



Appeal Decisions

Site visit made on 16 March 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal A Ref: APP/T5150/C/21/3270554

Appeal B Ref: APP/T5150/C/21/3270555

70 Grasmere Avenue, WEMBLEY, HA9 8TQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mrs Inderjit Roopra and Appeal B is made by Mr Harbans Singh against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/20/0201, was issued on 28 January 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises from a house to a House in Multiple Occupation, incorporating two self-contained flats and shared accommodation; and for the storage and deposit of waste and building materials, and use as a builders' yard. ("the unauthorised change of use").
 - The requirements of the notice are to: Cease the use of the premises as a House in Multiple Occupation (HMO). STEP 2 Cease the use of the premises as flats. STEP 3 Cease the use of the premises as storage and deposit of waste and building materials. STEP 4 Cease the use of the premises as builders' yard. STEP 5 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets, except those shown in the plans A, B and C attached to this notice. STEP 6 Restore the internal configuration to the original layout before the unauthorised change of use took place, as shown in the plans A, B and C attached to this notice. For the avoidance of doubt, this should include a kitchen/dining room, a separate lounge on the ground floor, 3 bedrooms on the first floor, a bathroom on the first floor, and a bathroom on the ground floor, and two bedrooms and a bathroom on the second floor. STEP 7 Remove all materials, items, waste scrap and rubbish associated with the unauthorised use from the premises. E/20/0201 - 70 Grasmere Avenue, Wembley, HA9 8TQ STEP 8 Remove all vehicles, equipment, materials and items associated with builders, and the construction industry. STEP 9 Rebuild an eight-course brick boundary wall between 70 and 70A, and between 70 and 72 Grasmere Avenue (or a hedge), and along the front boundary on the highway, as shown in the image attached to this notice. .
 - 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 (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by the Council and is the subject of a separate decision.

Ground (c)

3. An appeal on this ground is on the basis that the matters stated in the notice do not constitute a breach of planning control. The appellants' case is that the use of the house has changed from a class C3 dwellinghouse to a class C4 house in multiple occupation which benefits from permitted development rights pursuant to Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development)(England)Order 2015 ('the GPDO').
4. However, the appellant accepts that there were two self-contained units in the property, one on the ground floor and one in the attic. Whilst the kitchen facilities in these units have now been removed (following the service of the notice) the breach of planning control had occurred as alleged in notice. The property was in a mixed use with part of the house being used as an HMO and part as the two self-contained units, and the appellant has not disputed that the outside area was also being used for the storage and deposit of waste and building materials, and as a builders yard.
5. The appeal property, as one planning unit, must be considered as a whole. The concept of a mixed use is one or more primary uses existing within the same planning unit, as in this case. Class L of the GPDO does not permit only part of a C3 dwellinghouse to change to an HMO nor the change of a house to a mixed use. The mixed use of the appeal property overall therefore constitutes a breach of planning control. In addition, class C4 does not permit occupation by more than 6 residents and the HMO licence application dated 18 March 2020 records that 8 people were living at the property.
6. The use of the property did not change directly from a class C3 dwellinghouse to a Class 4 HMO as it was in the mixed use in the intervening period. The permitted development rights do not apply and the appeal on ground (c) therefore fails.

Ground (d)

7. To succeed on this ground the appellant must show that on the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice. The appellant would need to show that the property had been used as an HMO for a substantially uninterrupted period of 10 years prior to the issue of the notice. The burden of proof is on the appellants on the balance of probability.
8. The appellants argue that the house has been used as a class C4 HMO for over 10 years. However, as they have accepted that the appeal property had been in a mixed use which included the HMO and 2 self-contained flats, as well as the builders yard and storage, that period of use would therefore not count towards the time period required under this ground. They have provided very little in the way of evidence, including 4 tenancy agreements (dated September 2009, September 2011, January 2011 and September 2012) and a plan showing the layout of the property dated 15 January 2021. These documents do not show that the property has been used as an HMO for the required period.

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

Zoë Franks

INSPECTOR