



Appeal Decision

Site visit made on 25 June 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2019

Appeal Ref: APP/M5450/C/18/3208573

12 Kelvin Crescent, Harrow HA3 6DP

- 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 Oladeji Kuku against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 10 July 2018.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the single family dwelling house to a mixed use comprising two (2) separate residential Flats ("Unauthorised Flats") and a House in Multiple Occupation (HMO)("Unauthorised Use").
- The requirements of the notice are:
 1. Cease the Unauthorised Use of the Land as a mixed used comprising of an HMO and as Unauthorised Flats as two (2) self contained flats;
 2. Remove all kitchens except (1) one from the Land;
 3. Remove all bathrooms/showers except (1) one from the Land;
 4. Remove all internal partitions that enables the Unauthorised Use;
 5. Remove from the Land all material and debris from the compliance with the above steps 1-5.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (a) 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 Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The notice alleges the material change of use from a dwellinghouse to a mixed use comprising two flats and an HMO. The notice breaks the two elements of the mixed use down for the purposes of setting out the relevant period for immunity from enforcement action under section 171B of the 1990 Act. It gives a time period for four years for the two flats and ten years for the HMO.
2. However, in terms of a material change of use, the four year period only applies to "use as a single dwellinghouse" under section 171B(2) of the 1990 Act. The notice does not allege a change to a single dwellinghouse. Rather, it alleges a mixed use. The use as enforced against is a mixed use with all its component activities. The relevant time period for establishing immunity is, therefore, ten years under section 171B(3).

3. Where, as in this case, the appellant has appealed on ground (d), changing the notice to refer to the entire breach within ten years, as opposed to four for the two flats, has the potential to cause injustice to the appellant. However, there is no indication that the appellant has believed a four-year period was all that needed to be demonstrated under ground (d). There is no detailed evidence before me which indicates the two flats were provided four years or more before the notice was issued. As set out in my reasoning on the appeal on ground (d), the evidence put before me by the appellant indicates the use as alleged did not commence until within the four-year period. I am satisfied I can correct paragraph 4 of the notice to establish the correct time period of ten years without causing injustice to the appellant or the Council.

The appeal on ground (b)

4. To succeed on ground (b) the onus is on the appellant to show, on the balance of probabilities, that what is alleged in the notice has not occurred as a matter of fact.
5. The land to which the notice relates is a two-storey property with a single-storey attached garage to the side. The notice alleges the material change of use of the property from a dwellinghouse to a mixed use comprising two flats and an HMO. However, the appellant indicates that the property is not used as an HMO, rather it is occupied by a single family. It is also said that there is not two separate flats but one, contained within the former garage to the side of the property.
6. The appellant purchased the property in December 2006. Up until August 2012 it was a four-bedroom house comprising three living rooms, a single kitchen, a cloak room, a family bathroom and a garage, which was being used as an office/storage and laundry room. It is said that the appellant rented the property out to a family up until August 2012 when he took up occupation of the property with his family following a period of renovation. An en-suite was installed as part of the renovations. The garage was used as a utility room, a study room and a fitness room.
7. In June 2013, the appellant constructed a side extension to the property. I saw from my site visit that the extension is two-storey and located to the side/rear of the property. It is said that from April 2018, at ground floor level the property comprises a cloakroom, lounge/dining room, family room, a play room and kitchen/breakfast room, in addition to a study/bedroom with en-suite. At first floor, five bedrooms, a family bathroom and the landing. In addition, it is said that the garage now comprises a studio apartment which has been given the address 12B Kelvin Crescent and for which Council tax is being paid. It is occupied by a person unrelated to the family.
8. The appellant argues that, aside from No 12B, the property is occupied by his family with himself, his wife, his four children, and nephew. The study/bedroom on the ground floor is used for visiting family and friends from time to time. Since 30 June 2018, it has been used by a family friend for temporary lodgings.
9. At my site visit, I saw that the property contained at ground floor level, a w/c, an open plan living and dining room, a separate family room containing children's toys and a kitchen/diner. In addition, a door from the living room provided access into a room presently used as a study. A doorway, absent of a

door, provided access into a small galley with a further door into a room which appeared to be in use as a bedroom with a shower room. This room contained an external door and was within the two-storey extension.

10. At first floor, the property contained five bedrooms, three of which had en-suites. There was a further separate bathroom. Finally, the garage to the side was accessed via a gate at the front of the property which lead into an alleyway. A door in the side of the garage provided access. Internally it comprised a kitchen, with a separate bedroom and a shower room.
11. The Council's observations from October 2016 similarly indicated that the garage was being used as a separate self-contained flat whilst the ground floor of the house comprised a kitchen, toilet, lounge and a bedroom. However, in contrast to my observations, the Council say that, in the side extension, a studio flat had been created with a kitchen, bedroom and shower room. The access to the studio flat was from a door in the side of the building. There was no internal access from the main house. Upstairs, the Council's observations indicated there were five bedrooms being rented out to various people.
12. Whilst my observations did not wholly accord with the Council's from October 2016, what matters is what existed at the time the notice was issued, not at the date of my visit. Although the indications were at my visit that the side extension was not in use as self-contained flat and that the upstairs of the property was occupied by a single family, I did see that the majority of the internal doors had locks on them. Moreover, I saw that the property contained three separate satellite dishes, one of which had an individual feed directly into the side extension. Furthermore, the galley between the study room and the extension contained what appeared to be the remnants of kitchen cabinets. The doorway was also absent of a door.
13. Ultimately, the onus of proof is on the appellant. Whilst case law has established that an appellant's evidence should not be rejected simply because it is not corroborated, the evidence still must be sufficiently precise and unambiguous. I am not satisfied that is the case. In the absence of any evidence other than the appellant's written version of events, I find the appellant has failed to discharge the onus of proof placed upon them.
14. I conclude therefore that, on the balance of probabilities, the property was a single planning unit in a mixed use of two flats and a HMO at the time the notice was issued.
15. Consequently, the appeal on ground (b) fails.

The appeal on ground (c)

16. In an appeal on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice which give rise to the alleged breach of planning control did not constitute a breach of planning control.
17. Section 55(1) of the 1990 Act defines two limbs of development – operational development and the making of a material change of use. There is no suggestion from the appellant that the material change of use to a mixed use of two flats and an HMO is not development as defined in section 55(1).

18. The appellant's submissions on ground (c) are that there has been no breach of planning control regarding the building as it is permitted development. This is embellished upon in his appeal statement where it is stated that a breach of planning control was not committed because planning permission is not required for the side extension built in 2013 under permitted development rights.
19. However, the notice attacks a material change of use from a dwelling to a mixed use of two flats and an HMO. The breach of planning control does not include the erection of a two-storey extension. Indeed, the appellant indicates in his submissions that the extension does not form part of the matters in the notice.
20. The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended does not grant planning permission under Article 3 for the development alleged in the notice. Nor is there any evidence before me of planning permission having been granted for the development under section 58 of the 1990 Act.
21. As a result, the matters stated in the notice, that being the material change of use from a dwellinghouse to a mixed use of two flats and an HMO, constitute a breach of planning control.
22. The appeal on ground (c) therefore fails.

The appeal on ground (d)

23. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities that, at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. Section 171B(1) of the 1990 Act sets out the relevant time period for taking enforcement action. In the case of a breach involving a material change of use it is ten years. For the development to be immune from enforcement action, it is necessary for the appellant to demonstrate that the use of the property as a mixed use of two flats and an HMO materially changed on or before 10 July 2008 and continued for ten years thereafter.
24. The appellant indicates that he purchased the property in December 2006. Up until August 2012, it is said to have been a four-bedroom house. The former garage, which now comprises the flat known as No 12B, was used as a laundry room and study area with a toilet installed prior to the appellant's purchase of the property in November 2006 and it continued to be used as such until August 2012. It is said that the garage's use as a studio flat began in 2016 and assessed by the Valuation Office Agency as a separate dwelling in 2017. The extension which contained the second flat was said to have been constructed in May/June 2013.
25. Consequently, I find that the appellant has failed to demonstrate, on the balance of probabilities, that the use of the property edged red on the notice materially changed to a mixed use comprising of two flats and an HMO on or before 10 July 2008.
26. The appeal on ground (d) must therefore fail.

Formal Decision

27. The enforcement notice is corrected by:

- deleting the words "Unauthorised Flats" from paragraph 3 of the notice; and,
- deleting the words "It appears to the Council that the above breach of planning control of the Unauthorised Flats has occurred within the last 4 years" from paragraph 4 of the notice.

28. And varied by:

- deleting the words "as Unauthorised Flats as" from paragraph 5(1) of the notice.

29. Subject to the above corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

J Whitfield

INSPECTOR