



Appeal Decision

Site visit made on 9 May 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2022

Appeal Ref: APP/A5270/C/20/3262264

Land at 145 Wood End Gardens, Northolt UB5 4QW

- 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 Joginder Khaira against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 9 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the original main dwelling to two self-contained flats and the construction of a self-contained residential dwelling at the rear of the ground floor of the property.
 - The requirements of the notice are:
 1. Cease the use of the premises as self-contained flats;
 2. Remove the kitchen and drainage connections from two of the self-contained flats;
 3. Remove the shower and drainage connections from two of the self-contained flats;
 4. Remove all internal doors, partitions and locks that facilitate the use of the premises as self-contained flats; and
 5. Remove all resultant debris.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Application for costs

2. An application for costs was made by the Council of the London Borough of Ealing against Mr Joginder Khaira. This application is the subject of a separate Decision.

Procedural Matter

3. The appeal was made on ground (c), that there has not been a breach of planning control. However, in setting out the facts in the appeal form, the appellant also states that the property has not been converted into 3 self-contained flats as alleged. This is more of a ground (b) point, that the breach of control alleged has not occurred as a matter of fact. The Council have had an opportunity to respond to the matters raised on the appeal form, and there is therefore no prejudice in my consideration of this matter on ground (b). I have determined the appeal on that basis.

Appeal on ground (b)

4. The main issue is whether the change of use of the original dwelling into two self-contained flats and the construction of a self-contained residential dwelling at the rear of the ground floor of the property has occurred as a matter of fact. The onus is on the appellant to prove his case on the balance of probability. It is the appellant's view that the property is in use as a House in Multiple Occupation (HMO), as opposed to self-contained flats. Although no documentary evidence has been provided, the appellant states that he has an HMO licence for the property and obtained building regulations for the works.
5. There does not appear to be any dispute that a single storey extension has been constructed at the rear of the property. The completed Planning Contravention Notice¹ (PCN) confirms that the extension was completed on 2 June 2020 and first occupied for residential purposes on 19 June 2020. The extension is described in the PCN as a self-contained unit with a hob, double bed, shower, toilet and storage. Consequently, the accommodation has all the facilities required for day-to-day private domestic existence. Furthermore, I noted on my site visit that the flat takes access via a lockable door with access from a communal hallway and main front entrance door. From the evidence before me, the construction of a self-contained residential dwelling has taken place at the rear of the ground floor of the property as a matter of fact.
6. The PCN also confirms that two self-contained flats have been created within the original dwelling. One at ground floor and one at first floor level. Each of those units is described as having its own fitted kitchen, shower and toilet/hand basin. In addition, I noted on my site visit that each of these units had a separate locked access from the communal hallway. Whilst I saw on my visit that there was an oven and fridge freezer within the communal downstairs hallway, it is clear from my inspection of the accommodation that those appliances are in addition to the facilities provided within each self-contained flat, and thus supplementary appliances.
7. In the absence of any positive evidence from the appellant, the contrary evidence provided by the Council in the form of screen shots from a video, the completed PCN, Council Tax banding records, tenancy agreements and email correspondence, taken together with observations on my site visit, make the appellant's contention that the property's use is as an HMO less than probable.
8. In conclusion, I am satisfied that a change of use of the original dwelling into two self-contained flats and the construction of a self-contained residential dwelling at the rear of the ground floor of the property has occurred as a matter of fact at 145 Wood End Gardens. The appeal on ground (b) must therefore fail.

Appeal on ground (c)

9. The ground of appeal is that matters alleged do not constitute a breach of planning control. The appellant contends that the property is in use as an HMO and the conversion of the property to a small HMO is permitted by Article 3, Schedule 2, Part 3 of the General Permitted Development (England) Order, 2015, as amended (GPDO).
10. I have found that the matters alleged in the notice have occurred as a matter

¹ Local Planning Authority Statement of Case, Appendix 9.

of fact, and thus the unauthorised development is the change of use of the original dwelling into two self-contained flats and the construction of a self-contained residential dwelling at the rear of the ground floor of the property. The material change of use of the main dwelling to two self-contained flats and the construction of a self-contained residential dwelling to the rear of the ground floor did not benefit from a grant of planning permission, and the development is not permitted development under any provision of the GPDO. A breach of planning control occurred and the appeal on ground (c) fails.

Conclusion

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

Elizabeth Pleasant

INSPECTOR