
Appeal Decision

Site visit made on 22 November 2016

by David Richards B Soc Sci DipTP MRTPI

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

Decision date: 14 December 2016

Appeal Ref: APP/T5150/C/16/3149060
252 All Souls Avenue, London NW10 3AD

- 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 Notting Hill Community Church against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/15/0379, was issued on 19 March 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of the use of the premises from dwellinghouse to a mixed use as residential and community/religious use AND without planning permission the erection of outbuilding in the rear garden of the premises.
 - The requirements of the notice are: STEP1: Permanently cease the use of the premises as a community, religious and educational centre and remove all items and materials associated with the unauthorised use. STEP 2: Demolish the outbuilding and remove all the contents of the building and all waste materials associated with this demolition from the premises.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) 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.
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Decision

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

Reasons

Appeal on ground (b)

2. The ground of appeal is that the alleged change of use has not taken place as a matter of fact. Where a legal ground of appeal is pursued, the onus of proof is on the Appellant.
3. The Appellant argues that the building is used as a private residence and attaches a copy of a tenancy agreement between the church and the family renting the building. This agreement documents the assured shorthold tenancy on which basis the building is occupied. The address given is for 22 All Souls Avenue, but there is no dispute that this is a typographical error. The Church owns 252 All Souls Avenue and does not own any other residential property in the area.

4. Clause 7 of the agreement requires the tenant to use the property as a private dwelling house only. Clause 9 requires that the tenant shall not do anything on the Property which may be a nuisance to, or cause damage to, any adjoining premises.
5. While the lease is clear that the property should only be used as a private dwelling, this is not the end of the matter. It would be possible for the property to be used outside the terms of the lease without the landlord necessarily seeking to recover possession.
6. The Appellant acknowledges that 'the tenants do lead a charity; they do have a lot of family members living locally and are well known.' It is said that this has led the Council to reach a false conclusion.
7. A completed Planning Contravention Notice was returned to the Council on 22 January 2016. The completed form claimed that the property had been rented out to one family only and that the outbuilding had been used as an entertainment/hobby space. The form indicated that the appellant had not been aware of any religious/church activities taking place at the premises.
8. The Council's evidence in respect of the alleged change of use is as follows:
'On 18 November 2015 the case officer contacted the leaseholder of the premises in order to arrange a site visit as several complaints had been received concerning increasing noise levels associated with the use of the outbuilding for a religious gathering. ... A further site assessment was carried out on 27 November 2015. No internal subdivision, installation of kitchen or bathroom was noted. The outbuilding was clearly used as a function room for gathering as there were a number of chairs stacked against the wall. The internal layout and use of the main house was also inspected. It comprised a kitchen and a bedroom on the ground floor level, 3 bedrooms, a bathroom and a separate toilet on the first floor level, 2 bedrooms plus bathroom on the upper floor level. Access to the rooms on the first floor level was refused by the Care Taker. The upper floor level was used by the leaseholder and his family. There was a timetable on the wall which set out different community activities such as teaching, breakfast and 'quiet times'. The case officer was informed that 4 x bedrooms were allocated for the use of church members to stay from a couple of days to a maximum duration of 2 months.'
9. The Council has submitted photographic evidence taken during the site visit on 27 November 2015. These showed that the rear outbuilding had been fitted with a bar area. There were also some 20 stackable chairs, together with large portable whiteboards of a type commonly used for educational and exhibition purposes. On my site visit, I also saw an overhead projector fixed to the roof where it could be used to project onto a white wall.
10. The Council also refer to a timetable setting out a range of communal/educational activities including gym, work duties, teaching and small groups. Other, church related, activities at specific locations are referred to, for example, church cleaning at NHCC (presumably Notting Hill Community Church) and 'Be in Camden Town for church'. The Appellant reported that this was affixed outside a space used for an office by the tenant.
11. The Appellant acknowledges that the tenants do work for a charity unconnected with Notting Hill Community Church, which involves training, leading and

teaching young people and supporting churches and community groups. As such it is contended that it is not surprising that there should be a timetable on the wall. Many people, for example school governors, are likely to have timetables on the walls at residential properties, but this does not mean that they run an educational institution.

12. It is also accepted that functions and gatherings are held at the house. The tenant has a large family, many of whom live locally, and he and his wife like to entertain. Some of their students visit the premises and the garden building is useful for art and dance activities. It is also used for prayer.
13. A neighbour on one side of the property states that 'the use of the main new building appears to be as a venue for people to congregate', and questions the appropriateness of the use given the presumed residential designation of the property and the disturbance from noise and bright lights to the neighbours by such gatherings which can continue late into the evening.
14. A neighbour on the other side comments: 'There is so much building now in their garden that it dominates the view from my house and the sheer number of people who seem to be next door makes it less welcoming to spend time in my own garden .. there have been times when there were as many as 16 people staying in the house. People attend meetings there during the day which has meant a lot of coming and going, general noise and disturbance.'
15. I accept that the presence of the timetable does not necessarily indicate that activities associated with the alleged change of use are taking place at the house. However, taking into account all the matters that have been raised, including by neighbours, I consider that on the balance of probabilities, the timetable relates at least in part to communal activities of a religious/educational nature, at least some of which have taken place at the premises. The Appellant accepts that the building is used by students for arts, dance and prayer, and is not simply used by the family for purposes which are wholly in connection with residential use. Furthermore, the Council state that the case officer was informed on 27 November 2017 that a number of bedrooms were allocated for church members to stay from a couple of days to a maximum duration of two months. This has not been challenged by the Appellant, and is consistent with the mixed use of the premises as alleged in the enforcement notice.
16. Taking all the evidence into account I find that, as a matter of fact and degree, the use to which the premises have been put is not simply residential, but that a material change of use to a mixed residential and community/religious use as alleged in the notice has occurred. Accordingly, the appeal on ground (b) fails.

Appeal on ground (c)

17. The ground of appeal is that the construction of the outbuilding in the rear garden of the premises is permitted development. The Council initially determined that the building came within the parameters of what was permissible under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO). However on reviewing the case in connection with the enforcement action it was alleged that a material change of use had occurred. I have considered the evidence in respect of the appeal on ground (b) above and supported the Council's position in respect of the change of use.

18. The relevant part of the GPDO sets out permitted development rights specifically for dwellinghouses. It only permits the erection of a building such as that described in the enforcement notice if it is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such'. It would only be acceptable if was reasonably related to the domestic needs or personal enjoyment of the occupants.
19. Permitted development rights do not apply in this case, where the use of the structure is not solely for the residential needs of the occupiers. Accordingly, I conclude that the building that has been erected is not permitted development, and planning permission would be required. No planning permission exists and consequently, the appeal on ground (c) fails.
20. It was pointed out on the site visit that there was a substantial built-in barbecue area to the rear of the outbuilding, covered by a sheltering structure that was physically attached to the outbuilding. However, as this was not referred to in the Council's evidence, I have not taken it into account in determining this appeal.

Conclusion

21. For the reasons given above the appeal is dismissed and the enforcement notice is upheld.

David Richards

INSPECTOR