



Appeal Decision

Site visit made on 13 August 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal Ref: APP/T5150/C/18/3214692

Flats 1-6, 266 North Circular Road, Stonebridge, London NW10 0JT

- 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 Ian Brown, Lexton Estates Limited, against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 5 October 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises to six flats.
- The requirements of the notice are STEP 1 Cease the use of the premises as flats; STEP 2 Remove all kitchens and cooking facilities, except ONE, and remove all bathrooms, except TWO, from the premises; STEP 3 Remove all other fixtures, fittings and other paraphernalia associated with the unauthorised use from the premises; STEP 4 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include bedrooms on the first floor and a kitchen, dining room and lounge on the ground floor.
- The period for compliance with the requirements is 3 months.
- The appeal is made on the grounds set out in section 174(2) (a), (c) and (f) 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 a variation.

Application for costs

1. An application for costs was made by the Council of the London Borough of Brent against Mr Ian Brown, Lexton Estates Limited. This application is the subject of a separate Decision.

Preliminary Matter

2. At the site visit it was not possible to gain access to and inspect one of the first-floor bedrooms in the property. However I am satisfied that I am able to complete my decision without prejudice being caused to either of the main parties.

The appeal on ground (c)

3. The ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.

4. The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 sets out, amongst other things, to distinguish between dwellinghouses and houses in multiple occupation as follows:

Class C3. Dwellinghouses: Use as a dwellinghouse (whether or not as a sole or main residence) by — (including) (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation: Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"(HMO).

5. The change of use from a single dwelling (Use Class C3) to an HMO for up to six residents (Use Class C4) is normally permitted development under the terms of Schedule 2 Part 3 Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This permitted development right was first introduced through an amendment to the previous version of the GPDO¹, which came into effect on 1 October 2010².
6. Section 254 of the Housing Act 2004 sets out the criteria to be met if a building or a part of a building is an HMO. The criteria include that it must consist of one or more units of living accommodation not consisting of a self-contained flat or flats and that two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. "Basic amenities" is defined as a toilet, personal washing facilities or cooking facilities.
7. The property comprises a two-storey terraced dwelling, that has been converted to provide six bedrooms, by utilising the loft space. Each bedroom is accessed via a lockable door and incorporates a kitchenette and en-suite bathroom and toilet areas. A communal kitchen area is provided on the first floor. The appellant's case is essentially that the existing development is an HMO, with shared use of cooking facilities, and that the lawful use of the property as a dwellinghouse in Use Class C3 can be changed to an HMO in Use Class C4, without the requirement for planning permission.
8. However the allegation in the notice is the creation of flats rather than an HMO. There has not been an appeal lodged on ground (b), namely that the change of use alleged has not occurred such that the premises are not in use as six flats. Furthermore from the evidence before me and my visit it was apparent that, despite the presence of the communal kitchen, at least two of the bedrooms contained a variety of cooking equipment, including a small conventional oven, hot plates and a microwave oven. On this basis, and despite the appellant's reference to a management plan to deter cooking in individual rooms and to incentivise use of the communal kitchen, it seems to me that the property has been converted to at least two self-contained flats, whose occupants would have no need to use the communal kitchen.
9. The Council has also provided undisputed evidence that certain tenants who have occupied the property previously, have claimed the highest levels of housing benefit based on exclusive, rather than shared, use of basic amenities and that such benefits would appear to have been transferred directly to the landlord, as property owner, as rental payment. Undisputed evidence has also

¹ The Town and Country Planning (General Permitted Development) Order 1995.

² The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010.

been provided by the Council of tenancy agreements for flats at the property, which specify rental levels that correspond with benefits payable based on the tenants having exclusive access to basic amenities. I consider that these factors support the Council's claim that the property is in use as self-contained flats, rather than an HMO, and also my findings at the site visit regarding exclusive use of facilities.

10. The meaning of development is set out in s55(1) of the Act and includes the material change in the use of any buildings or other land. I am mindful that in accordance with s55(3)(a) of the Act, the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used.
11. I therefore conclude that the provision of self-contained flats has resulted in development for which planning permission would have been required. The development as a whole does not therefore fall within Use Class C4. Under these circumstances, where the existing use is unlawful, Article 3(5) of the GPDO states that permitted development rights granted by Schedule 2 of the GPDO would not apply. In any event there is not a permitted development right to convert multiple flats into a single HMO.
12. For the above reasons the ground (c) appeal therefore fails.

The appeal on ground (f)

13. S173(4)(a) of the 1990 Act as amended provides that the purposes of an enforcement notice can be to remedy the breach of planning control, including by making any development comply with the terms of any planning permission granted or by restoring the land to its condition before the breach took place.
14. The Council previously granted planning permission for the change of use of the property from six unauthorised flats to provide a four-bedroom HMO (Use Class C4) for up to five persons³. I have been provided with no evidence to the effect that this permission is no longer extant and capable of being implemented. I therefore find that the notice should be varied, in line with s173(4)(a), to require that either the unauthorised use cease and the previous lawful use be reinstated or that the development is modified so as to comply with the terms and conditions of the planning permission. Varying the notice on this basis would cause no injustice to the Council.
15. I conclude that the requirements of the notice are not excessive to remedy the breach, but the same end could also be achieved by the alternative, lesser step of making the development comply with the terms of the permission. I shall vary the notice and the appeal on ground (f) succeeds to that extent.

Conclusion

16. For the reasons given above I conclude that the appeal on ground (c) should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

17. It is directed that the enforcement notice be varied by inserting the following wording at the end of Schedule 4 of the notice:-

³ Planning permission Ref 19/0017 dated 28 February 2019

'OR Modify the building so as to comply with the terms of the planning permission Ref 19/0017, dated 28 February 2019, including its conditions and limitations, with the exception of how this applies to the timescale for compliance in accordance with Condition No 2.'

18. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR