
Appeal Decision

Site visit made on 1 May 2018

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 May 2018

Appeal Ref: APP/T5150/C/17/3180597

71 Victoria Avenue, Wembley HA9 6QA

- 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 Divyakant Patel against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 20 June 2017.
- The breach of planning control as alleged in the notice is the material change of use of the premises to 2 flats.
- The requirements of the notice are:
 1. Cease the use of the premises as flats and its occupation by more than one household.
 2. Remove all kitchens and cooking facilities except one and remove all bathrooms except two from the building.
 3. Remove all fixtures and fittings associated with the unauthorised use from the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Applications for costs

1. Applications for costs have been made by Mr Divyakant Patel against the Council of the London Borough of Brent and by the Council against Mr Patel. These applications are the subject of separate Decisions.

Appeal on Ground (e)

2. In order for the appeal to succeed on this ground it has to be shown that the notice was not properly served on everyone with an interest in the land.
3. The basis of the appeal is that the enforcement notice served on the appellant was not received, perhaps because a wrong postcode was used. It is accepted though that further copies of the notice addressed to other family members were sent to the correct address. And, while it is said that these were ignored, the very fact that the appellant has been able to appeal against the notice means that he must have become aware of the matter somehow.
4. In the light of the foregoing, even if the notice was not properly served as the provisions of section 172 require, any resultant shortcoming has not prevented the appellant from exercising his right of appeal. In these circumstances I do

not consider the appellant has suffered any substantial prejudice. Accordingly, therefore, the appeal on ground (e) fails.

Appeal on Ground (b)

5. In order for the appeal to succeed on this ground, it has to be shown that the matters alleged in the notice have not occurred as a matter of fact.
6. The appellant contends that the alleged breach has not actually occurred. It is claimed that the appeal property, a semi-detached house, has been lawfully converted from a C3 dwelling house to a 6 person C4¹ house in multiple occupation (HIMO) and has operated on this basis for over 10 years. Making a formal determination on whether or not this use is lawful lies outside the ambit of the appeal before me and I shall therefore refrain from taking a view on this matter.
7. Referring to a planning application for the change of use of the property to 2 flats refused in April 2017, the appellant submits further that the Council incorrectly assumed that the proposed conversion had occurred – it had not; the property remains as a 6 person HIMO. The planning application was not retrospective.
8. In contesting the appeal on this ground, the Council refer to two sets of factors. Firstly, observed alterations to the property and, secondly, information gleaned regarding its use. The alterations include the provision of 2 separate doors inside the front door, the installation of a boiler flue and waste water pipes on the side wall at first floor level, and the installation of a second satellite dish with a cable feeding into the first floor. The Council say that when the matter was initially investigated in the latter part of 2016, the internal doors *“were confirmed to be access for the ground and first floor flats”*.
9. The appellant does not dispute that internal doors were in place prior to the enforcement’s officer’s visit. Traces of the door frame fixings alongside the bottom of the staircase were still apparent when I inspected the site, but there were no doors or frames in evidence. The appellant’s assertion that *“we identified the problem and sought to remedy the breach”*² could be taken as an unequivocal acceptance that the matters alleged in the notice had occurred. However, it seems to me that this is more down to the injudicious choice of words. What I attach far more weight to is the Council’s observation that, despite having observed and recorded the presence of the internal doors, *“it was clear that internal works were ongoing and no use had commenced”*³.
10. The Council also point to contact by a complainant when *“it was also confirmed that the premises were occupied by a family of 4 at the ground floor flat and by 3 adults at first floor level”*.⁴ On a visit in December 2017 [after the notice was issued], information provided by an occupant of the property indicated that the same occupancy pattern was in being. A previous site inspection in February 2017 revealed that the door leading up to the first floor had been removed, but the ground and first floors contained kitchens – each equipped with washing

¹ I take the mention of Classes C3 and C4 as referring to the provisions of the Town and Country Planning (Use Classes) Order 1987 as amended.

² Appellant’s response to the Council’s statement, 29 January 2018, item 2.6.

³ Council’s statement of case, paragraph 2.3.

⁴ Ibid paragraph 2.6.

- machines – and bathrooms. There was also an en suite facility in a room in the loft space. This led to the conclusion that there were 2 separate households.
11. While the presence of separate bathroom and kitchen facilities on the ground and upper floors of the property could indicate a degree of independence of occupancy, and the doors to the individual rooms had locks on them, none of the accommodation is physically self-contained. It would be perfectly possible for occupants of the property to move about freely within the building should they so choose.
 12. The installation of a second boiler and associated flue, and a second satellite dish at first floor level could be indicative of separate units of living accommodation, but I find the appellant's explanation for this plausible. Indeed, as the appellant points out, the Council's Licence Application Guidance for private rented property indicates that kitchen facilities should be provided for every 5 persons or 3 households. No evidence of the presence of items such as separate utility meters or doorbells, which could be indicative of separate independent units of living accommodation, was apparent to me. Nor have any claims that such items have been installed at the property been made by the Council.
 13. Mindful that a planning application for the change of use from a HIMO to form 2 flats was made in February 2017, it may well be that some of the works observed by the Council were a precursor to this. But, given the Council's assessment, albeit based on observations prior to the installation of the items referred to in the preceding paragraph, that the use had not commenced even when internal doors were in evidence, I am not satisfied that these alterations are sufficient to vindicate the Council's stance .
 14. I appreciate that the Council are well versed in dealing with instances such as this and in this respect I have had particular regard to the case at 14 Chaplin Road which has been drawn to my attention⁵. However, while I can well understand why some reliance has been placed on this appeal decision, I am reluctant to place great weight on it as each case falls to be considered on its own particular merits.
 15. Ground (b) is a legal ground of appeal, distinct from any planning merits and the Courts have held that the onus on proving it lies with the appellant. I appreciate that the appellant's case under this heading does not amount to much more than a denial that the alleged use has taken place. Be that as it may, notwithstanding the Council's misgivings, the circumstances of this case are such that, on the balance of probability, I am not satisfied that the matters alleged in the notice have occurred as a matter of fact.
 16. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

⁵ Appendix 7 to the Council's Statement of case- Appeal Decision reference APP/T5150/C/14/2225378.

Formal Decision

17. I allow the appeal and direct that the enforcement notice be quashed.

D H Brier

Inspector