
Appeal Decisions

Site visit made on 10 May 2022

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 May 2022

Appeal A: APP/T2215/C/20/3259186

The Office, 1B, Regency Mount, Barn End Lane, Wilmington, Dartford

- 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 Harnaik Singh Kullar, Nicky Properties Ltd against an enforcement notice issued by Dartford Borough Council.
 - The enforcement notice, numbered 17/00181/ENF, was issued on 11 August 2020.
 - The breach of planning control as alleged in the notice is the material change of use of a room which has planning permission for an ancillary office, storage area and WC to the use of that room as a self-contained residential unit used for residential purposes.
 - The requirements of the notice are: (i) Cease the use of the self-contained residential unit used for residential purposes; (ii) Carry out the necessary building alterations to convert the self-contained residential unit used for residential purposes back to an ancillary office, storage area with WC as shown on approved drawing AL(0)03 REV. D submitted as part of the application for planning permission reference 12/01402/FUL or alternatively for another ancillary use to be agreed in writing with the Local Planning Authority.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B: APP/T2215/W/20/3248597

The Office, 1B, Regency Mount, Barn End Lane, Wilmington, Dartford

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Harnaik Singh Kullar, Nicky Properties Ltd against a decision by Dartford Borough Council to refuse an application for planning permission.
 - The application, ref: DA/17/01791/COU, dated 10 October 2017, was refused by notice dated 28 August 2019.
 - The development proposed is a change of use from C2 to C3 to provide a single person residential unit.
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Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Procedural matter

3. The appeal property is Grade II listed but the Council does not suggest that the alleged change of use has had any impact on the special architectural and historic interest of the heritage asset. The works that have been undertaken in the residential unit are minor and similar to those already granted consent when the building was converted into flats and I therefore agree with this conclusion.

Main Issues

4. The main issues in these cases are therefore:

Appeal A only

- (i) on ground (c), whether there has been a breach of planning control and, if there has
- (ii) on ground (d), whether the breach is immune from enforcement action through the passage of time and, if not,

Appeals A, ground (a) and Appeal B

- (iii) the effect of the development on the living conditions of current and future occupants

Appeal site

5. The unit in Regency Mount that is the subject of the enforcement notice comprises a bed-sitting room with a separate shower room within a building that was previously a care home and which has now been converted into flats. The rooms were previously granted consent as an ancillary office, W.C. and cleaners' cupboard as shown on the drawings accompanying approved planning application 12/01402/FUL. Internal partitions have been reconfigured so that the space is now accessed through a single door.
6. The bed-sitting room contains a kitchen sink unit, a cooker, a washing machine and a refrigerator. The shower room also has a handwash basin and a W.C. and the total area of the unit is about 18 – 19 square metres.

Reasons

Ground (c)

7. The appellant claims that the change from an office to a residential use is development permitted by Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO). However, Class O only applies to offices that are in use class E(g) [formerly B1(a)] and the former office use of the unit was only ancillary to that of the remainder of the building, which is in a residential use. In any event, any change of use under Class O requires an application for prior approval, which was not submitted.
8. The change of use has not therefore been authorised by the GPDO, a new self-contained dwelling unit has been created and planning permission has not been granted for this. Consequently, the appeal on ground (c) fails.

Ground (d)

9. The appellant submits that the unit has been continuously occupied for more than 4 years prior to the serving of the enforcement notice and is therefore immune from enforcement action. In such cases, it is for the appellant to provide clear and unambiguous evidence to support their case. To support his claim, the appellant has firstly submitted a copy of a tenancy agreement dated 10 January 2009 that refers to the 'studio flat' at 1B Regency Mount. It is for a period of 1 year only and does not, therefore, provide confirmation that the unit has been continuously occupied since then.
10. I am also told that the unit was previously occupied by the caretaker of the care home but the 'as existing' floor plans that accompanied the application for the change of use, dated June 2012, show the area as a single undivided space, with no shower room or WC present. Therefore, even if someone had been using the room, it would appear that it was not a self-contained unit at that time.
11. The appellant also states that the unit has been occupied since 2015 but has provided no evidence of a tenancy agreement for that date or any confirmation from the tenant. The Council disputes the occupancy date and points to Council Tax records that show that the tenancy of the main building commenced in April 2016, whereas that of the studio flat at 1B did not begin until 19 August 2016. Without any clear confirmation that the appellant's version of events is correct I am unable to conclude that the self-contained unit, as it now exists, has been in a continuous residential use for a period of 4 years prior to the issue of the notice. The appeal on ground (d) therefore fails.

Ground (a) and Appeal B

12. Policy CS17 of the adopted Dartford Core Strategy 2011 and policy DP8 of the adopted Dartford Development Policies Plan 2017 set design standards for living spaces and incorporate the Government's Nationally Described Space Standards 2015 (NDSS). This set of standards requires a minimum floor area of 37 square metres for a one-person, one-bed unit, whereas the floor area of the unit is, as noted above a maximum of 18 – 19 square metres. It does not, therefore, meet the space standards for a new residential unit and does not provide a suitable environment for permanent occupation. It consequently fails to comply with the relevant national and local development plan policies.
13. The appellant considers that the unit is providing an affordable small living space for the current occupant and submits that the fact that it has been occupied for some time, confirms that it must be acceptable. It is described as a bed-sitting room flat, but such a unit, such as might be found in a house in multiple occupation, would normally have access to some additional communal space, which is not the case here.
14. Whilst the unit has all the necessary basic facilities, it is nevertheless a cramped space with a single aspect which, in my view, is not suitable for occupation as a permanent home. To grant planning permission for a such a sub-standard space would make it difficult for the local planning authority to ensure that reasonable minimum criteria for living spaces are maintained elsewhere. Appeal B and Appeal A, ground (a) consequently fail.

Conclusions

15. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Katie Peerless

Inspector