
Appeal Decision

Site visit made on 15 March 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 27th May 2022

Appeal Ref: APP/T5150/C/20/3257244

Flats 1-3, 21 Brownlow Road, London NW10 9QP

- 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 Muhammad Zakriya against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/17/0072, was issued on 30 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the ground floor of the premises to three flats.
 - The requirements of the notice are (1) Cease the use of the ground floor of the premises as more than one flat; (2) 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; and (3) Restore the internal configuration of the ground floor of the premises to the original layout before the unauthorised change of use took place
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) 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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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A site visit was arranged for 15 March 2022. A representative of the Council attended but the Appellant did not and I could not access the property. Given that there is no dispute that the three flats referred to in the Notice are present, and that the appeal is made on ground (d) alone, I was of the view that there was no overriding need to access the property. I therefore wrote to the parties suggesting that the appeal proceed on the basis of the written submissions, asking whether they had any objection to this. Both replied by email. As neither objected, the appeal has been determined on this basis.
3. As no appeal has been made on ground (a), any arguments made in respect of the planning merits of the case cannot be taken into account. Therefore, I have to set aside the Appellant's comments made in this regard.

Reasons

4. An appeal made under ground (d) is that on the date that the Notice was issued no enforcement action could be taken in respect of the breach of

planning control. In this legal ground, the onus lies with the Appellant to make his case on the balance of probabilities.

5. The relevant time limit to acquire immunity from enforcement action, set out in s171B(2) of the Act, is four years. Therefore, it is incumbent on the Appellant to demonstrate that the use specified in the Notice commenced on or before 30 June 2016, (the 'relevant date'), and that this ran continuously for a four-year period (the 'relevant period') prior to the date that the Notice was issued.
6. The Appellant sets out that prior to the creation of the three flats, one of the three rooms on the ground floor was a "sub-unit" with "all facilities", and another residential unit was formed from that floor's other two rooms. No further evidence of this situation was provided.
7. He says that in 2015 builders carried out the works to create the three units; though he has been unable to contact them following the covid pandemic. However, he has not supplied any evidence that the building works were carried out at that time. This might have been in the form of, for example, invoices for work and materials or any other correspondence with the builders. I am told that a tenant from that time witnessed the works but would not come forward to provide supporting evidence.
8. The Appellant further states that he applied to the Council for an HMO¹ licence in December 2015 and that this was issued in January 2016, for the period to December 2019. The Appellant has not supplied me with copies of the documentation, but the Council has supplied a copy of a licence application that has the same reference number as that the Appellant refers to. It states that the type of licence required was an 'Additional HMO license'. At the time that the application was made, it indicates that a PK occupied the three rooms on the ground floor, all of which are described as bedrooms. It should be noted that I have used the person's initials to protect their privacy.
9. The licence application does not take the Appellant's case forwards. It merely gives some indication of the situation prior to the relevant date and shows that a successful application for a licence was made. However, this was for the use of the property as an HMO, rather than the self-contained flats that the evidence shows have been formed there and are the subject of the Notice.
10. The Appellant states that he subsequently received requests from the Council to undertake certain works to the property in 2016 and 2018. The first related to compliance with conditions of the licence. The nature of the second was not given. I have not been given copies of these requests. Although the first pre-dates the relevant date, it might have given some idea of the use of the property at that time. The latter might have given evidence of the actual use of the property within the relevant period.
11. The only evidence of the occupation of the property during the relevant period that I have is that the PK referred to above lived there until being evicted in October 2016. This does not demonstrate that there were three flats in the property.

¹ HMO is generally accepted to mean 'House in Multiple Occupancy', or similar. In the absence of any evidence to suggest otherwise, I have taken this to be the case here.

12. Council Tax valuation details² from that time show that there were three flats registered in the property from 12 January 2017; that is to say, after the relevant date. This cannot be taken as conclusive evidence that the alleged use was not being undertaken before this date. However, it does raise questions of the Appellant's claims. He did not make any Final Comments in which he might have explained why the property was not registered in this manner prior to the relevant date.
13. The Appellant has given no specific evidence of the date that the use of the property as three self-contained flats commenced, nor any substantive evidence of their continuous use for the four-year period.
14. Whilst the Council's evidence does not specifically contradict the Appellant's case, it does cast doubt on it and asks questions of it that he has not addressed. It is for the Appellant to make his case. Overall, his evidence is limited and is not sufficiently precise and unambiguous to prove the case that, on the balance of probability, the three flats have been in-situ and used continuously for the relevant period.
15. The appeal under ground (d) is dismissed.

'Hidden' Ground (c)

16. I have taken the Appellant's argument that the works that were undertaken were all internal that did not involve extending the property as amounting to a hidden Ground (c) appeal. That is to say that the matters referred to in the Notice do not constitute a breach of planning control. Again, the onus lies with the Appellant to make his case on the balance of probability.
17. The evidence shows that what operational development there was at the property was all internal. Whilst this might not have required planning permission in its own right, the Notice is directed at a material change of use (mcu) of the property. Established case law sets out that where internal works are integral to or part and parcel of the making of the mcu, the Notice can require those works to be removed. It has not been demonstrated that the works were not integral to the use.
18. Therefore, the hidden ground (c) appeal is dismissed.

Conclusion

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

Roy Curnow

Inspector

² Appendix 2 of the Council's statement