
Appeal Decision

Site visit made on 8 November 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 13 December 2016

Appeal Ref: APP/T5150/C/16/3155895

27 and 27A Cullingworth Road, London NW10 1HP

- 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 Hamid Hajivand against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 29 June 2016.
 - The breaches of planning control as alleged in the notice are
 - Without planning permission, the material change of use of the premises from one house to a House in Multiple Occupation (HMO) and one flat; and
 - Without planning permission, the erection of a hip to gable roof extension and rear dormer window.
 - The requirements of the notice are
 - Step 1. Cease the use of the premises as a House in Multiple Occupation (HMO) and one flat.
 - Step 2. Remove all kitchens, except ONE, and all bathrooms, except TWO, from the premises and all other items, partitions, equipment and materials associated with the unauthorised use from the premises so that the layout of the premises reflects that of a dwelling house.
 - Step 3. Demolish the hip to gable roof extension and rear dormer window and restore the roof back to its original condition before the unauthorised development took place.
 - Step 4. Remove all items, debris and materials arising from the demolition and all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Procedural Matter

2. The first alleged breach of planning control relates to the use of the property. It states that there has been a material change of use from one house to use as a HMO and one flat. However, at the site visit I saw that building works were currently taking place. All of the ground floor rooms had been vacated and were in the process of being re-plastered and re-plumbed; there were no kitchens only some bathroom pipework. It was the same at first floor level except for the rear part of the building which was unseen and occupied by the remaining tenant. Within the loft area I saw a shower, toilet and basin within one room but otherwise the remaining space had been re-plastered. Although these works have taken place recently, it is the use of the property as it was when the notice was issued that is part of the appeal before me now.
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The appeal on ground (c)

3. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. In respect of the first allegation the appellant submits that the property was used as a 'single family dwelling' in June 2012. He claims the subsequent use of the building was as a HMO use, with not more than six residents and refers to the re-issue of a HMO licence. The HMO use did not need express planning permission as this use fell within the limits of permitted development (PD) and the appellant refers to legislation¹ from 2010 which allowed this.
4. The Council's records show that the authorised use of the property is as a single dwelling house. After receiving a complaint about a new use as flats they served a Planning Contravention Notice (PCN) and visited the site in February 2015. They found that only the ground and first floor were laid out as a HMO comprising six bedrooms with a shared kitchen and bathroom. The loft area was used as a self-contained flat with its own kitchen, bathroom and living area. The response to the PCN stated that the property was used as seven flats from April 2007 with seven kitchens and seven showers. The Council are of the view that the former single dwelling house had been divided into two dwelling houses. One was used as a HMO on the ground and first floor and the second dwelling house was the loft flat. No express planning permission had been given for these uses and they did not benefit from any PD.
5. Section 55(1) of the 1990 Act defines the making of a material change of use of land as development and S57(1) requires that planning permission is necessary for development, subject to some specific exclusions. Schedule 2, Part 3, Class L (b) of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) sets out that development consisting of a change of use of a building from a use falling within Class C3 (dwelling houses) of the schedule to the Use Classes Order; to a use falling within Class C4 (HMOs) of that schedule is PD.
6. I consider the use of the property did not benefit from PD. This is because Class L limits a change of use from a building falling within Class C3 to Class C4 only. The Council allege though that the appellant used part of the building as a self-contained flat and the remainder as a HMO. For the HMO use to fall into Class C4, and thus benefit from planning permission, the building to be used as a HMO must not be a block of flats or 'part of a building that has been converted into flats'.²
7. In the appellant's Final Comments he disputes that the loft was used as a self-contained flat and states that the Council did not inspect the area during their site visit. However, the onus of proof is on the appellant to demonstrate that the loft was not a self-contained flat. Whilst he refers to a HMO licence to support his case, the appellant has not submitted a copy of it with his appeal. Furthermore, I find what evidence the appellant has submitted contradicts what he has claimed both before and after the notice was served. This is because the response to the PCN stated that the property was used as seven flats from April 2007 each with kitchens and showers and the answer given to the last

¹ Town and Country Planning (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Order 2010

² Town and Country Planning (Use Classes) Order 1987 Interpretation of Class C4 and Section 257 of the Housing Act 2004 which defines a 'converted block of flats' as a building or **part of a building** (my emphasis) that has been converted into and consists of self-contained flats

question on the PCN is 'hip to gable and rear dormer window **to existing loft flat June 2013**' (my emphasis). The appellant would have been aware of the need to provide truthful answers to the PCN. This is because the document he completed contained several warnings including that it is an offence to make false or misleading statements for which the maximum fine upon conviction is £5000. I therefore give his answers weight.

8. The permitted change of use provided by the GPDO is also on the basis that the previous use was as a Class C3 dwelling house. I find that the appellant's evidence, on this point, is limited. He provides no clarification as to why he states on the appeal form that the property was converted from a 'family dwelling' to a HMO yet 18 months previously his response to the PCN is that the building was used as flats. There are no photographs, utility bills or any other material submitted to support the appellant's ground that the building was in use as a single dwelling house falling within Class C3 before it was converted. In the absence of any details which might explain these matters, I consider he has not discharged the onus of proof that the first breach of planning control did not occur.
9. I turn now to consider the second allegation. In respect of this matter the appellant also claims that the building was in use as single dwelling house when the roof was extended in 2012. Consequently the additional volume benefitted from PD.
10. This ground of appeal falls to be considered against the GPDO as it stood when the development was carried out, namely the 1995 GPDO, as amended. The appellant does not dispute that operational development has occurred within the meaning of S55 of the 1990 Act for which S57 indicates planning permission is required.
11. Schedule 2, Part 1, Class B of the 1995 GPDO permits the enlargement of a dwelling house consisting of an addition to its roof. The appellant provided drawings with his appeal to demonstrate that the volume of the roof extension satisfied the limitations within Class B. However, a building must be in use as a single dwelling house when these works are carried out in order to benefit from the PD. Although there is no definition of a dwelling house in the 1990 Act, for the purposes of the 1995 GPDO 'dwelling house' is interpreted in Article 1 as being not a building containing one or more flats. Within the appeal submissions there is nothing from the appellant to demonstrate that the building was being used entirely as either a single dwelling house within Class C3 or a single dwelling house within Class C4 when the roof extension was built.
12. Furthermore, the Council point out that in the PCN response the appellant stated the roof works started in 'December 2012' and were completed in 'June 2013'. This is different from the information given in the appeal form where it is stated that the works were 'completed' in June 2012 and in the Final Comments where it is stated the dormer was 'constructed in June 2012'. . Also, the answer given to the last question in the PCN is 'hip to gable and rear dormer window **to existing loft flat June 2013**'.
13. The Planning Practice Guidance advises³ that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the

³ Reference ID: 17c-006-20140306

appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probability.

14. I find that the appellant's statement of facts to support his appeal is inconsistent with the previous formal responses he gave to the Council. The existence of the self-contained flat means that the appellant also cannot rely on the claimed use of the building as a single dwelling house within Class C4 in order to benefit from PD. In the absence of any other details which might explain matters, I consider he has not discharged the onus of proof that the second breach of planning control did not occur. The ground (c) appeal therefore fails in respect of both of the allegations set out in the notice.

Conclusion

15. For the reasons given above I consider that the appeal should not succeed.

D Fleming

INSPECTOR