
Appeal Decision

Site visit made on 20 March 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 29 March 2017

Appeal Ref: APP/H5960/C/16/3153410

28 Elmshaw Road, London, SW15 5EL

- 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 A Hussain against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The enforcement notice, numbered 2015/0237/ENF was issued on 19 April 2016.
- The breaches of planning control as alleged in the notice are:
 - (i) The use of the property as two (2) separate self-contained units of accommodation (being the unauthorised use); and
 - (ii) The unauthorised erection of timber fence posts in the front garden of the property (the unauthorised timber fence posts); and
 - (iii) The unauthorised erection of a timber service box on the front elevation of the property (the unauthorised service box).
- The requirements of the notice are:
 - 1) Immediately and permanently cease the unauthorised use;
 - 2) Remove any fixtures and or fittings including any kitchen units and appliances, internal partitions and divisions which facilitate the unauthorised use;
 - 3) Remove the unauthorised timber fence posts;
 - 4) Remove the unauthorised service box; and
 - 5) Remove from the site all rubbish and debris arising from compliance with steps 1-4.
- The period for compliance with the requirements is two (2) months.
- The appeal is proceeding on the grounds set out in section 174(2)(c),(d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.

Procedural matters

1. Requirement 1) requires the unauthorised used to cease immediately whereas the period for compliance is two months. These times are contradictory and I have a duty to ensure that the notice is correct. In addition, s.181(1) of the 1990 Act states that compliance with an enforcement notice shall not discharge the notice. I am satisfied that the correction of the notice by the deletion of the words 'immediately and permanently' from requirement 1) of the notice would not cause injustice to the Appellant and I will correct the notice accordingly¹.
2. In his grounds of appeal the Appellant referred to an application for a lawful development certificate (LDC) that had been refused by the Council. This

¹ S.176 of the 1990 Act

matter is the subject of a separate appeal². A number of documents were supplied to the Council in support of the LDC application. These documents were considered by the Council in its refusal of the LDC application and again in its appeal statements in both the LDC appeal and this appeal. No documents were, however, provided by the Appellant to the Inspectorate when he made this appeal. The Appellant was advised by the Inspectorate that if he wished the documents to be considered in the appeal he would need to supply them which he did by email dated 22 March 2017. It would appear that there are some differences between the documents provided originally to the Council and those provided in this appeal. I will consider these matters below.

The appeal on ground (c)

3. An appeal on ground (c) is on the basis that there has not been a breach of planning control. The Appellant's case under this ground of appeal is in respect of the timber service box and the timber fence posts which he says do not constitute development requiring planning permission in that the posts are minor *de minimis* works and the service box is not affixed to the ground and does not constitute building works.
4. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the carrying out of any development of land³. One of the specified exceptions is provided for by Article 3 of the GPDO pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.
5. Class A of Part 2 of Schedule 2 permits the erection or construction of a gate, fence, wall or other means of enclosure provided it does not exceed two metres above ground level⁴. However, an Article 4 Direction has been made in respect of the Dover House Estate Conservation Area in which the appeal site is located which means, among other things, that specified works to dwellings are not permitted development but require planning permission. These works include external alterations to front elevations and building fences over 1m in height on front boundaries which face a road or footpath.
6. The timber fence posts vary in height, depending on the ground level, from the between some 1.5m to some 1.9m. They are substantial posts which have been fixed into the ground and which were originally used to support fence panels of about the same height. They therefore comprise development as defined and are development which has a material effect on the external appearance of the property.
7. The service box is a substantial structure some 0.9m deep, 1.5m wide and 1.1m high. It is attached to the front wall of the property and the washing machine and tumble dryer that are located inside have been placed on a plinth some 0.11m high. The electricity and water supply to the washing machine and tumble dryer are taken from the house. The Council advises that the service box has been in place since about November 2014 and I consider that it is therefore a permanent structure of some substance.

² APP/H5960/X/16/3154558

³ S.57 of the 1990 Act

⁴ A.1(b)

8. The timber posts and the service box are prominent, permanent and substantial structures at the front of the house. I do not consider them to be minor works and, given the terms of the Article 4 Direction, they constitute development for which planning permission is required. No such permission has been granted and their erection therefore amounts breaches of planning control as alleged in the notice.
9. The appeal on ground (c) fails

The appeal on ground (d)

10. In an appeal on ground (d) the Appellant has to prove, on the balance of probability that at the time the notice was issued it was too later to take enforcement action against the matters stated in the notice. The Appellant's case on this ground of appeal is confined to the use of the property as two self-contained units of accommodation which means that he has to prove that the change of use as two separate self-contained units of accommodation occurred on or before four years before the notice was issued, that is, on or before 19 April 2012 and that the use has been continuous since that date.
11. The only case put by the Appellant under this ground of appeal is an assertion that the two self-contained flats have been in existence for in excess of four years and that a LDC application was submitted in November 2015 supported by documentary evidence which was refused by the Council on 5 April 2016 and that an appeal has been made. In the circumstances I will replicate, with some alterations, my reasoning from that appeal. The documents submitted to the Inspectorate include:
12. In respect of Flat A an agreement between the landlord Hafizabad Management and one named person and signatories as tenant for six months from 1 December 2014; this document has not been signed by the named person. Various gas bills to John Lacoza from September 2010 to July 2014 but with some gaps; a letter confirming a gas supply to Gogo Stead for the period 17 February 2011 to 1 October 2011 and electricity in his name supplied to No 28A but with Mr Stead's address not being No 28A for the period September 2010 to September 2011; BT bills to Miss L Gallagher from January 2013 to November 2014 but with some gaps; and a water bill to Imitaj Ahmed dated June 2014. None of these individuals are named on the letting agreement.
13. In respect of Flat B an incomplete Lease dated 1 January 2012 to a limited Company (Trevco Ltd); an assured shorthold tenancy for the period 1 April 2013 to 1 July 2013 by Surkur Management Ltd as landlord to three named people as tenants individually and together and this document has not been signed by those people; an incomplete agreement for the period from 16 May 2014 to 15 January 2015 to one named person and signatories and again this document has not been signed. A water bill dated June 2014 to Dominic Hogg dated June 2014; a water bill dated December 2014 to Zafar Iqbal; and a BT bill to Zafar Iqbal dated October 2014. None of these names are on the letting agreements.
14. Fire alarm test certificates for Flats A and B, some of which refer to devices on the ground floor and the first floor, which date from January 2011 to July 2013; the final certificate is blank. Emergency lights were checked from September 2013 to November 2014. A letter about insurance dated May 2012 and an insurance schedule dated July 2013 have been redacted so that there is no way

- of telling what property they relate to. A plan of Flat A is dated December 2010.
15. As I have mentioned above, it appears that the Council had sight of more and different documents. With regard to letting agreements, those I have do not cover the period in question from April 2012 to April 2016. Those referred to by the Council indicate that there are a number of gaps in the tenancy agreements and I note in particular from 31 March 2014 to 1 December 2014 for Flat A and from 1 July 2013 to 16 May 2014 for Flat B. I accept that properties are vacant for various reasons and that tenants could hold-over but these periods of time appear to me to be excessively lengthy. In addition there are no tenancy agreements up to the date of the notice as the last one for Flat A is to 31 May 2015 and for Flat B to 15 January 2015.
 16. The Appellant appears to accept that the tenancy agreements are not an accurate reflection of what actually happens in that he states 'tenants may continue to occupy flats after the end of the tenancy agreement' but there is no evidence that the tenants named in the agreements expiring in May 2015 and January 2015 did so. Therefore there is no evidence that the flats, or indeed the property, were occupied for the requisite four year period even if tenancy agreements were evidence of occupation, which they are not.
 17. The fire alarm test certificates provide no evidence of how the property was used for those two and half years; nor does the checking of emergency lighting for just over a year. It is notable that these documents do not cover the whole four years and in particular do not extend to the date of April 2016. Similarly the sporadic utility bills in names that do not appear elsewhere provide no evidence of the use of the property.
 18. The Council has provided evidence including correspondence between itself and the Appellant; various Planning Officers' reports; and reports from Environmental Services. These documents indicate that in July 2010 a house in multiple occupation (HMO) licence was granted for the property; in May 2011 the property was occupied by six people as one HMO in accordance with the licence; on 24 October 2014 the property was occupied as a HMO; and on 10 June 2015 it was occupied by one person who stated that the property was being used as a HMO and not as two separate flats. On this last occasion there had been alterations to the property so, among other things, it comprised eight bedrooms. At some stage the property was further altered to provide the entrance to the upstairs flat at the front and the entrance to the ground floor flat at the back and this is the arrangement I saw on my visit. I also noted that, as well as the entrance door having a lock, each of the bedroom doors had its own lock which is often an indication of a HMO use.
 19. The advice in the Planning Practice Guidance with regard to the evidence required in LDC applications is also relevant in ground (d) appeals. This advice is that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability⁵.

⁵ Planning Practice Guidance: Lawful Development Certificates paragraph 006

20. From the documents I have seen and those referred to by the Council I find that the Appellant's evidence is not sufficiently specific and precise to prove to the required standard that the change of use of the property as two self-contained flats took place on or before four years from the date of the notice; that the use was occurring on the date of the notice; and that it had been continuous for a period of four years prior to that date.

21. The appeal on ground (d) fails.

The appeal on ground (g)

22. In a ground (g) appeal the Appellant is saying that the time to comply with the notice is too short and that because both flats are occupied by tenants and to arrange for their departure and the internal works a period of six months is needed.

23. The flats were occupied at the time of my visit but the Appellant has not provided any current tenancy agreements and therefore I have no knowledge of the terms under which the flats are let which includes notice periods or when the current tenancies come to an end by the passage of time.

24. From what I saw on my visit the works required by the notice, that is to remove the timber posts, remove the service box and remove fixtures, fittings etc are not onerous and I consider that two months is a reasonable period for compliance. If the Appellant should encounter difficulties in complying within the time allowed I remind the Council of its powers in s.173A of the 1990 Act to extend any period for compliance.

25. The appeal on ground (g) fails.

Conclusions

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Decision

27. It is directed that the enforcement notice is corrected by the deletion of the words 'immediately and permanently' from part 5 requirement 1). Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Gloria McFarlane

Inspector