
Appeal Decisions

Inquiry held on 29 November 2016

Site visit made on 29 November 2016

by Alwyn B Nixon BSc MRTPI

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

Decision date: 1 March 2017

Appeal Refs: APP/T5150/C/16/3146014 & APP/T5150/C/16/3146016 15 Prout Grove, London NW10 1PU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Ben Kpogho and Mrs Christine Nabisenke Kpogho against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/15/0063, was issued on 2 February 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 house to flats".
 - The requirements of the notice are: STEP 1 Permanently cease the use of the premises as flats. STEP 2 Alter the internal layout so that it contains no more than one kitchen and two bathrooms, a lounge to reflect a layout associated with a single family dwellinghouse. STEP 3 Remove all items, partitions and equipment associated with the unauthorised change of use of the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since there is no appeal on ground (a) there is no application for planning permission deemed to have been made under section 177(5) of the Act as amended.
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Decisions: APP/T5150/C/16/3146014 & APP/T5150/C/16/3146016

1. The enforcement notice is corrected by the amendment of steps 2 and 3 of the requirements as follows:

STEP 2 Revert the internal layout of the property to that of a single dwelling containing not more than one kitchen and two bathrooms.

STEP 3 Permanently remove from the site all other kitchen and bathroom fixtures and fittings and partitions associated with the unauthorised change of use of the premises to flats.

The appeals are dismissed and the enforcement notice, as so corrected, is upheld.

Procedural Matters

2. The appellants are the joint owners of the property to which the enforcement notice relates. The grounds of appeal are the same in each case and the evidence has been submitted jointly in respect of both appeals. At the inquiry Mr Ben Kpogho appeared for himself and Mrs Christine Kpogho and gave
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evidence on behalf of both parties. I therefore deal with both appeals jointly throughout this decision.

3. At the inquiry an application for a partial award of costs was made by the Council against Mr Kpogho. This is the subject of a separate decision.

Matters concerning the notice

4. During the inquiry I raised questions about the clarity of the requirements of the enforcement notice. I have wide powers of correction, and have a duty to get the notice in order if I can. An enforcement notice should tell the recipient clearly what he or she must do to put the matter right. I consider that the wording of steps 2 and 3 of the requirements of the notice should be amended as set out in my Decision above, in the interests of clarity and accuracy. I am satisfied that this does not prejudice the interests of any party.

Background

5. 15 Prout Grove was constructed as a semi-detached house and was used as a single dwelling until sometime after its purchase by the appellants in 2003. The appellants have never lived at the property, but instead have let it to tenant occupiers. At some point after taking ownership of the property, the appellants have converted 15 Prout Grove from a single dwellinghouse into flats. 15 Prout Grove now comprises four self-contained flats.

The ground (d) appeals – reasons for decision

6. The appeals are made on ground (d) alone, which is that at the time the notice was issued it was too late for the local planning authority to take enforcement action against the matters stated in the notice. The notice was issued on 2 February 2016; in short the basis of the appeals is that the change of use of 15 Prout Grove from a house to flats took place well over 4 years before the notice was served. In support of this position it is said that the flats have been rented out to tenants who claimed housing benefit and that the Council has the records of this. In addition the appellants say that the flats were registered for Council tax and that this has been paid by the tenants of the flats.
7. The breach of planning control as alleged in the notice is “without planning permission, the material change of use of the premises from a house to flats”. The Council described the breach in this way because it was unable to obtain access to the interior of the property and was not certain how many flats had been created. However, it is clear that the Council had reason to think that there were 4 flats at that time, as the notice was served on (amongst others) “The Owner/Occupier/Anyone with an interest in land at, Flats 1-4, 15 Prout Grove, London NW10 1PU”.
8. On ground (d) the onus is on the appellant to produce sufficient evidence to demonstrate, on the balance of probability, that the use has continued over a sufficient period of time to become lawful.
9. At the inquiry Mr Kpogho gave evidence concerning the chronology of changes to 15 Prout Grove following his acquisition of the property. In summary, it appears on the evidence that there have in fact been successive building operations, each of which have facilitated a material change of use requiring planning permission. In late 2007 or thereabouts works were carried out to convert 15 Prout Grove from a single dwelling to a ground floor and a first floor

flat. Council tax valuation and billing records show that the property was registered as 2 flats with effect from 23 December 2007 but that neither flat was occupied until at least April 2008. A Council Housing Benefit decision notice produced by the appellants indicates that housing benefit was paid in respect of a tenant of Flat 1 at 15 Prout Grove for a brief period commencing on 3 April 2008.

10. In 2011 and 2012 further works were carried out to subdivide the ground floor flat into 2 (thereby forming 3 flats in total), and to similarly subdivide the first floor (resulting in 4 flats in total). Council tax valuation records show that the ground floor of 15 Prout Grove was registered as 2 flats with effect from 20 June 2011, and that Flat 4 was registered with effect from 9 August 2012.
11. Further housing benefit payment notices have been produced by the appellants which indicate that housing benefit payments were made in respect of tenants at Flat 1 (from 20 June 2011 and from 9 August 2012 to 21 July 2013), Flat 3 1st Floor (from 5 December 2011) and Flat 4 (from 8 October 2012).
12. Copies of tenancy agreements relating to 15 Prout Grove have also been produced by the appellants. These relate to Ground Floor Flat 1 (dating from 9 August 2012) and Flat 3, 1st Floor (dating from 17 December 2011).
13. On the basis of the foregoing it appears that the change of use of 15 Prout Grove to flats as alleged in the enforcement notice may possibly have commenced in about April 2008. However, no documentary evidence has been provided showing if, or when, the upper floor flat (Flat 2) registered at this time was actually occupied. Moreover, no evidence has been provided of the pattern of occupancy of Flat 1 between April 2008 and August 2012. In addition, in the absence of evidence to the contrary and on the balance of probability I consider it likely that during some of 2011-2012, when works were in progress to subdivide the ground floor and first floor into two flats apiece, there would not have been residential use of the affected parts of the property.
14. Drawing all of the evidence together, I incline to the view that what has taken place in this case is an initial change of use of 15 Prout Grove to 2 flats in around 2008, followed by further development in 2011-2012 consisting of a subsequent change or changes from 2 to 4 flats. To my mind this subsequent phase or phases of development suggests a significant interruption and further change in the use of the property. The evidence falls well short of showing continuity of use of the property as flats for any 4 year period from April 2008 up to the issuing of the enforcement notice in February 2016.
15. During the inquiry Mr Kpogho maintained that he could have provided additional evidence of occupancy and use of the property, if he had known that this was needed. It is for the parties to decide what evidence to rely on in support of their respective cases, and Mr Kpogho was aware of the inquiry procedure timetable for preparation and disclosure of evidence. Although appearing on his own behalf and not represented by counsel or other legal or planning advocate, Mr Kpogho is a solicitor by training and was plainly content to rely on his own knowledge and experience in presenting the appellants' case.
16. Moreover, regardless of the question of nature and continuity of use of the constituent parts of 15 Prout Grove since 2008, it is clear on the evidence that a fourth flat at the premises only came into being in August 2012, less than 4

years before the enforcement notice was issued. Any use of the property as 3 flats prior to this can only have subsisted for a period of about 8 months at best (between December 2011 and August 2012). The initial use of 15 Prout Grove as 2 flats, on the appellants' own evidence, can only have been present at best for a period of less than 4 years (April 2008 to whenever in 2011 the works to convert the ground floor to 2 flats were undertaken). Each of these successive changes to my mind represents a step change and a new chapter in the use of 15 Prout Grove, such that no new lawful use of the property has been established at any time since its use as a single dwelling ceased.

17. Consequently I conclude that a lawful use of 15 Prout Grove as any particular given number of flats has not on the balance of probability been shown to have occurred. Accordingly, the appeal on ground (d) fails and the enforcement notice is upheld, subject to the minor corrections set out above to make its requirements clearer.

Alwyn B Nixon

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr Ben Kpogho Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks MRTPI	(Instructed by L B Brent Council)
He called	
Scott Davies	Deputy Planning Enforcement Manager, L B Brent Council

INTERESTED PERSONS:

Ms Zena Hussen Neighbouring resident