



Appeal Decision

Site visit made on 14 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 April 2022

Appeal Ref: APP/T5150/C/21/3270399

31 Crest Road, London NW2 7LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Sajid Mughal against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/19/0665, was issued on 27 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the garage to a dwelling. ("the unauthorised change of use").
 - The requirements of the notice are to:
 - STEP 1 Cease the use of the garage as a dwelling.
 - STEP 2 Remove all fixtures and fittings associated with the unauthorised change of use, including the kitchen and bathroom, from the garage.
 - STEP 3 Remove all associated waste, debris and materials, arising from compliance with the above steps, 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)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended ('the Act').
-

Decision

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

Procedural Matters

2. The appellant states that a tenant of the main house has been resident in the external building for over 4 years. Although such a matter would ordinarily be dealt with under ground (d), the appellant has not appealed under this ground of appeal and does not suggest that the garage has been used as a self-contained dwelling for at least four years. Rather the appellant's case is that the garage has been used as part of a House in Multiple Occupation (HMO) for over 4 years. The appellant is professionally represented and has submitted evidence in support of their case in this regard. I shall therefore consider the appeal on the basis of the grounds of appeal advanced by the appellant.

Ground (b)

3. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. The main thrust of the appellant's case under ground (b) is that the garage is not being occupied as a separate self-contained dwelling. It forms an additional bedroom to the main property and therefore the breach has not occurred.
4. A Lawful Development Certificate, reference 16/4476, was issued on 16 November 2016 for proposed garage conversion into a habitable room with en-suite shower room with insertion of a window to the front north elevation and a

new door and window set to the side east elevation. All the windows to match existing.

5. The appellant asserts that the property is in use as an HMO for up to 6 unrelated people (Use Class C4) and has been since 2016. In support of this claim, the appellant has provided floor plans of the property and a copy of an HMO licence. While the property benefits from a HMO license, this is not determinative of how the property has actually been used.
6. I note the appellant submitted a Certificate of Lawfulness application 20/3835 for the existing use as a small HMO, which has been refused by the Council and states that they intend to appeal the Council's decision. While the refusal of the application is not before me, how the property has been used is relevant to my consideration of this appeal.
7. The appellant has provided a tenancy agreement dated 5 February 2016, which identifies the property as '31 Crest Road NW2 7LY (one room with sharing kitchens)'. The appellant states that the tenant who currently resides within the converted garage has done so since 2016 and utilises the main house for shared kitchen facilities. However, it is not clear from the agreement which part of the property the agreement relates to. Even if this is the tenancy agreement for the garage, it does not show how the premises was used.
8. Access to the garage is via a lockable gate to the side of the main dwellinghouse. During my visit, the garage was unoccupied and had clearly been so for some time. I saw that there was a shower room with toilet and basin. Although there were no kitchen facilities within the garage, there was a cooker switch with kitchen cupboards above and below, and plumbing for a sink. There were also grease stains on the cupboard above the cooker switch, indicating that the area has been used to cook food.
9. The Council has provided photographs, taken by the Housing Needs Officer on 24 September 2019, which show that the garage had a sink, microwave, plug-in hob and other domestic paraphernalia. Photographs taken on 7 November 2019 also show a sink and microwave in the garage.
10. The appellant has provided photographs of the garage, however, they are undated and mail delivery bags have been placed over the cupboard where I observed plumbing for the sink. From the evidence provided by the Council and from my observations on site, it is clear that the garage had cooking facilities, albeit they have since been removed.
11. The ground floor rear of the building is also accessed via the gate to the side of the main dwellinghouse and appeared to be in use as a self-contained dwelling at the time of my site visit. This is inconsistent with the floor plans provided by the appellant, which show a laundry room and manager's office with shower room. Although there are kitchen facilities in the rear ground floor unit, they are located in the living space and are accessed via a lockable door. I therefore consider it highly unlikely that occupants of the garage would have used them.
12. I was also able to view the ground floor front unit, which has its own kitchen. This kitchen is only accessible via the front door, which also has its own lock. I consider it highly unlikely that occupants of the garage would choose to cook in the main building when it would have been necessary to exit the building, walk around to the front and enter through the main living area to use the facilities.

13. Although kitchen facilities within the converted garage had been removed by the time of my visit, an appeal under ground (b) is made on the basis that the alleged breach has occurred. Even if the garage did not contain kitchen facilities at the time the notice was issued, section 174(2)(b) of the Act is worded in the past tense, so the question is whether the breach had occurred by the date of issue of the enforcement notice.
14. The appeal on ground (b) cannot succeed on the basis that it no longer has the facilities required for day to day living. This approach was endorsed in *Blackburn v FSS and South Holland DC* [2003] EWHC 671 Admin.
15. From the evidence it appears that the garage had all the facilities required for day to day living and has been used as a self-contained dwelling. For the reasons given above, I consider it highly unlikely it was used as part of an HMO. The overwhelming conclusion that I must draw from the evidence, therefore, is that the breach has occurred and so the appeal under ground (b) must fail.

Ground (c)

16. An appeal under ground (c) is made on the basis that those matters (the matters stated in the notice, if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities. The appellant asserts the occupancy of the garage as habitable space is lawful.
17. A certificate of lawfulness (LDC) for the use of the garage as a habitable room was granted on 16 August 2016, reference 16/4476. Section 192(4) of the Act states that the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.
18. As set out above, I have found, on the balance of probabilities, that the garage was used as a self-contained dwelling. This resulted in the creation of a separate planning unit and was a material change of use. It has not been demonstrated that the garage was converted lawfully to a habitable room in line with the LDC and even if it was, its use as a self-contained dwelling would have superseded the lawful use.
19. Since the use of the garage as a self-contained dwelling is development for which planning permission is required and no planning permission has been obtained, the appeal under ground (c) must fail.

Ground (f)

20. An appeal under ground (f) is made 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.
21. The Council has confirmed that the purpose of the notice is to remedy the breach of planning control, which is consistent with the requirement to cease the use and remove fixtures and fittings.

22. The appellant suggests the removal of the fixtures and fittings including the kitchen and bathroom is unreasonable and unnecessary given the appellant has a lawful right for the ensuite shower room to be within the garage and there is no kitchen installed to remove. However, although the appellant was granted an LDC for the conversion of a garage into a habitable room, I have no substantive evidence to show that this is what has occurred.
23. The evidence provided by the Council shows that the premises contained all the facilities required for day-to-day existence and, as set out above, I have found on the balance of probabilities that it was used at some point as a self-contained dwelling. The appellant has not demonstrated that such facilities were not present when the garage was first converted or that it was used as habitable space as part and parcel of the dwelling prior to its use as a self-contained dwelling.
24. Furthermore, the appellant asserts that the garage was actually used as part of an HMO. An enforcement notice ref E/14/0171 was issued on 27 January 2015 alleging 'without planning permission, the change of use of the premises to two self-contained flats. Without planning permission, the erection of a single storey rear extension. Without planning permission, the erection of an outbuilding in the rear garden of the premises.' The enforcement notice was upheld, with corrections and variations.
25. An HMO licence was granted on 15 March 2016 and the tenancy agreement of the alleged occupant of the garage is stated as starting on 5 February 2016. Although planning permission was granted on appeal, reference APP/T5150/D/16/3146949 on 28 June 2016 for a single storey rear extension and outbuilding in the rear garden (retrospective)¹, it seems on the evidence provided that if the property was converted to an HMO, the use commenced before the above planning permission was granted.
26. As confirmed in *RSBS Developments Ltd v SSHCLG & Brent LBC* [2020] EWHC 3077 (Admin), in order for permitted development rights to be enjoyed, existing building operations or use had to be lawful. Since the above planning permission was not granted until 28 June 2016, the building operations would not have been lawful when the HMO use was begun.
27. The implication of this is that, even if the garage was used as part of an HMO, at the time the use commenced, Article 3(5)² of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO) was engaged and so the property did not benefit from permitted development rights. The GPDO does not grant retrospective planning permission and so the use of the property as an HMO would not have been lawful.
28. I am not persuaded, therefore, that it would be possible for the appellant to revert to using the garage as habitable space in the event that the enforcement notice was upheld, either as part of a C3 use or a C4 use. While the appellant has removed some of the kitchen facilities, this does not negate the need to

¹ Section 180 of the Act sets out that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

² Article 3(5) sets out that permission granted by Schedule 2 does not apply if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful.

include it as a requirement in the notice. The requirements would remedy the breach and are therefore not excessive.

29. Consequently, the appeal under ground (f) must fail.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

M Savage

INSPECTOR