

Appeal Decision

Site visit made on 2 December 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 4 January 2017

Appeal Ref: APP/A5270/C/16/3150003

361 Horn Lane, Acton, London W3 0BX

- 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 Salahuddin Chowdhury against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 23 March 2016 under ref. COM/2015/01146.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the main dwelling from a single dwelling house to an HMO for 10 people (use class Sui Generis) and the material change of use of the outbuilding to the rear of the premises (in the position marked 'X' on the attached plan) to use as a self-contained residential dwelling ("Unauthorised Development").
 - The requirements of the notice are set out as follows:
 - a. *Cease the use of the main dwelling as an HMO (Use Class Sui Generis) and do not use for any purpose other than as a single dwellinghouse;*
 - b. *Remove all locks to all internal doors in the main dwelling except locks on bathroom doors;*
 - c. *Cease the use of the outbuilding as a self-contained residential dwelling;*
 - d. *Do not use the outbuilding for any purposes other than a use ancillary to the main dwelling;*
 - e. *Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling;*
 - f. *Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling; and*
 - g. *Remove all resultant debris.*
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (e) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended have lapsed and do not fall to be considered.
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Decision

1. It is directed that the enforcement notice be corrected and varied as follows:
 - (i) By inserting the word "London" in the address of the land affected before the postcode in paragraph 2.
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- (ii) By altering the text "(use class Sui Generis)" to the text "(sui generis use)" in paragraph 3 and the text "(Use Class Sui Generis)" to the text "(sui generis use)" in paragraph 5a.
 - (iii) By deleting from paragraph 5a the words "and do not use for any purpose other than as a single dwellinghouse".
 - (iv) By deleting the whole of paragraph 5d and relabelling sections e, f and g in paragraph 5 as sections d, e and f accordingly.
2. Subject to the above corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Background

- 3. The appeal concerns a two-storey terraced residential property with further accommodation in the loft and a detached outbuilding in the rather compact rear garden. There is a gated service road at the rear that runs between Cecil Road and Noel Road.
- 4. The enforcement notice is directed at an alleged material change of use of the main property from a single dwelling to a large-scale house in multiple occupation (HMO) and an alleged material change of use of the outbuilding to a self-contained residential dwelling.

The enforcement notice – corrections and variations

- 5. It would be more correct if the site address at paragraph 2 of the notice made reference to London.
- 6. Large HMOs (those containing more than six people) are unclassified. They are therefore sui generis or of their own kind. There is no "Use Class Sui Generis" as such; where that phrase appears in the notice it should be replaced by the phrase "sui generis use".
- 7. It is incorrect and excessive for an enforcement notice to include a positive requirement that a property must only be used for a specified lawful use. Requirements that seek to simply cease unauthorised uses are sufficient. A notice cannot prohibit any of the lawful uses to which a building might be put. Consequently, in paragraph 5 of the notice the second part of requirement "a" and the whole of requirement "d" should be deleted by variations to the notice.
- 8. I am satisfied that the corrections and variations to the notice indicated in paragraphs 5-7 above would not cause any injustice to the parties.

The appeal on ground (e)

- 9. Ground (e) arises where an appellant wishes to argue that copies of the enforcement notice were not served as required by section 172 of the 1990 Act as amended.
- 10. The key issue in this case is whether the notice was served properly on the owner and on the occupier of the land to which it relates and 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. If it was not served

- properly, the test is whether anyone with an interest in the land has been substantially prejudiced by the failure to serve a copy of the notice on them.
11. Section 176(5) of the 1990 Act as amended gives the Secretary of State or the appointed Inspector power to disregard any failure to serve the notice on anyone as required, if neither the appellant nor the person concerned has been substantially prejudiced by the failure to serve him or her.
 12. The appellant says he did not receive a copy of the notice as it was sent to his mortgage company (Capital Home Loans Ltd). The mortgage company sent the appellant a copy of the notice on 9 April 2016. The interests of other parties are not referred to.
 13. The Council insists that the appellant was served with copies of the notice at 361 Horn Lane, the appeal property and 365 Horn Lane, the appellant's address as supplied on the appeal form. A further copy of the notice was sent to the mortgage company by registered post. The certificates of service are enclosed with the Council's statement. The appellant has not challenged these in his final comments. It seems to me that copies of the notice were served correctly in accordance with section 172 of the 1990 Act as amended.
 14. Even if the appellant only became aware of the notice on 9 April 2016 or shortly thereafter, the appellant was able to lodge an appeal against the notice and to make written representations well before the date the notice was first due to take effect. So, even if there had been a failure of service in accordance with section 172 of the 1990 Act as amended, I would have been satisfied that this had not caused substantial prejudice to him and would have exercised my powers to disregard it.
 15. In the light of the above, the appeal on ground (e) fails.

The appeal on ground (b)

16. The appellant, who is not represented, may have misunderstood the purpose of ground (b). An appeal on ground (b) is directed to the consideration of whether the matters alleged in an enforcement notice have occurred, as a matter of fact. The relevant date for assessing whether the alleged breach of planning control set out in a notice has taken place is the date of issue of the notice. The burden of proof in such matters is on the appellant and the relevant standard is on the balance of probabilities.
17. The appellant acknowledges that since taking possession of the property in 2008, the main house has been let out to residential tenants as a HMO. No attempt is made to claim that the HMO use might have fallen within Use Class C4 (small HMOs for up to six people).
18. My site visit revealed that there are six letting rooms with locked doors across the three floors of accommodation in the main house. There are shared bathroom and toilet facilities on the first floor and shared kitchen and dining areas on the ground floor, together with a small room under the stairs containing a shower, toilet and washbasin. It was clarified at the site visit that the accommodation catered for 10 persons in accordance with the varied HMO licence issued under the Housing Act 2004 and dated 24 June 2013. Compliance with the terms of the HMO licence and the Housing Act 2004 does

not supersede or exempt the appellant from the planning regulations which are quite separate.

19. This evidence, together with the evidence gathered by the Council at various site visits (24 August 2011, 2 February 2012, 13 February 2013, 15 July 2013, 8 June 2015 and 3 September 2015), suggests to me that, on the balance of probabilities, the material change of use of the main dwelling from a single dwelling house to a HMO for 10 people (sui generis use) has occurred. The appeal on ground (b) insofar as it relates to this aspect of the breach of planning control does not therefore succeed.
20. Turning to the outbuilding, the appellant is suggesting that it was used as an office for a florist before he purchased the property in 2008, that he has never used the outbuilding for anything other than storage and that it has never been changed in any way.
21. From what I saw the outbuilding contains all the facilities required for day-to-day living, including a kitchen area within a living room/bedroom and a separate room containing a shower, toilet and washbasin. Whilst it did not appear to be occupied on the day of my visit, the Council on various visits to the property (4 June 2013, 10 June 2013, 12 July 2013, 25 February 2015, 8 June 2015 and 3 September 2015) found evidence that the outbuilding was being occupied as a separate self-contained dwelling. This evidence casts serious doubt on the appellant's version of events.
22. The appellant has not discharged the burden of proof. Even if the outbuilding is not currently occupied and used as a self-contained residential dwelling, it does not mean that this use has not occurred. I find, on the balance of probabilities, that the matter alleged – the material change of use of the outbuilding to use as a self-contained residential dwelling – has occurred. The appeal on ground (b) insofar as it relates to this aspect of the breach of planning control does not therefore succeed.

Conclusion

23. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed. I shall uphold the enforcement notice as corrected and varied.

Andrew Dale

INSPECTOR