



Appeal Decision

Site visit made on 8 December 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2021

Appeal Ref: APP/Q1445/C/20/3248174
117 Milner Road, Brighton BN2 4BR

- 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 Mrs Lisa Zevi of Mosaica Properties Ltd against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 21 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use from small House in Multiple Occupation (C4) to a 8 bedroom House in Multiple Occupation (Sui Generis) and a loft conversion including a dormer to the rear roof slope to facilitate the unauthorised change of use to HMO (Sui Generis).
 - The requirements of the notice are: (i) Cease the use of the property as a sui generis House in Multiple Occupation. (ii) Remove the dormer to the rear roof slope.
 - The period for compliance with the requirements is 3 months for (i) and 6 months for (ii).
 - The appeal is proceeding on the grounds set out in section 174(2)(d) 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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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Preliminary Matters

2. The appellant or a representative on her behalf failed to attend the scheduled site visit for a second time. However, on the appeal form the appellant confirmed that I could see the relevant parts of the site sufficiently from public land and that it was not essential for me to enter the site to check measurements or other relevant facts. I was then able to observe the rear of the property, and with-it dormer, from an adjoining access pathway. Given the grounds of appeal pleaded and the appellants case therein, prejudice to the parties does not arise from determining the appeal on this basis.
3. Both parties consider the appeal is suitable to be determined by the written procedure. That being so, I do not consider that prejudice to a party arises.

The Enforcement Notice

4. It would be appropriate for the second requirement of the notice to ensure that following the removal of the dormer, the resultant roof slope is made-good with matching materials. Injustice to the parties does not arise from making this correction.

The ground (d) appeal

5. For the ground (d) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
6. The notice has very clearly been drafted to attack a material change of use and loft conversion with dormer which facilitates that material change of use. The notice has then been issued on the basis of the breach of planning control having occurred within the last 10 years (the 10-year rule) pursuant to Section 171B(3) of the Act.
7. This is because case law¹ makes it clear that if a notice is directed at an unauthorised change of use, and operational development took place to facilitate that unauthorised use, the notice may enforce against the use as well as the works on the basis of the 10-year rule.
8. The appellant makes the ground (d) appeal solely on the basis that the loft conversion, which included operational development by means of the construction of a dormer, is immune from enforcement action on the 4-year rule, which would be pursuant to Section 171B(1) of the Act. However, that is not the basis upon which enforcement action has been taken. There is then no ground (b) or (c) appeal before me or other evidence to demonstrate on the balance of probabilities that the dormer that is required to be removed by the notice did not facilitate the material change of use.
9. The appellant has put forward a case which it is contended demonstrates that the loft conversion, and with-it dormer, had been created by January 2016. But even if I accept that was the case, there is still very little evidence that the breach of planning control actually enforced against has subsisted for the relevant 10-year period prior to the issue of the notice.
10. Accordingly, as a matter of fact and degree, the appellant has not demonstrated on the balance of probabilities that at the time the notice was issued it was too late to take enforcement action against the matters stated in the notice. For the above reasons the dormer cannot be disaggregated from the breach enforced against.
11. The appeal on ground (d) therefore fails.

The ground (f) appeal

12. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is

¹ Including: *Murfitt v SSE* (1980) 40 P&CR 254; *Bowring v SSCLG* [2015] EWHC 1027 (Admin)

necessary to remedy the breach of planning control and propose lesser alternatives steps.

13. The appellant advances a case in respect of housing mix and living conditions. However, these are matters for a ground (a) appeal. In the absence of the appropriate fee having been paid, I am unable to consider such matters. In any event, the requirements of the notice go no further than what is necessary to remedy the breach of planning control attacked by the notice. It is not excessive for the dormer to be removed as this is said to facilitate the breach, and the appellant offers no precise or unambiguous evidence to the contrary.
14. The appellant then contends the dormer was permitted development and so even if she complied with the notice, it could be rebuilt the following day. However, there is very little evidence to demonstrate on the balance of probabilities that the dormer does comply with the necessary strictures of permitted development or that the same or something similar could then be subsequently built. I however find the dormer is integral to the unauthorised change of use, as it provides for additional letting bedrooms, and the appellant has not demonstrated on the balance of probabilities how the breach could be effectively remedied without the removal of the dormer, other than to broadly say the number of occupiers could be reduced to 7. This however would still amount to a sui generis HMO and/or provide additional bedrooms that would have the potential to be let in breach of planning control. There is therefore no realistic evidence of a fall-back position before me or ground (a) appeal to consider the planning merits therein.
15. As no other lesser steps are proposed to remedy the breach of planning control enforced against, the appeal on ground (f) fails.

Overall Conclusion

16. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

17. It is directed that the enforcement notice be corrected by:
 - substituting the words '*Remove the dormer to the rear roof slope and make-good the resultant roof slope using matching materials.*' for those at requirement 5. (ii) of the notice.
18. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR