



Appeal Decisions

Site visit made on 22 September 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd OCTOBER 2020

Appeal A: APP/M5450/C/19/3237745

Appeal B: APP/M5450/C/19/3237746

Land at 41 Vancouver Road, Edgware HA8 5DH

- 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 Graham Brian Lambert (Appeal A) and Ms Anna Maria Yolanda Lambert (Appeal B) against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 13 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission: the material change of use of the Land from use as a single family dwellinghouse to use as two dwellings ("the Unauthorised Use").
 - The requirements of the notice are:
 1. Cease the Unauthorised Use
 2. Remove all kitchens except one (1) from the Land
 3. Remove all bathrooms except two (2) from the Land
 4. Remove all internal partitions that enable the use of the original dwelling house as two dwellings
 5. Remove from the land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed, and the enforcement notice is upheld.

Preliminary matter

2. A full statement of case was not submitted by the appellants or the Council within the prescribed period. I have therefore relied upon the facts and grounds as stated in the initial appeal form and the Council's Delegated Report.
3. I attended the site on the 22 September 2020 but was unable to gain entry to the property. Given the grounds of appeal and extent of the written submissions, there would be little to be gained from undertaking a physical inspection of the rear garden and the inside of the single storey dwelling. Having sought the appellants' and Council's views, the Council has confirmed they agree a physical inspection is not necessary and the appellant made no comments within the specified period. I am satisfied the appellant would not be prejudiced and shall proceed to determine the appeal on this basis.
4. There is no dispute that the single storey extension attached to the side of the original dwelling has been erected for more than 4 years.

Ground (c)

5. The key issue in this case is whether the change of use from one dwelling to two dwellings amounts to a material change of use requiring planning permission. The burden of proof on this ground of appeal lies with the appellant, and the test of the evidence is on the balance of probability.
6. The appellants' ground (c) appeal however is not made out on the premise that the allegation does not amount to a material change of use requiring planning permission. Instead it is argued that the alleged breach of planning control is lawful due to the length of time it has existed. That argument however falls within a ground (d) appeal; that the breach was immune from enforcement action at the date the notice was issued. The appellants do not provide substantive evidence that there has not been a material change of use.
7. Article 3(1) of the UCO¹ states that "where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or other land for any other purpose of the same class shall not be taken to involve development of the land". The exception to this is where an additional dwellinghouse would be created; section 55(3)(a) of the Act² confirms that "the use as two or more separate dwellinghouses of any building previously used as a single dwelling house involves a material change in the use of the building and of each part of it which is so used".
8. While there is no statutory definition of "dwellinghouse", in *Gravesham*³ the Court accepted that whether a building was or was not a dwellinghouse was a matter of fact. It identifies the distinctive characteristics of a dwellinghouse to be its ability to afford to those who use it, the facilities required for day-to-day domestic existence.
9. In this instance, the single storey side extension contains all the facilities required to provide for the occupants' day-to-day domestic existence. A material change in use of the building and land has therefore occurred as a matter of fact.
10. The appeal on ground (c) fails.

Ground (d)

11. The appeal is that at the date the enforcement notice was issued it was too late to take enforcement action against the breach of planning control due to the passage of time. The relevant date for the purposes of assessing immunity of the alleged breach of planning control is four years prior to the date of issue of the enforcement notice, which is 13 August 2015.
12. The burden of proof is on the appellant and they must demonstrate that, on the balance of probability, that the change of use had taken place on or before the material date and that it has continued, without material interruption, for at least 4 years after the date of change.
13. The appellants claim that "by the time the [Council] issued the enforcement notice, it was too late for them to take action against the matters stated in the notice due to the fact that the subject property has been in continuous use as

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

² Town and Country Planning Act 1990 as amended

³ *Gravesham BC v Secretary of State for the Environment* [1982] 47 P.&C.R.142

two separate dwellings and is still in use as is". The appellants have provided no evidence relating to the date when the use as two separate dwellings commenced or to show that the use has continued without material interruption throughout the relevant period.

14. While the Council's evidence supports the case that the extension has been erected for more than 4 years, it does not confirm that the extension was completed and available for occupation as a separate dwellinghouse. Even if I were to conclude that the extension had been completed as a separate dwellinghouse, there is no evidence to show that there has been no material interruption of the use. Consequently, the burden of proof placed upon the appellants has not been discharged.
15. I conclude on the balance of probability that the breach of planning control is not immune from enforcement action and the appeal on ground (d) fails.

M Madge

INSPECTOR