



Appeal Decision

Site visit made on 15 August 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/A5270/C/21/3274804

297 Greenford Road, GREENFORD, UB6 8RE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A Darwish against an enforcement notice issued by London Borough of Ealing.
 - The notice, numbered 19EN1239(1), was issued on 25 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission: The material change of use of dwelling house to a mixed use comprising 3 self-contained residential units and a small HMO, and the construction of a rear roof extension.
 - The requirements of the notice are 1. Cease the use of the property as three self-contained residential units and a small HMO; 2. Remove the kitchen and drainage connections from 3 of the 4 units; 3. Remove the internal partitions and fixtures and fittings that facilitate the unauthorised material change of use of the premises; 4. Remove the rear roof extension in its entirety; 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)(a), (b), (f) 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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Decision

1. It is directed that the enforcement notice is varied by deleting "6 months" from the period for compliance and replacing it with "9 months". Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

2. An application for costs has been made by the appellant and is dealt with in a separate decision letter.

Background to the Appeal

3. This case has a tangled back history some of which is important to determining the appeal itself. The property has been used as an HMO for many years. It was one half of a pair of semis with a small side dormer. At some point a flat roofed two storey side extension was added and photographs show it in place at least as far back as 2008. This looks like another similar sized house has been attached. The ground floor of the extension is used as a chiropodist, but the rest of the extended house was an HMO. It was licensed with the Council for a maximum of 8 households comprising no more than 10 persons in total. However, a large HMO such as this is sui generis and planning permission is

required to change from a small C4 HMO to a larger one. No planning permission has been obtained so the lawful use of the property is a single dwelling house or C4 HMO for a maximum of 6 people. Unless any planning permission are still extant that is the fallback position.

4. In 2014 planning permission was granted for the change of use of the property to 4 flats, including a new pitched roof across the whole property with two rear dormers. The 4th flat was in the roof and the dormers were needed to provide sufficient space to get close to the London Plan space standards. Although this 4th flat didn't quite meet the standards, overall the Council were happy with the proposal and granted it planning permission in April 2015 under reference PP/2014/2206. The confusion starts at this point. The permission included a condition referring to the plans submitted. The relevant plans mentioned in the condition are GR003B (dated 14 April 2014) and GR006A. The latter is the rear elevation which shows two large dormers. GR003B is not included in the documents but its antecedent, GR003A, shows the floor plans and clearly the two dormers are different to those shown in the elevation plan, the right hand one (as you look at the rear elevation) being much smaller than the other so there is a larger gap between them.
5. The appellant says that GR003B was substituted during the course of the application and shows the floor plan for the same equal and large dormers as in the elevation plan. This plan (GR003B) seems to have been lost for some time by both parties, and I still have not received a copy of it. But the appellant's final comments insert a screengrab of part of it showing the larger right hand dormer and that it is dated 14 November 2014, which is not the same date as the GR003B mentioned in the condition. Nevertheless, it seems to me the dormers shown in the screen grab of GR003B are still not the same as those in GR006A, the former are still further apart than the floor plans would suggest and the right hand one, although larger than in GR003A, is still smaller than the left one.
6. Nothing seems to have happened and that planning permission was not immediately implemented. In December 2016 the HMO licence was renewed and the floor plan submitted showed the old roof arrangement (a flat roof over the extension and small side dormer on the original hipped roof of the house). The April 2016 Google street view photograph bears this out.
7. In January 2017 another application was made (170320FUL) for a loft conversion and new pitched roof the same as in the 2014 application, but this was for an upgraded HMO. This was granted in March 2017, but was for the works only, not any potential change of use to a sui generis HMO. The plans are now all, confusingly, labelled GR006A and are dated April 2014, so were simply re-used from the 2014 application. Again they show the same two large rear dormers on the elevation but a smaller right hand one on the floor plans (ie the old GR003A version). There is no mention of GR003B and the permission contains a condition referring to the drawings as described above. In other words both the planning permissions, regardless of what drawings are used, contained conflicting plans. If I was forced to give an opinion, I would favour the elevation drawings as being the most obvious, especially as impact on the character and appearance of the area would have been considered and would suggest therefore the Council were happy for the two larger dormers to be constructed as shown on the rear elevations.

8. In 2017, according to the appellant and Google street view, works started on the roof and they were complete by June 2018. Unfortunately, what was built was not shown on any of the plans, but one large dormer across the back of the building that was built up to the full ridge height (all the plans show the dormers being set down from the ridge). The appellant says this was done in error, but regardless, it is the situation today.
9. In May 2019 the Council issued a PCN which the appellant returned, saying the house was used as an HMO. It was licenced for 7 households and a maximum of 10 people but actually contained 5 households with 8 tenants. In July of the same year it must have become clear the large HMO required planning permission and an application (192711FUL) was made to regularise the position. The floor plan now re-labelled GR006B and dated 4 June 2019, shows the full width dormer but the rear elevation is still GR006A from 2014 showing the two large dormers. To add to the confusion there is another rear elevation plan labelled GR006B and dated 4 June 2019, but it still shows the two dormers, not the actual dormer that had been built.
10. Following a site visit the Council realised the large dormer had been built which did not tally with the plans submitted and following a further site visit in September 2019 they claimed the house had actually been split into 4 flats, one of which, which occupied part of the first floor and part of the loft conversion was a 3 bed HMO. The appellant argued that he was actually in the process of implementing the 4 flat permission from 2014 and the rooms that look like an HMO have just not yet been incorporated into the correct flats. This does not tally with officer's notes which showed that 4 flats had already been created nor with the most recent application only a few months before to regularise a large sui generis HMO. There was no sense in the officer's notes that part of the building was undergoing conversion works. To further complicate matters at my site visit I saw that all works were now definitely completed and five self-contained flats had been created within the property, utilising the large dormer and none were being used as an HMO.
11. The lawful position would seem to be that the property had permission for a conversion to four flats which involves 2 dormers, but that permission may well never have been implemented and so has now expired (see discussion below). By the same logic it may well be the 2017 permission for the extended roof is also expired as it was never implemented - however, it seems the Council would have no objection to either of these permissions being finally built. But there is still no permission for a sui generis HMO, nor for five flats, nor for the four flat configuration that is subject to the notice where one of the flats is an HMO.

The Appeal on Ground (b)

12. This ground is that the matters alleged have not happened. The appellant argues there never was a flat that was used as an HMO, but that the building was in the process of conversion, two flats had been created and two were in the process of being made. It is difficult at this remove to have any certainty as to what the position was, especially as now the final outcome is different again, with 5 flats. While this does suggest that the internal arrangements have been inherently fluid over time there is no evidence that four flats (without an HMO) were ever created. The Council's annotated plans from the site visit in 2019 clearly show four flats, with one in use as an HMO. It has

three bedrooms, split over 2 floors, and a shared kitchen and bathroom. Even if the eventual plan was to carry out further works to make four independent flats, at the time it seems as if there were 3 self-contained flats and a fourth used as an HMO. Consequently, on the balance of probabilities, the matters alleged did occur and the appeal on ground (b) fails.

The Appeal on Ground (a)

13. This ground falls into two parts, firstly the appeal for the large dormer and secondly the appeal for the use. The use is somewhat problematic as the appellant claimed during the appeal that he was implementing the 2014 planning permission for 4 flats and this, I assumed, was his preferred option. However, following the site visit this is not clear as 5 flats have been created and this could now be what the appellant is after. However, the allegation is for 3 flats and an HMO. It would seem that neither party want this particular outcome. Unfortunately neither the original 4 nor the existing 5 self-contained flats are part of the matters alleged which are very specifically 3 self-contained flats and a small HMO over two floors. The only way a different outcome could be achieved is by making a separate planning application. Meanwhile I am obliged to deal with the ground (a) as being for the matters alleged.
14. The dormer is fairly straightforward. Judging by the elevation plans that were granted permission, the Council were content for two large dormers side by side. The difference between those and the single dormer that was built is the existing dormer is taller in that it begins at ridge height rather than being set down as on the plans and does not have a gap in the middle.
15. Looking round the area several houses have large dormers on their rear roofs, one in the same street and visible in the same view as the appeal dormer. However, these are not as large as they only cover half a standard semi-detached roof, whereas the appeal dormer extends over the full size side extension, so is as large as a dormer across both semis in a normal situation. As a result it is much more dominant. I was shown photographs and saw in the area two similar sized large dormers but both were clearly planned as a single unit in sympathy with the house below. By way of contrast the appeal site has been extended in a somewhat ad-hoc manner with no conformity of style in window sizes, positioning or scale and there are various single storey extensions of different size and scale as well. Adding the large and bulky dormer that dominates two-thirds of the roof (because one half of the original semi is unaffected and retains its hipped roof) looks unbalanced and adds to the unappealing jumble of extensions that make up the appeal site.
16. Policy 7B of the Ealing local plan requires new development to show high quality architecture and to achieve a positive visual impact. The dormer clearly fails both tests and is contrary to policy. It harms the character and appearance of the area and should not be allowed. Various cosmetic alterations have been suggested by the appellant but none overcome the fundamental problems I have identified above.
17. Although I cannot grant permission for the 4 flats they can still act as a fallback position. The Council accept they have no objection to the original 4 flat proposal but argue the planning permission has now expired. It would seem this might well be the case. There is no evidence the four flats granted permission were ever provided and whatever dormer arrangements were permitted, the single large one that was built was not part of the scheme.

Nevertheless, there is no reason why the original permission should not be granted again in the future. As far as I am aware there have been no policy changes that would make the 4 flat conversion unacceptable.

18. The Council oppose the appeal scheme as it would create a development capable of housing up to 11 people which they argue is over development of the site. The 4 flat scheme would have had a maximum of 4 double bedrooms or 8 people. The Council also point out there are no other HMOs in the immediate area and the overdevelopment would be out of character. Unfortunately the appellant's arguments are based on the four flat scheme and I think it is common ground that if that scheme could be achieved with better designed rear dormers, there would be little to object about. However, it is not within my powers to grant that permission. It is also not clear that it can be achieved, even with the two large dormers as shown on the elevation plans. If it could have been, then why was the single large dormer built? It is entirely possible that to obtain sufficient head height for the staircase and corridor the two dormer plan was found not to work. Whatever the truth of the matter, the single large dormer is unacceptable and the scheme of 3 flats and an HMO is dependant on that dormer, so permission cannot be granted for it in any event.
19. I agree with the Council that the creation of 3 flats and a 3 bed HMO is likely to lead to overdevelopment of the site and but given the lack of evidence from the appellant it is hard to be certain. Nevertheless it does seem as if there is no private amenity space for the occupiers of the flats nor adequate parking spaces or cycle facilities. But most importantly the appeal scheme cannot be allowed as it requires the large single dormer which is undoubtedly harmful and is not part of the possible fallback 4 flat scheme. The scheme is contrary to policy, harmful to the character and appearance of the area and should not be allowed.

The Appeal on Ground (f)

20. I have considered whether lesser steps to resolve the breach would be possible. However, to cease the use and remove three of the kitchen units is the minimum required to stop the use of the building as alleged. Given my uncertainty about the possibility of completing the 4 flat scheme with the two dormers, and indeed the uncertainty as to how large those dormers should be (whichever floorplan is used neither match the elevations – as noted above), I cannot grant permission for two separate dormers rather than the 1 large one as I have no accurate plans to base that permission on. Consequently, the removal of the large dormer is the only way of remedying that part of the breach. The Appeal on ground (f) fails.

The Appeal on Ground (g)

21. The period for compliance is 6 months which is ample time to carry out the requirements. However, there is no dispute that a four flat scheme with two separate dormers would be acceptable. The Appellant needs to employ a reliable architect to provide plans of those dormers and be certain that the 4 flat scheme will work with the smaller dormers and reapply for a new permission to that effect. If that is granted, which would seem not to be in doubt, then the existing single dormer and internal arrangements can be reconfigured to create a property with a lawful use and a lawful roof. To enable that to be achieved I shall extend the compliance period to 9 months.

Simon Hand

INSPECTOR