



Appeal Decisions

Site visit made on 25 August 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2020

Appeal A Ref: APP/A5270/C/20/3248578

Appeal B Ref: APP/A5270/C/20/3248579

20 Gunnersbury Lane, Acton, London W3 8EE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Jiwan Verma (Appeal A) and Mrs Sharanjit Kaur Verma (Appeal B) against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 29 January 2020.
- The breach of planning control as alleged in the notice is the material change of use of the property to four self-contained flats.
- The requirements of the notice are: 1. Cease the use of the property as four self-contained flats; 2. Remove the kitchen and drainage connections from three of the four self-contained flats; 3. Remove the bathroom and drainage connections from three of the four self-contained flats; 4. Remove the internal doors, partitions and locks that facilitate the use of the property as four self-contained flats; and 5. Remove all resultant debris.
- The period for compliance with the requirements is three months.
- The appeals are 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 appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice as varied is upheld.

Preliminary Matters

1. Step 1 of the enforcement notice requirements is to cease the use of the appeal property as four self-contained flats. The other steps also refer to four self-contained flats. However, the number of flats enforced against is already in the alleged breach of planning control. Therefore, specifying the number of flats in the requirements is unnecessary. It could also lead to uncertainty, for example whether the notice requires cessation of a use of the property for a lesser or greater number of flats. Consequently, I shall vary the notice to delete reference to the number of flats from the requirements. In doing so, I am satisfied that there would be no injustice.
2. The appellants' case that the property is used as a small House in Multiple Occupation (HMO) is made on ground (c)-that the matter stated in the notice did not constitute a breach of planning control. However, an argument that the property is not in fact used as self-contained flats is also relevant to ground (b)-that the matters alleged in the notice have not occurred. Therefore, I intend to consider the appeals as if they had been made on both grounds.

There would be no prejudice to the Council or interested parties, as there has been an opportunity to respond to the appellants' case.

Ground (b) appeals

3. It is for the appellants to show that their appeals on this ground should succeed, the relevant test of the evidence being on the balance of probability.
4. The property contains a mid-terrace residential building, in which the accommodation is arranged over two floors. During my visit, I saw that there are two units of accommodation on the ground floor. On the first floor, there is a further unit of accommodation at the front, with a common room at the rear. The common room is identified as such by a sign on the internal entrance door. Each unit of accommodation has a private kitchen, which includes a worktop and cupboards, a sink and drainer and an oven and hob, together with domestic appliances including a fridge, freezer and washing machine. Each unit also has its own ensuite WC/shower room. The common room contains a kitchen equipped with similar facilities to those found in the units of accommodation, together with some items of furniture. It also contains a WC/shower room and another room, which is largely empty and unfurnished.
5. The presence of private kitchen facilities and ensuite WC/shower rooms means that each unit of accommodation affords its occupiers the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwellinghouse set out in established case law¹. Consequently, as a matter of fact and degree, each unit of accommodation is physically and functionally separate from the rest and each comprises a separate residential planning unit. Whilst I acknowledge that a communal kitchen and WC/shower room have also been provided, none of the tenants are reliant on those facilities for their day-to-day living. Also, in practice the tenants are more likely to take advantage of the privacy and convenience afforded by the kitchen and WC/shower room in their own units to cook, wash clothes and undertake daily ablutions, as opposed to using the communal facilities. Therefore, the presence of the communal facilities does not mean that the property is used other than as self-contained flats.
6. Furthermore, evidence supplied by the Council showed that the property is banded as four flats for Council Tax purposes. The names of the tenants of four flats-A, B, C and D-were provided. Details of a refused retrospective planning application dating from 2016 for the conversion of the property to four flats² and Building Control records concerning such works dating from around the same time, were also supplied. This all provides evidential support for the presence of four self-contained flats at the property, notwithstanding what I observed during my visit.
7. Additionally, the property has four separate electricity meters together with four letterboxes and four separate labels on the entrance intercom. The appellants did not explain why four of each of the above are present. Although not conclusive factors in themselves, such physical evidence also supports the other evidence supplied by the Council concerning use of the property as four self-contained flats.

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

² Council Ref: 160314FUL.

8. Moreover, although it is presently not occupied as such, when viewed in conjunction with the Council's evidence I am not convinced that the common room has not been used as a self-contained flat. The common room contains all the facilities required for day-to-day private domestic existence and it is accessed by a lockable internal door. Such factors give this part of the property a significant degree of physical separation from the rest. There is no firm evidence which shows that the common room is not the same part of the property referred to as flat D in the Council Tax details. For this and the other reasons set out above, the available evidence is inconsistent with the appellants' claim that the property has not been used as four self-contained flats.
9. In reaching the above findings, I acknowledge that Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwelling by not more than six residents as an HMO. For the purposes of Class C4, an HMO has a similar meaning as that set out in s254 of the Housing Act 2004, which refers *inter alia* to the living accommodation being occupied by persons who do not form a single household and who share basic amenities, such as washing or cooking facilities. However, as the units of accommodation are self-contained, the property cannot be an HMO as meant by s254 and in consequence Class C4.
10. I also acknowledge that an HMO licence for up to four households at the property was issued in January 2018. Even so, the issuing of such a licence is not conclusive of the use of the property for planning purposes. This is because it is how the property has been used in practice that is the determinative factor. When looked at in conjunction with the other available evidence, this document does not weigh significantly in favour of concluding that the property is used as an HMO. The appellants did not provide any other firm evidence to support their claim.
11. Therefore, based on the available evidence, on the balance of probability the appellants have been unable to show that the use of the property as four self-contained flats has not occurred. The ground (b) appeals fail.

Ground (c) appeals

12. It is also for the appellants to show that their appeals should succeed on this ground, the relevant evidential test again being on the balance of probability.
13. What is meant by 'development' is set out in s55 (1) of the Act and includes the making of a material change in the use of any buildings or other land. The use as two or more separate dwellings of any building previously used as a single dwelling involves a material change in the use of the building and of each part of it which is so used, having regard to s55 (3) (a) of the Act.
14. In the absence of firm evidence to suggest otherwise, the lawful use of the property is likely to be as a single dwelling within the UCO Class C3. As a result, subdivision of the property to form self-contained flats is a material change of use and has involved development, for which planning permission is required by s57 (1) of that Act. However, there has been no grant of express planning permission for such a change of use, the planning application made in that respect having been refused. Also, no planning permission is granted by any Class in any Part of Article 3, Schedule 2 to the Town and Country Planning

(General Permitted Development) (England) Order 2015 for a change of use from Class C3 to self-contained flats.

15. Therefore, on the balance of probability the appellants have failed to show that the use alleged in the notice did not constitute a breach of planning control. The ground (c) appeals also fail.

Conclusion

16. For the reasons given above I consider that the appeals should not succeed.

Formal Decision

17. It is directed that the enforcement notice be varied by deleting the word 'four' in the requirements at steps 1 to 4. Subject to this variation the appeals are dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR