
Appeal Decision

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 December 2020

Appeal Ref: APP/T5150/C/17/3182904

154a Harlesden Road, Willesden, London

- 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 Ebele Muorah against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 24 July 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a canopy and door, facing Harlesden Road ("the unauthorised development") and without planning permission the material change of use of the premises from one to two dwellings ("the unauthorised change of use").
 - The requirements of the notice are:
 - Step 1 Cease the use of the premises as flats and its occupation by more than ONE household and remove all kitchens and cooking facilities, except ONE, and remove all bathrooms, except TWO, from this building.
 - Step 2 Demolish the front canopy and door, facing Harlesden Road, and restore this elevation back to its original condition before these works took place as per the attached photograph.
 - Step 3 Remove all fixtures and fittings associated with these works from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - This decision supersedes that issued on 22 August 2019. That decision on the appeal was remitted for re-hearing and determination by order of the High Court.
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Procedural Matters

1. Following a High Court challenge, made under s289, to the Inspector's decision, the Court has ordered that the appeal is re-determined. Under s289 the decision is not quashed following a successful challenge. The High Court Practice Direction states that 'where the court is of the opinion that the decision appealed against was erroneous in point of law, it will not set aside or vary that decision but will remit the matter to the Secretary of State for re-hearing and determination in accordance with the opinion of the court'.
2. The matter of s289 remittals was considered by the court of appeal in *R (on the application of Perrett) v SSCLG [2010]* and the judges affirmed that in these cases there should be a rehearing sufficient to enable the Secretary of State to remedy the error identified by the court and to make a determination in accordance with the opinion of the court. It is not therefore an opportunity for the appellant to re-run, supplement or introduce new points.
3. In short, the error related solely to the Inspector's consideration of ground (f) and in particular, the failure of the Inspector to consider an appropriate

correction to step one to remove the requirement for its occupation to cease by more than one single household. No error was found in relation to the other grounds of appeal, those being grounds (a), (c), (d) and (g). The ground (g) appeal was introduced in the appellant's Statement of Case. The Council had the opportunity to respond and so, as no prejudice would be caused, this additional ground was considered by the previous Inspector.

4. With the exception of ground (g), it is not necessary to re-visit the other grounds of the decision other than to say, for the reasons previously set out by the Inspector, I agree with the conclusions reached on those other grounds. In doing so, I note that policies contained in the draft London Plan concerning space standards, would not alter the consideration of the deemed planning application. I shall re-visit ground (g) in light of the covid-19 restrictions which represents a material change in circumstances since the previous decision.
5. It is important to note that due to the partial success of ground (c) a correction is required to the description of the breach of planning control alleged comprising the deletion of the alleged unauthorised (operational) development – that being the erection of a canopy and door facing Harlesden Road. No breach of planning control was found to have occurred in this regard. A consequential correction is also required to delete step 2.
6. The Council had identified an error in step 3 in that it should require the removal of fixtures and fittings associated with 'the material change of use' rather than 'these works'. I agree this correction can be made without causing any injustice to the parties.

Decision

7. It is directed that the enforcement notice be corrected by the:
 - Deletion of 'the erection of a canopy and door facing Harlesden Road and' from the description of the alleged breach of planning control set out in schedule 2 and the deletion of Step 2 in the requirements set out in Schedule 4; and
 - Replacement of the words 'these works' with 'the material change of use' in Step 3 of the requirements in Schedule 4;

and varied by the:

- Deletion of the words 'and its occupation by more than ONE household and' and the words 'and remove all bathrooms, except TWO' from Step 1 of the requirements set out in Schedule 4.

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

8. Turning to the error found in ground (f), the judge said that it can be seen immediately from the appeal decision that the Inspector's approach was to take a proportionate approach to what was required to be removed for the purposes of compliance with planning control and that this was done expressly on the basis set out in paragraph 24 of the appeal decision, that it would not prevent

the use of the property as a Use Class C4 'Houses in Multiple Occupation' (HMO)¹ after the upholding of the notice and its coming into force. Indeed, the Inspector had assumed at paragraph 22 that there was no harm to local amenity precisely because the property could be used as a 4-bedroom HMO.

9. It follows, as explained in the judgement, that it is clear that there was no intention on the Inspector's part to seek to prohibit the use of the subject premises as an HMO within Class C4. Indeed, since there are permitted development rights to move between Class C3 and Class C4 in the Town and Country Planning (General Permitted Development) (England) Order 2015² that would have required express justification and to be addressed through clear and express reasons.
10. The purpose of the notice is clearly stated as being to remedy the breach of planning control; that being its use as two dwellings (flats). It is therefore the use of the premises as flats that should cease together with the removal of any works integral to and solely for the purpose of facilitating the unauthorised use. Accordingly, the additional restriction in step 1, to also limit its occupation to not more than one household, would clearly exceed what is reasonably necessary to remedy the breach of planning control. In order to ensure that the use of the property is not curtailed to such an extent as to prevent its lawful use as a dwellinghouse and for purposes falling under Class C4, following compliance with the notice, it would be necessary to strike out the words "and its occupation by more than ONE household" from step 1.
11. No fault was found with the reasoning of the previous Inspector in relation to the remainder of step 1. For the reasons set out I shall therefore vary step 1 to delete any reference to the need to remove one of the bathrooms in order to comply with the notice since this is considered to be excessive to remedy the breach and would serve no useful purpose in the particular circumstances of this case.
12. To this extent, the ground (f) appeal succeeds and the enforcement notice shall be varied accordingly.

Ground (g)

13. Since the initial determination of the appeal, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. The situation is fluid and it is uncertain how long the current restrictions associated with the pandemic will last. In all cases under Ground (g) the test remains whether the compliance period is reasonable, which needs consideration of what must be done in practice to carry out the remedial steps and how much time is reasonable to allow for that purpose.
14. I consider, for the reasons set out by the previous Inspector relating to the length of tenancies, that six months remains a reasonable period for compliance. Section 173A(1)(b) provides that local planning authorities may waive or relax any requirement of an enforcement notice. In particular, they may extend any period specified in accordance with s173(9). However, that would be entirely a matter for the Council.

¹ Class C4 permits the use of a dwellinghouse by not more than six residents as a "house in multiple occupation"

² Schedule 2, Part 3, Class L

Conclusion

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

C Sherratt

Inspector