
Appeal Decision

Site visit made on 14 November 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 22 November 2016

Appeal Ref : APP/N5660/C/16/3148015

Land at 108 Glenister Park Road, London, SW16 5EA.

- 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 Ouhla Properties against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The notice was issued on 31 March 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a single dwellinghouse into 3 self-contained flats and the erection of a rear dormer roof extension.
- The requirements of the notice are a) cease the use of each of the three unauthorised flats and remove all internal doors and partitions which facilitate their unauthorised use; b) remove all kitchen units, kitchen appliances, gas boilers and associated fixtures and fittings from the first and second floors of the premises and disconnect and remove all associated electrical, water and gas services, plumbing and wiring; c) remove the unauthorised roof extension from the rear roof slope of the premises and reinstate the roof as existed prior to the breach of planning control; and d) remove all associated waste and debris resulting from compliance with all of the above steps from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice upheld.

Ground (c) appeal

1. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Section 55 (1) of the 1990 Act sets out the meaning of development and includes the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land.
2. The notice attacks two separate breaches of planning control - the material change of use of the building to three self-contained flats and operational development comprising the erection of the rear dormer roof extension.
3. There is no argument before me that the change of use from a single family dwellinghouse to use of the premises as three self-contained flats does not comprise development. I see no reason to conclude otherwise than that there

has been a material change of use of the appeal site from a single family dwellinghouse to three self-contained flats.

4. In respect of the operational development the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permitted development rights for certain types of development subject to specified conditions and limitations. But these rights apply to a dwellinghouse and not a building containing one or more flats. There is no evidence before me that the operational development occurred before the appeal site had been converted into flats. I therefore conclude that the development the subject of the notice comprises a breach of planning control without the required planning permission.
5. Even if the operational development was carried out when the appeal site was formerly in use as a single dwellinghouse the GPDO provides that permitted development rights are subject to certain specified conditions and limitation. It is relevant to look at the GPDO as it was in force at the time of the issue of the notice namely the 2015 GPDO.
6. Class B of Schedule 2 Part 1 of the GPDO provides permitted development rights for the enlargement of a house consisting of an addition or alteration to its roof. Condition B.2 (b) (i) (aa) provides that the eaves of the original roof are maintained or reinstated. Condition B.2 (b) (i) (bb) provides that the eaves of the enlargement closest to the eaves of the original roof is as far as practicable not less than 0.2 metres from the eaves measured along the roof slope from the outside edge of the eaves. The Council says that these conditions are not met and I see no reason to conclude otherwise. No argument to the contrary is before me from the Appellant. Therefore, even if the rear dormer roof extension was constructed when the appeal site was in use as a dwellinghouse and could benefit from permitted development rights the conditions and limitations of Class B are not met and the development requires planning permission.
7. For the reasons given I conclude that the works cited in the notice comprise a breach of planning control and the appeal on ground (c) does not succeed.

Ground (f) appeal

8. This ground is appeal is that the steps to comply with the requirements of the notice are excessive.
9. Section 173 of the 1990 Act provides that there are two purposes which an enforcement notice can seek to achieve. The first is to remedy the breach of planning control. The second is to remedy any injury to amenity which has been caused by the breach. In this case the notice requires the unauthorised use to cease and the removal of the roof extension. It seems to me therefore that its purpose is to remedy the breach and I am satisfied that no lesser steps would do so.
10. The Appellant argues that the Council has failed to consider an obvious lesser step, namely to use the property as a C3 dwellinghouse in which case the extension would be permitted development.
11. But as explained in the ground (c) appeal even if the property was in lawful use as a dwellinghouse the conditions and limitations of Class B of the GPDO are not met. The lesser steps proposed do not comprise an obvious alternative as

suggested by the Appellant. The rear dormer extension would not benefit from permitted development rights if the property reverted back to a single family dwellinghouse and permitting its retention would not remedy the injury to amenity caused by the breach of planning control.

12. For the reasons given the ground (f) appeal does not succeed.

Ground (g) appeal

13. This ground of appeal is that the time period for compliance with the notice is too short. The period for compliance is six months.

14. The right to a home must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account conflicting consideration of public and private interest. The Appellant argues that 12 months is more reasonable but gives no specific reasons other than that 6 months is too short to evict tenants and carry out the required works.

15. I consider a period of six months to be a reasonable period in which to expect the requirements to be undertaken. It would strike the appropriate balance between the conflicting private and public interest and be proportionate so as not to violate individuals' rights. It would prevent the identified harm continuing any longer than necessary. The Appellant has not identified any specific reasons why 6 months would not be reasonable and I am satisfied that 6 months is a reasonable period for compliance.

16. For the reasons given, the ground (g) appeal does not succeed.

Other matters

17. I note the objections of a neighbour. Concerns raised about compliance with building regulations and any impact on the value of property are not within the remit of this appeal.

Formal Decision

18. The appeal is dismissed and the enforcement notice is upheld.

S. Prail

Inspector