



Appeal Decision

Site visit made on 10 November 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 10 December 2020

Appeal Ref: APP/T5150/C/20/3245068

13 Belton Road, London NW2 5PA

- 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 John O'Brien against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0222, was issued on 9 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from one dwellinghouse to a House in Multiple Occupation (HMO) on the land to the front of the premises, and separate residential use on the land to the rear of the premises.
 - The requirements of the notice are to:
 - STEP 1 Cease the use of the land to the front of the premises as a House in Multiple Occupation (HMO), ensuring that there are NO MORE than SIX occupants and SIX beds in the land to the front of the premises.
 - STEP 2 Remove all kitchens and cooking facilities, except ONE, from the land to the front of the premises and remove all associated debris, items and materials arising from this removal from the land to the front of the premises.
 - STEP 3 Remove all bathrooms and bathroom facilities, except TWO, from the land to the front of the premises and remove all associated debris, items and materials arising from this removal from the land to the front of the premises.
 - STEP 4 Remove all partition walls facilitating the unauthorised change of use of the land to the front of the premises and remove all associated items, debris and materials arising from this removal from the land to the front of the premises, so that the layout is returned back to a single family dwellinghouse.
 - STEP 5 Cease the use on the land to the rear of the premises as separate residential accommodation.
 - STEP 6 Remove all kitchens and cooking facilities on the land to the rear of the premises and remove all associated debris, items and materials arising from this removal from the land to the rear of the premises.
 - STEP 7 Remove all bathrooms and bathroom facilities on the land to the rear of the premises and remove all associated debris, items and materials arising from this removal from the land to the rear of 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) (c) (d) and (f) of the Town and Country Planning Act 1990 (the Act) as amended.
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Decision

1. It is directed that the enforcement notice be varied, due to the appeal succeeding to an extent under ground (f), by deleting "ensuring that there are NO MORE than SIX occupants and SIX beds in the land to the front of the premises" from Schedule 4, STEP 1.
2. Subject to this variation the appeal is otherwise dismissed and the enforcement notice is upheld.

Ground (c)

3. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
4. The appellant's case under this ground is, in essence, that the building on the land to the front of the premises was a single household dwelling (Use Class C3) and is currently in use as a dwellinghouse by not more than six residents as an HMO within Use Class C4 of the Use Classes Order (UCO)¹. It is argued that the development is lawful due to the exercise of a permitted development provision giving general planning permission for change of use from Use Class C3 to Use Class C4². It is not argued that the building has express planning permission for use as an HMO.
5. However, the above permitted development provision (which has existed since 1 October 2010) is contingent on a change of use directly from a lawful C3 use to C4. In consideration of whether that is in fact the case, it is necessary to assess the evidence relating to the use of the building over time.
6. I place significant weight on a previous Inspector's findings, following a thorough consideration of the building's use at an inquiry in 2007³, that its use was not as a single dwellinghouse in 2002 but rather as an HMO (and I note the evidence to that inquiry that the appellant had lived with his girlfriend in the property as a single dwelling from 1999 to 2002). At some point thereafter the building appears to have been in use as a single dwelling, according to a letter from the appellant's architect in 2006 and the appellant's application in 2014 for a selective property licence for 13 Belton Road when he indicated it on the form to be a "Self-contained single household unit".
7. On 7 May 2019 the appellant completed another application, this time for an HMO licence, in which he stated that 13 Belton Road was multiply-occupied by 7 persons forming 5 households (which constitutes a *Sui Generis* use commonly referred to as a "large HMO" rather than a C4 use for the purposes of the UCO). Further to this I have no reason to doubt the evidence of the council officer, in assessing that application, that in inspecting the appeal address on 9 May 2019 he found 8 persons multiply-residing in the appeal property as a whole including one person in the outbuilding (which, without bathroom and kitchen, was found to lack all the requirements for independent day-to-day living as a self-contained unit).
8. An email from Klaudia O'Brien to the Council on 27 July 2019 stated that 13 Belton Road was occupied as an HMO by 5 tenants, in accordance with the HMO licence the Council had issued on 8 July 2019. This would constitute use within Class C4.
9. In the appellant's response to the Planning Contravention Notice (PCN) dated 5 August 2019, he stated that 13 Belton Road was occupied as an HMO by 8 persons ("7 living in the house and 1 living in the outbuilding"). This use as a *Sui Generis* HMO is consistent with what the Council says in its statement

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

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Article 3(1) Schedule 2 Part 3 Class L (b)).

³ Appeal Ref: APP/T5150/C/06/2013052

about a site visit on 23 October 2019, when officers found the appeal premises in use as a large HMO.

10. I note that the appellant's PCN response says that use as an HMO with 8 occupants had commenced in 2001, with the appellant suggesting immunity over time. However as this contradicts the letter of 2006, the selective licence application of 2014 and Klaudia O'Brien's email I consider that claim is more likely than not to be factually incorrect. Further, I do not accept the appellant's appeal submission that the appeal property 'subsequently reverted' to use as a single family dwellinghouse after 3 July 2019 as, even were that statement not in conflict with the PCN response made some weeks later, there has been no substantive evidence submitted in support of that claim. Conversely, the tenancy agreements submitted by the appellant with his grounds of appeal indicate multiple occupation in the second half of 2019. Multiple occupation was also found by the Council on 23 October 2019.
11. Therefore, based on the evidence available to me it appears that the use of the property has undergone multiple material changes over the span of time highlighted by the parties. The sequence over time culminating in the service of the notice appears to be from single household dwelling to HMO (before the introduction of Class L), to single household dwelling to *Sui Generis* HMO to C4 HMO to *Sui Generis* HMO though I cannot be entirely certain. However, the burden of proof is on the appellant, and it is a well-established planning principle that the evidence submitted in fulfilling this burden should be sufficiently precise and unambiguous. The evidence does not meet this test and does not cause me to find on the balance of probabilities that the permitted development right claimed, from a lawful C3 use to C4 following Class L introduction in 2010, applies in this case. Therefore, I am not satisfied on that basis that a breach of planning control has not occurred, and the appeal under ground (c) fails.

Ground (d)

12. For success under this ground the appellant must satisfy me on the balance of probabilities that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by matters stated in the notice.
13. The appellant says that the existing use of the outbuilding on the land to the rear of the premises (which he refers to as No 13C Belton Road) as a single dwelling is lawful, on the basis that it is now too late to take enforcement action in respect to it. Section 171(B) of the Act provides that where there has been a change of use to a building to use as a single dwellinghouse, enforcement action must be taken before the end of the 4-year period commencing with the date the change of use commenced.
14. While the appellant has provided copies of tenancy agreements, and an affidavit, indicating that the outbuilding has been used for residential occupation since 2007 those documents do not in my view satisfactorily evidence 4 years of continuous use as a self-contained dwelling in the *Gravesham*⁴ sense with all the facilities required for day-to-day private domestic existence. The evidential value of the tenancy agreements in this regard is weakened by the fact that such facilities were not present on the

⁴ *Gravesham BC v SSE and O'Brien* [1983] JPL 306

Council's visit of 9 May 2019 during the period represented by the submitted 12-month agreement for a furnished house or flat on an assured shorthold tenancy starting 1 December 2018 (the other tenancy agreements submitted since 2007 being of the same type). The affidavit does not mention the facilities present during occupation.

15. The Energy Performance Certificate of 15 December 2015 does indicate that the outbuilding was laid out as a dwelling on that date but it does not evidence such use over any period of time.
16. Therefore, the appellant has not produced sufficiently precise and unambiguous evidence to persuade me on the balance of probabilities that there has been a continuous 4-year period where the outbuilding has been in separate use as a dwellinghouse. Accordingly, it was not too late for enforcement action to take place and the appeal under ground (d) fails.

Ground (f)

17. For an appeal to be successful under this ground, I must be satisfied that the steps required by the notice are excessive.
18. It is clear from the way that the notice requirements have been drafted that the Council is pursuing the purpose of remedying the breach of planning control resulting from the change of use, by requiring the discontinuation of that use and the restoration of the land to its condition before the breach took place. This is in accordance with section 173(4) of the Act.
19. The alternative steps put forward by the appellant, resulting in an HMO of up to 6 persons, would not remedy the breach of planning control and accordingly would not fulfil the purpose of the notice.
20. However, I do take issue with one aspect of the notice requirements. In seeking the discontinuance of HMO use on the land to the front of the premises, STEP 1 of the notice requires that there are NO MORE than SIX occupants and SIX beds. However, such requirements go beyond what is necessary for cessation of HMO use since there are no such limits in respect of use as a single family dwellinghouse. Therefore, the requirements of the notice are excessive in this respect, and the appeal succeeds under ground (f) to this extent. Accordingly, I am using my powers to vary the notice to remove this specific requirement.

Conclusion

21. For the reasons given above I conclude that the appeal should not succeed, except to the limited extent under ground (f). I shall uphold the enforcement notice with a variation.

Andrew Walker

INSPECTOR