
Appeal Decision

Site visit made on 20 March 2018

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 09 April 2018

Appeal Ref : APP/K2230/C/17/3181418

Land at 18 Wrotham Road, Gravesend, DA11 OPA

- 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 Jasbinder Gill against an enforcement notice issued by Gravesend Borough Council.
- The notice was issued on 10 July 2017.
- The breach of planning control as alleged in the notice is failure to comply with conditions 4, 5, and 7 of planning permission 20140673.
- The requirements of the notice are to i. reinstate the front garden and boundary treatment so that it accords with the plans approved in planning permission 20141012 and ii. carry out the noise mitigation work as required under section 7 of the Ned Johnson Acoustic Consultants Limited report reference 1814 Rev B.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed

Ground (b) appeal

1. This ground of appeal is that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof rests on the Appellant and the relevant test of evidence is the balance of probabilities.
2. The appeal site is a two storey semi-detached property that sits in a terrace of four similar properties. Planning permission (ref 20140673) has been granted, subject to certain pre-commencement conditions, for change of use of the property from Class A2 office (financial and professional services) to a four bedroom dwellinghouse (Class C3 residential) (the Permission). The Permission concerns the entire property and does not exclude the basement. Condition 4 of the Permission requires detailed plans showing reinstatement of a front garden and front and side boundary treatments to be submitted and approved by the Council before occupation. Condition 5 provides that the scheme pursuant to condition 4 shall include samples of materials. Condition 7 required that a noise scheme shall be submitted to and approved by the Council before occupation. Conditions 4 and 7 were discharged on 26 October 2016 (ref 20141012).
3. The appeal before me is whether the breach has occurred as a matter of fact and that turns on whether the Permission has been implemented. The Permission concerns the change of use of the appeal site from Class A2

office to a four bedroom dwellinghouse. There is no dispute that the appeal site is in residential use on the ground and first floors. There is no dispute that the requirements of conditions 4, 5 and 7 have not been met. The issue in dispute is the use of the basement and whether it is in Class A2 and not residential use. If the Permission has not been implemented because the site is in a mixed A2/C3 use then the alleged breach has not occurred as a matter of fact.

4. The evidence relied upon by the Appellant comprises email correspondence between the Appellant and the Council in which he says the Council accepted that the Permission has not been implemented. But the Council is not bound by any such correspondence and in any event I do not find the correspondence to unambiguously confirm that the Permission had not been implemented.
5. There is limited direct supporting evidence before me from the Appellant that the appeal site has been in a mixed residential and A2 use. Whilst the Appellant's evidence does not have to be independently corroborated in order to be believed in this case the Council provides counter evidence which does not support the Appellant's version of events. The Council provides an extract from a file note of a site visit in March 2016. This note records that the occupier stated herself to be in occupation of the whole house as a single family dwellinghouse with access to the basement which was full of rubbish. A site visit in July confirmed that the internal access to the basement had been blocked and photographs show the basement in use for storage. There is no direct evidence before me from any A2 occupier or evidence of any advertising of services. Council tax records, whilst not conclusive of use, refer to a single family dwelling since 2014. The Appellant states in response to the Council's evidence that the occupier does not have access to the basement and that the lease permits access to the ground and first floors only whilst the basement is available for A2 use. But there is nothing before me to support this version of events. I am not provided with any documentary evidence of any lease or any evidence from the occupier. Whilst not conclusive I have also taken into account the size and layout of the basement which as a matter of fact is not well designed for an A2 use. I also note the applications made by the Appellant for discharge of conditions of the Permission which presuppose implementation of the Permission.
6. The Council's evidence is inconsistent with the Appellant's claims. I attach particular weight to the site visit records which together with the photographs, lead me to conclude that on the balance of probabilities a change of use from A2 to C3 of the appeal site has taken place. The fact that residential occupation may have started prior to the grant of the Permission does not alter my conclusions.
7. The onus of proof in this appeal rests firmly on the Appellant. On the evidence before me the Appellant has not discharged that burden of proof. The Appellant has not provided precise and unambiguous evidence to support his claim. I cannot conclude with any certainty on the evidence before me that the Permission has not been implemented.
8. I conclude as a matter of fact and degree that in the circumstances of this case the alleged breach (namely implementation of the Permission without

compliance with conditions 4, 5, and 7) has occurred as a matter of fact. The appeal on ground (b) therefore fails and the notice is upheld.

9. In these circumstances where I do not find a mixed use it is not necessary to consider any hidden ground (c) appeal that the change of use is permitted by Class G of the Town and Country Planning (General Permitted Development (England) Order 2015.

Formal Decision

10. The appeal is dismissed.

S. Prail

Inspector