
Appeal Decision

Site visit made on 31 August 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2021

Appeal Ref: APP/W5780/C/20/3256306

Land at, Rear of and 4 Grove End, South Woodford, London E18 2LE shown edged red on the attached plan (the Land)

- 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 Gulston of Stanoak (Grove End) Ltd against an enforcement notice issued by the Council of the London Borough of Redbridge.
 - The enforcement notice was issued on 25 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the conversion of an outbuilding to the rear (as outlined in blue) into habitable accommodation and integration into HMO at no. 4 Grove End.
 - The requirements of the notice are:
 - (i) Cease the habitable use of the rear outbuilding;
 - (ii) And remove all associated internal partitions and fittings used for primary living accommodation;
 - (iii) And remove from the land all building materials and rubble arising from compliance with the steps (i) and (ii) above.
 - 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 (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellants have submitted an appeal against the Council's decision to refuse planning permission for the change of use of the outbuilding, which is the subject of this appeal, to provide additional HMO accommodation (Appeal Ref: APP/W5780/W/20/3256759). That appeal is the subject of a separate decision.
3. An application for costs has been submitted by the appellants, this is also the subject of a separate decision.

The Notice

4. The plan which is attached to the notice shows the land to which the notice relates edged red. The outbuilding which is referred to in the breach is edged blue. The appellants have provided an amended plan because they consider that the red line should relate to the whole site as a single planning unit. It is not necessary for the land to which the notice relates to be a planning unit. In this case the plan meets the requirement to identify the boundaries of the land

to which it relates i.e. 'Land at, Rear of and 4 Grove End'. Therefore, it is not necessary to correct the notice.

Ground (c)

5. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities.
6. In order to achieve success on ground (c) the appellants must show that either there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.
7. In this case the appellants argue that the breach which is the conversion of the outbuilding into habitable accommodation and integration into HMO at No. 4 Grove End (No. 4) was permitted development when it was carried out. This is on the basis that they consider that the semi-detached house, the outbuilding, and the garden are all one planning unit and that the change of use of that planning unit from Class C3 (dwellinghouse) to Class C4 (house in multiple occupation) (C4 HMO use) was permitted development.
8. The change of use of a building from a use falling within Class C3 to a use falling within Class C4 is permitted development by virtue of Schedule 2 Part 2 Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (Class L).
9. The appellants say that the C4 HMO use of the site commenced in October 2018 and that the outbuilding has operated as an extension to the HMO since November 2019. There is no evidence before me to demonstrate that the change of use to a C4 HMO could not have been carried out in two stages and still amount to permitted development.
10. The Council argues that the outbuilding is not part of the same site because it was omitted from the plans which were submitted with an application for a certificate of lawful use or development (LDC) (Council Ref. 3360/18). The LDC was granted for the conversion of a residential dwelling (use class C3) into an up-to-six persons' HMO (use class C4). However, an LDC only confirms that the use would be lawful if begun on the date of the certificate, in this case, 2 November 2018. It does not preclude another lawful use being implemented with or without a further certificate being issued.
11. The Council also contends that its refusal of an LDC in February 2019 (Council Ref. 4713/18) (the 2019 LDC) established that the development which is the subject of the notice is not permitted development. The 2019 LDC application sought to establish the existing use of the outbuilding as a workshop (use class B1(c)). However, it was not granted on the basis that insufficient evidence had been submitted to demonstrate use for a continuous period of 10 years. The 2019 LDC does not refer to an HMO use at all, consequently it does not establish whether or not such a use was lawful at that time.
12. The Council says in its statement that the case history and neighbour comments suggest that the workshop was in ancillary use by the owner of the house. This is consistent with the refusal of the 2019 LDC which also does not establish the workshop as a separate B1(c) use.

13. The Council goes on to argue that the conversion of the workshop into a separate self-contained residential unit requires planning permission. Whilst this may be the case it is not the breach which is set out on the notice or the subject of this appeal.
14. The arguments made by the Council do not contradict the contention by the appellants that the house and the outbuilding were part of a single planning unit at the time when the development was carried out or that a change of use under Class L did not take place. It follows that the evidence provided by the Council does not make the appellants version of events less than probable. However, the appellants evidence still needs to demonstrate that the development amounts to that permitted under Class L. In that regard the evidence provided by the appellants is not sufficiently precise and unambiguous.
15. The appellants argue that the conversion of the outbuilding following the conversion of the house 'was already covered within that initial exercise of those rights'. I have accepted that the conversion of the house and the outbuilding at two different times does not necessarily prevent those works amounting to permitted development under Class L. However, the resulting development still needs to constitute a C4 HMO.
16. In this case the appellants have submitted two planning applications which in their words sought to 'regularise the use of the outbuilding for habitable accommodation'. This introduces a degree of ambiguity into the case as the appellants seem unsure themselves whether the accommodation in the outbuilding is part of a C4 HMO and therefore development which requires planning permission.
17. To compound the lack of precision and ambiguity, it is not clear from the evidence that, following the conversion of both the house and the outbuilding, the accommodation on the site amounted to a C4 HMO. On the basis of my site visit there were 5 bedsits in the house and 2 bedsits in the outbuilding. This correlates with the plans which form part of the Council's submissions illustrating the layout of the house as submitted for the 2018 LDC application and the plans for the outbuilding within the appellants' statements, albeit that the latter are marked up as 'proposed'.
18. The Town and Country Planning (Use Classes) Order 1987 (the UCO) defines a C4 HMO as use of a dwellinghouse by not more than six residents as a house in multiple occupation.
19. There is no evidence before me to define precisely how many occupiers there were once the change of use was completed. However, on the basis of the evidence which is available I find it more probable that the accommodation was occupied by 7 residents and not 6 which is the maximum number referred to in the UCO. That being the case, and in the absence of precise and unambiguous evidence to the contrary, the appellants have failed to demonstrate, on the balance of probabilities, that the conversion of the outbuilding into habitable accommodation and integration into HMO at No. 4 was permitted development when it was carried out.
20. For the reasons set out above the appeal fails on ground (c).

Ground (f)

21. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
22. The appellants rely solely on their contention that the appeal should be allowed under ground (c) and therefore that the steps required to comply with the notice exceed what is necessary.
23. Had the appeal succeeded on ground (c) there would have been no need to consider the appeal under ground (f) as the notice would have been quashed. However, as I have dismissed the appeal under ground (c), ground (f) falls to be considered. On the basis of the lack of any evidence, it has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. In the absence of such evidence, the appeal fails on ground (f).

Conclusions

24. For the reasons set out above, the appeal is dismissed.

Sarah Dyer

Inspector