



Appeal Decision

Site visit made on 10 August 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/G5180/C/20/3246504

Land at Shaftesbury House, 20 Tylney Road, Bromley BR1 2RL

- 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 Colin Harrison on behalf of Harrison Group of Companies against an enforcement notice issued by the London Borough of Bromley.
 - The enforcement notice was issued on 31 January 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the ground floor offices within Shaftesbury House located at the rear of the building from office use (Class B1) to residential use (Class C3). The ground offices have been sub-divided into a total of 5 separate units, 4 of which are allegedly being used as separate residential units, known as Flat A, C, D and E.
 - The requirements of the notice are: Cease the unauthorised use of the offices as self-contained residential units as described above and remove all items associated with the unauthorised residential use.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) 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.
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Decision

1. It is directed that the enforcement notice is:
 - corrected by inserting the word "floor" after the word "ground", in the second sentence of the allegation, under section 3 of the enforcement notice (the matters which appear to constitute the breach of planning control).
2. Subject to this correction, the appeal is dismissed, and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by London Borough of Bromley against Harrison Group of Companies. This application is the subject of a separate Decision.

Preliminary Matter

4. The second sentence of the allegation in the Enforcement Notice is missing the word "floor" after the word "ground". However, the appellant appears to have

understood the allegation and, in my opinion, the misdescription does not render the notice completely unclear. It is necessary however to correct the allegation to insert the additional word "floor". This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.

The appeal on grounds (b) and (c)

5. To succeed on ground (b), the onus is upon the appellant to demonstrate that the allegation has not occurred as a matter of fact. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. There is significant overlap between these two grounds of appeal, and the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
6. The appellant states that Bromley Business Rates confirm that this property is entirely business use only. However, the Council advise that the Revenues Department at the Council have confirmed that if planning permission is granted for a change of use, they would then monitor the situation having been made aware of the possible change of use. In the absence of any planning permission they would therefore not be aware of any subsequent change of use. In itself, paying business rates does not demonstrate what the property has been used for and therefore, very limited evidence has been submitted to demonstrate that the allegation has not occurred as a matter of fact (ground b), or that the matters alleged by the enforcement notice do not constitute a breach of planning control (ground c).
7. On the contrary, the Council state that on 23 May 2019, Officers visited the property, and it was noted that there were 5 separate entrances to the premises at the rear of the appeal building that were identified as Flats A, B, C, D and E. The Council advise that Officers were able to speak with the occupier of Flat D who stated that they had lived at the premises for 18 months. Photographs taken of Flat D at the time of the visit are included in the Council's statement. The accommodation comprised a bedroom, a kitchen (containing a fridge, cooker, washing machine, sink and kitchen units), a living room and separate bathroom. The occupier of this flat was also able to confirm to the Council that Flats C and E were occupied. The Council also advise that the Occupier of Flat A arrived during the Council's site visit and confirmed he had resided at Flat A for one month and another individual confirmed to Officers that he had lived at Flat A for a year before that.
8. The Council's photographs taken during the site visit, and Officer's inspection as outlined above provides clear evidence that the allegation has occurred as a matter of fact. Furthermore, during my site visit I also observed that the rear of the building at ground floor level contains five separate units, marked out as A, B, C, D and E. I also observed that the units A, D and E contained kitchen worktops and units with fridges, cookers, and washing machines, and units A, C, D and E contained a separate bathroom or shower rooms containing a toilet, sink, with either a shower or bath.
9. As such, clear evidence has been provided by the Council, which demonstrates as a matter of fact and degree and on the balance of probability that the development as alleged has taken place when the notice was served. Information submitted which relates to after the Notice was served is irrelevant to this grounds b) and c) appeal. If there has been a subsequent further

material change of use of the units since the notice was served this is not a matter for me to consider and is beyond the remit of this appeal. Planning permission is required for the change of use to residential, which has not been granted, and the use is not permitted development. There has therefore been a breach of planning control and the appellant has not discharged the onus on him to demonstrate otherwise.

10. Therefore, the appeals under grounds (b) and (c) fail.

Conclusion

11. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

R Satheesan

INSPECTOR