change of use of the single dwelling house to 9 short term let units and the installation of 9x air conditioning units located on the flank wall at the rear of the site.
- The requirements of the notice are:
  1. Cease the use of the property as 9 short term let units;
  2. Revert the property to a single dwelling house;
  3. Completely remove the 9x air conditioning units installed on the flank wall at the rear of the site; and
  4. Repair and damage caused as a result of the above works.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)[e] and [g] of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

The Notice

2. The appellant submits that the notice is invalid because it requires tenancy laws and regulations to be broken in order for the appellant to comply with it. Notwithstanding that the appellant has not provided any detailed evidence of such outcomes arising from compliance with the notice, these laws and regulations are a separate issue for the appellant to resolve. They do not render the notice invalid, which is confined to a situation where there is a patent defect on the face of the notice.

Procedural Matters

3. The grounds of appeal are ground (e) and (g) and in this case it was not necessary for me to carry out a site visit because neither the merits of the scheme nor the potential for alternatives are before me. I have advised the main parties of my intention to determine the appeal without a site visit and I have not received any comments from them.

4. On the basis that the notice relates to the use of residential accommodation I consulted both parties regarding whether there were any implications arising from COVID-19. I have taken account of the responses which I received in my consideration of the appeal.

Ground (e)

5. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required. Section 172 (2)(b) of the Town and Country Planning Act 1990 (as amended) requires that a copy of an enforcement notice be served (a) on the owner or occupier of the land to which it relates and (b) 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.

6. The appellant says that the Council did not advise him that enforcement action was under consideration nor did it give him the opportunity to obtain planning permission or reverse the unauthorised works before the notice was served in November 2019. The appellant does not argue that copies of the notice were not served as required.

7. The Council argues that a letter was sent to Messina Limited in August 2019 but that this was not responded to. I note that the same address was used as for the service of the notice.

8. Notwithstanding whether or not the Council contacted the appellant before serving the notice, an appeal under ground (e) is on the basis of the way in which the notice was served. There is no evidence to demonstrate that the notice was incorrectly served, and the appellant does not argue that this was the case. It follows that the appeal fails on ground (e).

Ground (g)

9. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of one month is too short because the occupiers of the bedrooms are on 12-month (minimum) licenses, one month's notice is required and the works to convert the property back into a single dwelling will take two months. In contrast the Council argues that the bedrooms are let for much more limited amounts of time as described to officers by some of the occupants during a site visit in October 2019.

10. The appellant has not provided any information in the form of copies of the licences to substantiate his claims. Neither is there any evidence to demonstrate why it would take two months to carry out the works to convert the property back into a single dwelling or that the disconnection and removal of the air conditioning units would be a complicated process.

11. In response to my consultation regarding the implications of COVID-19 the Council advised that were there to be any substantiated evidence of the use of the short term let units by NHS staff/key workers, they would have no objection to an extension to the compliance period. There is no indication that the accommodation is being used in this way, therefore I find that an extension of the compliance period is not justified on this basis.

12. I find that the one-month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeals on ground (g) should fail.

Conclusions

13. For the reasons given above I conclude that the appeals should not succeed, and I shall uphold the enforcement notice

Sarah Dyer

Inspector