



Appeal Decision

Site visit made on 17 August 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th August 2021

Appeal Ref: APP/K3605/C/20/3264036

Land at 254 Walton Road, East Molesey, Surrey KT8 2HT

- 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 S Khan against an enforcement notice issued by Elmbridge Borough Council.
 - The enforcement notice, numbered INV/2020/0066, was issued on 3 November 2020.
 - The breach of planning control as alleged in the notice is the material change of use of the ground floor to form a single dwelling.
 - The requirements of the notice are:
 1. Permanently cease any residential use of the ground floor,
 2. Permanently removed the kitchen and bathroom fixtures and fittings from the ground floor,
 3. Permanently removed the door and window added to the ground floor front elevation and restore this part of the building to its previous condition and
 4. Permanently remove any waste associated with completing steps 1, 2, and 3.
 - 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 (f) 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. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Preliminary matters

2. The appeal was initially submitted on ground (a) that planning permission should be granted for what is alleged in the notice, and ground (b) that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.
3. Prior to validation the appellant's Agent confirmed that the appellant wished to withdraw ground (a) and the deemed application. There is some cross over of the evidence and both parties refer to the possibility of a hidden ground (f) appeal. Accordingly, as I do not consider that this would cause injustice to either party, I have added this ground to the above heading.

Ground (b)

4. The appeal is proceeding on ground (b), that the matters alleged in the notice have not occurred as a matter of fact. This is one of the legal grounds and therefore the onus of proof lies with the appellant.
5. It is the nub of the appellant's case that some of the matters referred to in the notice have not taken place, in so far as, the ground floor has never been used for residential occupation. It is submitted that sanitary and catering facilities have always been available on the ground floor and the works carried out represent a refurbishment of those existing facilities.
6. When determining whether a material change of use of a building to a single dwellinghouse has occurred, it is necessary to have regard to two factors: when occupation commenced; and when the building provided viable facilities for living, with regard to the Gravesham characteristics of a dwelling house (*Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142; [1983] JPL 307*). Neither of these is necessarily determinative and for each case the facts need to be assessed in the round.
7. With regard to the first point, I have no evidence before me to suggest that the unit has been occupied residentially. Indeed, from the appellant's evidence, the ground floor has been unoccupied for some 19 years and this was still the case when I visited.
8. Turning to the second point, it was apparent to me that internal works had taken place to alter the layout and provide a larger, fully equipped, kitchen and bathroom, towards the centre of the unit. It is also clear that the works carried out during 2018/2019, are largely in compliance with the proposed, but refused, residential application plans (2018/1002).
9. I acknowledge the appellant's point that there were sanitary and kitchen facilities available in the unit. However, a comparison of the current layout with the submitted 'existing plans', demonstrates that these were comparatively limited in scale and in a different location to the rear of the building, leaving the remainder of the unit available for commercial purposes.
10. The current layout of the rooms, with the narrow entrance hallway has all of the characteristics of a dwelling, and the layout now appears more conducive to a residential, rather than a commercial use. This impression is further emphasised by the replacement of the shopfront with a more solid façade, with smaller window and residential style front door.
11. The unit contains all of the facilities necessary for day to day living. I have no evidence to demonstrate that the physical works, were carried out to facilitate any other alternative non-residential use, and there is no alternative use taking place. Furthermore, I have no evidence to establish the nature and duration of the unsuccessful attempts to let the site to a commercial tenant.
12. I acknowledge that the residential use has not yet commenced. However, it is clear from the evidence and planning history of the site that this is the preferred option for the appellant. The physical works have been carried out to facilitate the change of use of the ground floor to a single dwelling, albeit it that it has yet to be occupied. Consequently, for the above reasons I find that, on the balance of probability and in the circumstances of this site and the

evidence before me, the matters alleged in the notice have occurred. The appeal on ground (b) therefore fails.

Ground (f)

13. In appealing ground (f) the appellant needs to demonstrate that the requirements of the notice exceed what is required to remedy the breach of planning control, or injury to amenity, depending on the purpose of the notice, and lesser steps would overcome the objections. The merits of the development cannot be considered under ground (f).
14. In essence the appellant argues that it is not uncommon to find a kitchenette and washing facilities in a dental practice and therefore the first requirement of the notice, to cease the residential use is sufficient.
15. From the wording of the notice, the Council are seeking to remedy the breach of planning control by restoring the land to its condition before the breach took place. It is therefore necessary to consider whether these requirements exceed what is necessary.
16. It is well established in case law that a notice can legitimately require the removal of works integral to, and solely for, the purpose of facilitating an unauthorised use. I have already found that the physical works have been carried out to facilitate the change of use of the ground floor to a single dwelling and this has resulted in a material change of use of the ground floor.
17. Accordingly, I find that the remedial nature of the notice requires full compliance by, ceasing the unauthorised use, the removal of all facilitating works and the restoration of the site to its former condition.

Conclusion

18. The appeal is dismissed and the enforcement notice is upheld.

Hilary Orr

INSPECTOR