



Appeal Decisions

Site visit made on 21 October 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal A) Ref: APP/A5840/C/19/3220299

19 Relf Road, Peckham, London SE15 4JS

- 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 Trevor Hadjimina against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 5 December 2018.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised use and arrangement of the property as a sui generis use as a House in Multiple Occupation by more than 6 people.
 - The requirements of the notice are:
 - i) Cease the use of the property as a House in Multiple Occupation;
 - ii) Removal all locks from internal doors within the property;
 - iii) Remove the partition from the upper part or first floor that intersects with the front wall of the house at the Relf Road frontage so that there are no more than three bedrooms on this floor;
 - iv) Remove all bedding from the front two rooms of the ground floor so that they are capable of being used as a dining and living room;
 - v) Remove the partition dividing the rear two ground floor bedrooms nearest to Sternhall Lane so that only one room exists;
 - vi) Remove from the rear of the property (Sternhall Lane frontage) all refuse bins, so that all bins are stored off the highway in the front garden of the property;
 - vii) Remove from the property all debris arising from the work to achieve compliance with requirements (i) to (vi) above and properly dispose at an authorised waste collection centre.
 - The period for compliance with the requirements is:
 - In respect of requirement (vi) one week after this notice takes effect;
 - In respect of all other requirements six months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended (the Act). 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.
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Appeal B) Ref: APP/A5840/X/19/3220310

19 Relf Road, Peckham, London SE15 4JS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Trevor Hadjimina against the decision of the Council of the London Borough of Southwark.
- The application Ref 18/AP/3301, dated 12 October 2018, was refused by notice dated 16 December 2018.
- The application was made under section 192(1)(b) of the Town and Country Planning

Act 1990 as amended.

- The development for which a certificate of lawful use or development is sought is the alteration to rear pitched roof of the existing building.
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Appeal A) Decision

1. It is directed that the enforcement notice is varied at section 5:

- By the deletion of the words "Cease the use of the property as a House in Multiple Occupation" after (i) and their replacement with the words "Cease the use of the property as a sui generis House in Multiple Occupation by more than 6 people";
 - By deletion of requirements (iv) and (vi);
 - By deletion within requirement (vii) of the reference to requirements "(i) to (vi)" and the insertion of the word "the" before "requirements";
- and

at section 6:

- the deletion of period for compliance set out in paragraph 6.1.

2. Subject to the variations, the enforcement notice is upheld.

Appeal B) Decision

3. The appeal is dismissed.

Appeal A) Costs Application

4. An application for costs has been made by Mr Trevor Hadjimina against the Council of the London Borough of Southwark. The Council has also made an application for costs against Mr Trevor Hadjimina. These applications are the subject of separate Decisions.

Preliminary Matters

5. The appellant has explicitly clarified in writing in relation to Appeal A), that the appeal on ground (d) which, had originally been pleaded, is not being pursued. Whilst the appellant states that the current use has been subsisting for 10 years and is immune from enforcement action, this would appear to be on the basis of only 6 residents occupying the property which he suggests means that the breach as alleged has not occurred and would not be a breach of planning control. This appears to relate to grounds (b) in addition to ground (c) as pleaded. I will therefore consider the appeal on the basis of ground (b) as well as ground (g) which is also referred to.

Appeal A) Grounds (b) and (c)

6. To succeed on ground b), the appellant must demonstrate on the balance of probabilities that the breach as alleged has not occurred as a matter of fact. With respect to ground c), the appeal is that what is alleged does not constitute a breach of planning control and the onus is again upon the appellant to demonstrate their case.

7. The building is an end of terrace property arranged presently over 2 floors. At ground floor level there are 2 bedrooms positioned off of the entrance corridor, a bathroom adjoining bedroom 2 and then further along the hall is the kitchen which includes 2 cookers, 2 fridges as well as work tops and other cooking equipment. Outside in a small open courtyard I saw 2 more fridges. Further to the rear of the kitchen, accessed through a restricted space due to the presence of the fridges and a worktop is another corridor. As well as allowing access through to 2 further bedrooms, this corridor includes a shower room with a lavatory behind a rudimentary screen and also a small kitchenette with a fridge, microwave oven and a sink. At first floor level, there are 4 further bedrooms and a bathroom.
8. Apart from the main kitchen and cramped corridor kitchenette and unconventional adjoining shower facilities, there are no other communal areas within the building. Some of the bedrooms are large and some include double beds. Whilst accepting that the building is in use as a House in Multiple Occupation (HMO), the appellant suggests that the property was occupied by 6 individuals not 8 as alleged when the notice was issued although in some of his representations, he also refers to 6 households being present which could therefore include more than 6 people.
9. At the time of my visit, 6 bedrooms were in use and 2 others contained beds that had been up-ended. Even with only 6 bedrooms being in use, the building could still easily accommodate more than 6 people due to the size of some of those bedrooms that were in use. It would also be a very simple matter to make up the beds that were present in the other 2 rooms thus making it available for 8 households, therefore 8 or more people.
10. Notwithstanding the number of people who were occupying the building at the time of my visit, the Council has produced evidence from the time of site visits prior to issuing the notice. The planning officer visited and saw 8 bedrooms and although not all were occupied at that time, one had more than one occupant. Notes of the Council's Environmental Health officer's visit on 1 November 2018 indicate that 7 of the rooms showed signs of occupation.
11. The building at the present time clearly has the facilities to enable occupation by more than 6 people and this appears to me to have manifested in the current layout and facilities provided. The number and position of fridges in the main kitchen impedes convenient access through the building and there has been a necessity to position other fridges or fridge/freezers outside in the open air. The incorporation of the shower within a corridor on the ground floor without normal expectations of privacy being respected and a lavatory behind a rudimentary screen rather than in a conventional room is unusual and not characteristic of a dwelling or small HMO falling within the terms of Class C4 of the Use Classes Order¹ (UCO) which allows for the use by not more than 6 residents. These factors indicate to me that the building is being used or at least is capable of use at a high intensity. Six people could normally occupy a building of this substantial size in a far more comfortable manner without the need for such measures.
12. Looking at the matter in the round, I consider that the building is capable of use and its layout has facilitated use as a larger HMO by more than 6 people, even if that number are not currently in occupation. As such, the arrangement

¹ The Town and Country Planning (Use Classes) Order 1987, as amended

of the property as a large HMO was occurring as a matter of fact when the notice was issued and the appeal under ground (b) must fail.

13. With respect to the appeal under ground (c), the layout I have described above is of a different, more intensive character than I would expect within either a smaller HMO falling within the terms of Class C4 of the UCO or if used as a single dwellinghouse under the provisions of Class C3 of the UCO. I do not have definitive information to confirm what the previous lawful use was. There is however a significant difference in the character of activities from what I would have expected within a dwellinghouse or smaller HMO. As such I consider on the balance of probabilities, that a material change of use has occurred which requires planning permission and the appeal on ground (c) must also therefore fail.
14. I conclude that the appellant has failed to demonstrate that the allegation has not occurred and that furthermore, there has been a material change in the use of the building. The appeals on ground (b) and (c) therefore fail.

Appeal A) Ground (f)

15. The appeal on this ground is that the steps required or the activities required to cease, exceed what is necessary to achieve the purpose of the notice. In this case the purpose is to remedy the breach of planning control.
16. The first requirement of the notice is to "cease the use of the property as a house in multiple occupation". Taken at face value that would prevent the appellant from using the property as a smaller HMO within the terms of Class C4 of the UCO if that was the previous lawful use or if the use was reverted to Class C3 and then subsequently, the permitted change to Class C4 were to take place. I have no definitive agreement about the previous lawful use and that was not a judgement I have had to make. It is unnecessary to state when wording the alleged breach of planning control, what the material change of use was from. In this case it seems that it would either be Class C3 or Class C4 of the UCO. However, it is also necessary for the requirements to not exceed the undoing of what has been done in causing the breach of planning control.
17. Requiring the cessation of the use of the property as a sui generis House in Multiple Occupation by more than 6 people, would more closely reflect the allegation and would achieve what the Council is trying to achieve in remedying this breach of planning control. Section 57(4) of the Act states that planning permission would enable the resumption of the previous lawful use. I consider that making the requirement less onerous whilst still achieving the purpose of the notice in that way, would not cause injustice to the Council or the appellant and could therefore be undertaken using my powers under S176(1) of the Act.
18. As the appellant has pointed out within his grounds of appeal, requirements (ii) to (vi) relate to internal works which would not ordinarily require planning permission. It has been held that enforcement notices can require the removal of works which have been carried out solely to facilitate the unauthorised development. In this case, the subdivision of rooms, the coded locks as addressed by requirements ii), iii) and v) respectively have clearly formed part of the more intense use of the property and therefore the material change of use. Requirement vii) to remove debris from carrying out those requirements is also reasonable.

19. I do not consider that it is necessary to seek the removal of bedding as per requirement iv), although in practical terms that is likely to happen due to compliance with other requirements. Where the external refuse bins as addressed by requirement vi) are stored is also not directly related to the use as a HMO and may continue even if the property is occupied at a lower intensity. Furthermore, if the purpose of that requirement is to prevent bins being stored on the highway, it relates to land outside of the identified property and beyond the scope of the notice. I can delete these requirements without causing injustice.
20. I therefore find that the appeal on ground (f) should succeed only to the extent that I shall change the first requirement and delete requirements (iv) and (vi). Consequently the form of requirement (vii) needs alteration and it is also necessary to delete the period specified in relation to requirement (vi).

Appeal A) Ground (g)

21. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant suggests 12 months are required to comply. The remaining period following my variation under ground (f) is 6 months.
22. The appellant has not explained why any affected tenants would need longer to look for somewhere else to live. No such representation has been received from any of the tenants themselves. I conclude that three months would be a reasonable and proportionate time to comply with the notice and the appeal on ground (g) fails.

Appeal A) Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Appeal B)

24. Article 3, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for various classes of developments which are set out in Schedule 2. Those involving development within the curtilage of a dwellinghouse (which includes amongst other things extensions and alterations) are set out within Part 1 of Schedule 2.

Main issues

25. The first main issue in this case is whether permitted development rights under the provisions of Part 1 applied to the building at the time of the application. The second main issue is, if permitted development rights under Part 1 do apply, whether the proposal would comply with the limitations of the GPDO at Schedule 2, Class B relating to additions to the roof of a dwellinghouse. The onus is upon the appellant to demonstrate their case.

Whether permitted development rights apply

26. I have determined within Appeal A, that when the enforcement notice was issued, the building was a large HMO beyond the scope of Class 4 of the UCO. The notice was issued on 5 December 2018 and the refused application subject to Appeal B was submitted shortly before on 12 October 2018. I have no

evidence to indicate that the situation was materially different between these 2 dates and I therefore consider on the balance of probabilities that the building was in use as a large, sui generis HMO on the date of the application.

27. The term 'dwellinghouse' is not defined within the Act. It is also not a condition of qualifying for GPDO Part 1 permitted development rights that a dwellinghouse is of a particular type or for instance that it must be used in accordance with Class C3 of the UCO. It is however relevant to consider whether the building is a dwellinghouse in the normal sense. It has been held that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day to day private domestic existence.
28. Article 2(1) of the GPDO states that for its purposes, a dwellinghouse does not include a building containing one or more flats, or a flat contained within such a building. It is a matter of fact and degree as to whether a larger sui generis HMO such as in this case would meet the normal definition of a dwellinghouse, for Part 1 permitted development rights to apply.
29. The building contains bedrooms, bathrooms, toilets and places to cook. It is used more intensively than a Class C3 dwellinghouse or Class C4 HMO and does not have communal areas although there is space outside, within the main part of the kitchen and in some of the bedrooms which are of sufficient size to enable some social interaction between occupants.
30. In my view, the building does contain the facilities required for normal day to day private domestic existence. The facilities are contained within a single planning unit rather than being completely separate in a functional sense with shared areas or in terms of occupation. The building does not therefore contain flats. In relation to the first main issue, the building is a dwellinghouse for the purposes of the GPDO permitted development rights under the provisions of Part 1 and therefore applied to the building at the time of the application.

Whether the proposal complies with Class B

31. The plans that have been submitted contain scale bars but I have noticed some inconsistencies between different representations of the building which is shown in a simplistic way. Although these inconsistencies are relatively minor, this does not give me the confidence that the plans are based upon an accurate survey or that the proposed alterations are precisely represented. The appellant has not provided his interpretation of the dimensions of the proposal to counter those suggested by the Council. Although reference has been made to the adjoining property in terms of how to deduce the dimensions of the proposal, I cannot assume that because the addition would not be as long as the adjoining building, that it would be within the permitted development tolerances.
32. The only limitation of Class B that the Council has referred to is that the cubic content of the proposed roof extension would exceed 40m³ as set out in paragraph B.1.(d)(i). I agree that this appears to be the relevant limitation. The Council has suggested that its best estimate of the proposal as represented would be 44.25m³ in volume which is significantly above the limitation. Given my concerns about the accuracy of the plans, I cannot be confident that the 40m³ could be adhered to by the design of addition as set out on those plans.

33. In relation to this main issue, it has not been demonstrated on the balance of probabilities that the development would comply with the limitation of the GPDO at Schedule 2, Class B relating to additions to the roof of a dwellinghouse.
34. The appellant has raised concerns about how the Council dealt with the application with respect to Human Rights legislation and also the Public Sector Equality Duty. In the interpretation of the parameters of what may be permitted development under the provisions of the GPDO, I have not had to undertake an assessment for those purposes.

Appeal B) Conclusion

35. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the alteration to rear pitched roof of the existing building was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Harwood

INSPECTOR