



Appeal Decision

Site visit made on 1 October 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 1 November 2019

Appeal Ref: APP/R5510/C/19/3224649

17 Beatrice Close, Eastcote, Pinner HA5 2QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Rakesh Shah against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 12 February 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of a single family dwellinghouse into six (6) separate self-contained residential units.
- The requirements of the notice are:
 - i. Cease the use of the property as more than one dwellinghouse;
 - ii. Remove all but one kitchen from the property to include oven, hob, extractor unit, sink, worksurfaces and kitchen style cupboards, hot and cold water supply and foul waste drainage pipework;
 - iii. Remove all the internal partitions and lockable doors used to divide the dwellinghouse into six separate self-contained residential units to allow free internal passage to all areas;
 - iv. Demolish the single storey rear extension;
 - v. Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the works listed in (ii, iii and iv) above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. 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 1990 Act as amended have lapsed. Consequently, the planning merits of the development are not before me. Matters such as access to the rear garden, car free development policies and internal floorspace are not relevant as they concern the planning merits.
2. Similarly, whether or not the development has Building Regulations approval, the quality of the work carried out and rental values are not relevant to this appeal.

The appeal on ground (b)

3. In order to succeed in an appeal on ground (b), the appellant must show on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact.
4. The appellant accepts that the property has been converted into six self-contained units. Therefore, the appeal on ground (b) must fail.
5. The issues raised by the appellant concerning planning permission for the rear extension and for the conversion of the garage, and whether the development is permitted by virtue of Article 3 and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) are considered below under the most appropriate ground of appeal.

The appeal on ground (c)

6. In order to succeed on ground (c), the appellant must show on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control.
7. Although planning permission has been granted for a single-storey rear extension¹ and the conversion of the garage to habitable space², the allegation in the notice concerns the change of use of the property. This must form the basis of my consideration of the ground (c) appeal. The implications of the planning permissions are more appropriately considered under ground (f) below, that the requirements specified in the notice are excessive.
8. Council Officers visited the property on 13 June and 20 December 2018, as part of an enforcement investigation into its use. The reports from the Council's visits describe conversations with occupants who explained the property was occupied by six unrelated individuals living in self-contained rooms, each with kitchens and bathrooms. It is reported that the communal kitchen was not used. The Council's inspection of rooms 1, 3 and 4, on the ground floor, confirmed they were self-contained. The room in the former garage (No 4) did not have a WC/shower within it, but the occupant had sole access to a separate WC/shower on the ground floor. Photographic evidence (dated June and December 2018) has been provided showing cooking and washing/toilet facilities in individual rooms. In addition, residents living nearby have confirmed that the individual rooms within the property have been rented out on a continual basis since the house was converted.
9. The appellant indicates that he understood the change of use was 'permitted development'. The GPDO grants deemed planning permission for development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) to Class C4 (houses in multiple occupation)³ within the meaning of Class C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987. For the purposes of Class C4, a house in multiple occupation has the same meaning as in section 254 of the Housing Act 2004.
10. Under s254, a building or part of a building is a "house in multiple occupation" if it consists of one or more units of living accommodation not consisting of a

¹ Ref APP/2017/2513 dated 11 September 2017.

² Ref APP/2017/2795.

³ Use of a dwellinghouse by not more than six residents.

self-contained flat or flats⁴; and 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 amenities⁵.

11. The reports from the site visits confirm that the premises had been subdivided into self-contained flats each containing or with sole access to basic amenities. The appellant has not provided any information to the contrary. The standard tests set out in s254 have not been met and, consequently, the property was not in use as a house in multiple occupation at the date of the notice.
12. The change of use of the premises to six self-contained flats constitutes development for which express planning permission would be required. There is no evidence of any such permission, therefore, the appeal on ground (c) must fail.

The appeal on ground (f)

13. Section 173(4) of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the notice is to remedy the breach of planning control.
14. The first requirement is to cease the use of the property as more than one dwellinghouse. While the breach of planning control can only be achieved by the cessation of the unauthorised use, the requirements should flow from the allegation which specifies a change of use to six self-contained flats. The first requirement would be better worded as cease the use of the property as self-contained flats to ensure clarity, although the effect is the same.
15. The remainder of the requirements go further and, together, they seek to demolish the rear extension and reinstate the property to its condition when it was in use as a single dwellinghouse. The appellant indicates that the requirements are excessive as they go beyond what is necessary to remedy the breach.
16. The Courts have ruled that where a notice is directed at a material change of use, and requires that certain works be removed, those works must have been integral to or part and parcel of the making of the material change of use. It will not be sufficient if the works had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased.
17. The question of what is necessary to prevent the unauthorised use depends on the facts of the case. As explained above, the evidence does not support the appellant's claim that the property was in use as a house in multiple occupation, the critical factor being the cooking facilities that were installed in each room. It follows, therefore, that the kitchens/kitchenettes were integral to and part of parcel of the making of the material change of use and should be removed to prevent the unauthorised use from continuing.

⁴ "Self-contained flat" means a separate set of premises (whether or not on the same floor)- (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

⁵ "Basic amenities" is defined in subsection (8) as (a) a toilet, (b) personal washing facilities, or (c) cooking facilities.

18. However, the notice also seeks the removal of internal partitions and lockable doors. I accept that these facilities were also integral to and part and parcel of the making of the material change of use. However, these facilities could be re-installed with the intent of using the property lawfully as a house in multiple occupation for six sharers. I consider that there is a reasonable likelihood that a C4 use would be reinstated. Enforcement action is intended to be remedial and not punitive. A requirement to remove partitions and doors, only for them to be reinstated, would serve no useful purpose.
19. Similarly, I accept that the rear extension has been altered to facilitate the sub-division of the property. The Council explains that it has been not been constructed in accordance with the approved plans and is seeking its demolition. However, the breach of planning control would be remedied if the extension were altered to comply with the planning permission. Its complete removal is excessive, therefore.
20. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

The appeal on ground (g)

21. The appeal on ground (g) is that the time given to comply with the notice is too short. The appellant is seeking additional time to enable him to negotiate alterations to the property so it can be used lawfully as a house in multiple occupation. I have taken this matter into account in my consideration of the ground (f) appeal. Accordingly, the three month compliance period stated in the notice is proportionate and reasonable in the circumstances. Therefore, the appeal on ground (g) fails.

Conclusion

22. For the reasons given above I consider that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Formal Decision

23. It is directed that the enforcement notice is varied by:

- a) The deletion of requirement (iii) in its entirety.
- b) The deletion of requirements (i) and (iv) in their entirety and their replacement with the following:
 - 1. Cease the use of the property as self-contained residential units;
 - 2. Alter the single storey rear extension so that it complies with planning permission reference 72685/APP/2017/2513 dated 11 September 2017.

Subject to these variations, the enforcement notice is upheld.

Debbie Moore

Inspector