



Appeal Decision

Site visit made on 26 July 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2022

Appeal Ref: APP/T5150/C/21/3272814

58 Evelyn Avenue, London NW9 0JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ('the Act'). The appeal is made by Mr Rakesh Shah against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 11 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a roof extension to the premises.
 - The requirements of the notice are to: Demolish the unauthorised roof extension to the rear of the premises. reinstate the roof back to its former condition before the unauthorised development took place, and remove all resultant items, waste materials and debris (including scaffolding).
 - The period for compliance with the requirement is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) 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.

Ground (c)

2. An appeal under ground (c) is made on the basis that the matters stated in the notice, if they occurred, do not constitute a breach of planning control. The main thrust of the appellant's case under this ground is that the development is permitted by the Town and Country (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO').
3. Although the enforcement notice makes reference to Class C and Class E of Part 1, Schedule 2 of the GPDO, I consider the roof extension should be considered against Class B, Part 1 of Schedule 2 of the GPDO, which permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
4. It is for the appellant to make their case on the balance of probabilities. As established in *Gabbitt v SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. The Council issued a certificate of lawfulness for a proposed rear dormer window under reference 15/5486 (Lawful Development Certificate, or 'LDC'). Section 192(4) of the Act provides that the lawfulness of any use or operation for which an LDC is in force under section 192 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.

6. After the issue of the LDC, an enforcement notice, reference E/17/0747, was issued against the material change of use of the premises to seven flats, the erection of a building in the rear garden of the premises, the erection of a roof extension to the rear of the premises and the erection of a canopy to the rear of the main house. The notice required the removal of the operational development and the cessation of the use of the premises as flats.
7. The Planning Enforcement Manager wrote to the appellant on 10 February 2020 and stated 'I can confirm that you have complied with the enforcement notice as all the steps specified in the enforcement notice have been undertaken'. Although permitted rights would once again be afforded to the premises once the notice has been complied with, such rights would not apply to an unlawful use, by virtue of Article 3(5)¹ of the Act.
8. Section 57(4) of the Act states that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which... it could lawfully have been used if that development had not been carried out. It is not disputed that the previous use of the building was used as a single dwellinghouse prior to the breach, which is Use Class C3². The implication of this is that planning permission is not required to revert to use as a C3 dwellinghouse.
9. However, the Council suggest that the premises has not been put to any use other than as an HMO since the 2018 enforcement notice was issued and advise it has received detailed reports from nearby residents since 10 February 2020 which suggest there have been periods where the property has had no occupants, and other periods where it has been in use as an HMO. The appellant wrote to the Council on 14 March 2021 asking whether planning permission was required for an HMO for 6 people at the appeal site, suggesting that they intend to use the property in this way.
10. Class B, Part 1 of Schedule 2 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions. It is not a condition of qualifying for Part 1 permitted development rights that a dwellinghouse is used in accordance with Use Class C3. However, although the enforcement notice E/17/0747 did not impose a requirement to prevent the premises from being used as an HMO, the change of use to an HMO in this case would not be authorised by section 57(4).
11. Class L, Part 3 of Schedule 2 of the GPDO permits development consisting of a change of use of a building (b) from a use falling within Class C3(dwellinghouses)...to a use falling within Class C4(Houses in multiple occupation) of that Schedule. In order to benefit from this right, the dwelling would need to first have reverted to use as a C3 dwellinghouse, in accordance with section 57(4) of the Act.
12. The appellant states that since compliance with the enforcement notice, the property remained vacant until May 2021 and was re-occupied by the appellant in late May for security purpose and preparation of the loft conversion, which was started on 22 June 2020. The premises appeared in the process of being

¹ Article 3(5) provides that the planning permission granted by the GPDO 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 or (b) in the case of permission granted in connection with an existing use, that use is unlawful.

² The Town and Country Planning (Use Classes) Order 1987 (as amended)(UCO).

renovated at the time of my visit. Although there was some evidence that an individual was occupying the property, given the limited personal effects present, I consider it unlikely that the occupant has been living there on a permanent basis.

13. The Council has provided Companies House information and Housing Benefit information which give an alternative address for the appellant and shows that the appellant continued to receive housing benefit payments for an occupant at the premises between 5 June 2017 and 26 July 2020. This contradicts the appellant's assertion that the premises remained vacant until May 2021.
14. The appellant states that they were the liable party for Council Tax at the appeal property. However, they have not provided any documentary evidence to support this assertion. Furthermore, the Council state that Council Tax records show that he is a non-resident Council Tax payer in relation to the premises.
15. While a property occupied by the owner and up to two lodgers does not constitute an HMO for the purposes of the GPDO, the appellant has not shown this is how the premises has been occupied. Moreover, an interested party disputes that the appellant has ever lived at the premises. While the document provided by the interested party is not a sworn statement and this must limit its weight, it is consistent with the Council's contention that the appellant did not reside at the premises.
16. Thus, for the reasons given above, I find the appellant's evidence is not sufficiently precise and unambiguous and does not show, on the balance of probabilities, that at the time the roof extension was constructed, the appeal premises benefitted from permitted rights set out in Schedule 2, Part 1, Class B of the GPDO. Consequently, the roof extension is development for which planning permission is required and the appeal under ground (c) must fail.

Ground (f)

17. 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 the matters stated in the notice, or... to remedy any injury to amenity which has been caused by any such breach. It is clear from the wording of the notice that its purpose is to remedy the breach of planning control.
18. The appellant has drawn my attention to appeal decision APP/R5510/C/19/3224649, which concerned an enforcement notice issued against the change of use of a single family dwellinghouse into six separate self-contained residential units. Under ground (f), the Inspector accepted that internal partitions and lockable doors could be retained, since the facilities could be reinstalled with the intent of using the property lawfully as a house in multiple occupation for six sharers.
19. The Inspector also found that the breach would be remedied if the extension were altered to comply with a planning permission and its complete removal would be excessive. Whilst I have had regard to the appeal decision, there is no planning permission for the roof extension in this case and the GPDO does not grant retrospective planning permission.

20. Although it would be possible for the appellant to erect a dormer under permitted development rights once the use of the building has reverted to use as a single dwellinghouse, the power to vary the terms of an enforcement notice under section 176(1)(b) cannot be used to attack the substance of the enforcement notice. Allowing the roof extension to be retained would not remedy the breach. Consequently, the appeal under ground (f) must fail.

Conclusion

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

M Savage

INSPECTOR