



Appeal Decision

Site visit made on 9 August 2022

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 6th September 2022

Appeal Ref: APP/M5450/C/21/3271225

Land at 79 Oakleigh Avenue, Edgware HA8 5DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr Boris Ali Shahabadi-Farahani against an enforcement notice issued by London Borough of Harrow.
 - The notice was issued on 4 February 2021.
 - The breach of planning control as alleged in the notice is:
Without planning permission:
 - 3.1 the unauthorised change of use of the Land from single family dwelling house (Use Class C3) to mixed use comprising one self-contained flat in the side extension and a House in Multiple Occupation (HMO) in the main house ("The Unauthorised Use").
 - The requirements of the notice are:
 - 5.1 Cease the Unauthorised Use of the land and revert back to single family dwellinghouse
 - 5.2 Remove all kitchens except (1) one from the Land
 - 5.3 Remove all bathrooms from the land except (1) one from the main house.
 - 5.4 Remove all internal partitions and the external door from the side extension that enables the Unauthorised Use of the side extension as a separate unit.
 - 5.5 Remove all boundary fences from the rear garden that subdivide the rear garden of the Land.
 - 5.6 Make good any damage caused to the building as a result of these steps and ensure that all materials used shall match those used in the existing building.
 - 5.7 Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is: six (6) calendar months
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the 1990 Act.
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Decision

1. The enforcement notice is quashed.

Procedural Matters – The Notice

2. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
3. The breach of planning control relates to 'the unauthorised change of use of the Land from single family dwelling house (Use Class C3) to mixed use comprising one self-contained flat in the side extension and a House in Multiple Occupation (HMO) in the main house'. The allegation therefore is that a **mixed use** (my emphasis) has occurred. The Council has stated that the enforcement notice was issued with regards to the time limits under section 171 of the 1990 Act

based on a recent appeal decision¹ of a similar nature. In that case the notice alleged the material change of use from a dwellinghouse to a mixed use comprising 2 flats and an HMO. I note the conclusions drawn by the inspector within that appeal decision in relation to the time limits associated with section 171 of the 1990 Act. Moreover, in that case the Inspector concluded that on the balance of probabilities the property was a single planning unit in a mixed use and the precise circumstances relating to that appeal property are not before me.

4. In this case, the evidence before me indicates that the appellant owns the whole appeal site which at the date the notice was issued constituted one half of a semi-detached property – the main 2-storey part of the property allegedly in use as an HMO and the single storey side extension allegedly in use as a self-contained flat. Based on my observations at the site visit the side extension is physically separate from the main part of the property with no internal access between them. Additionally, there is physical delineation in the form of fencing between the rear gardens of the main part and that of the side extension and the windows/doors in the side extension on the boundary with the main property have been boarded up. The area in front of the main property and the extension is not physically divided but there is a gate to the side of the extension and that provides an independent access to that extension. As such, the main property and the side extension are physically and functionally separate to each other.
5. I consider that the above factors mean that even though the whole site is owned by the appellant that there are two separate and distinct areas within the site that are occupied for substantially different and unrelated purposes. These being the main 2-storey house and the side extension. Consequently, the uses as an HMO and a self-contained flat constitute primary uses each in its own planning unit. The breach of planning control is therefore, in my judgement, misdescribed as a mixed use and is incorrect.
6. I acknowledge that I have a duty to try and get the notice in order and that the Secretary of State has a broad discretion to adapt an enforcement notice to overcome defects in it, provided always that in doing so he does not cause injustice. Both parties were given the chance to comment on whether the description of the alleged breach of planning control could be corrected without injustice to either party.
7. I consider that if I were to attempt to correct the notice by deleting the whole of the description and substitute it with '*the unauthorised material change of use of the Land from a dwelling house (Use Class C3) to use as a House in Multiple Occupation (HMO) in the main 2-storey building and a self-contained flat in the single storey side extension ("The Unauthorised Uses")*' that would significantly alter the notice in such a way which the appellant has not had the opportunity to respond to. This is because different time limits through section 171 of the 1990 Act would apply to the separate uses and as separate planning units different arguments would apply as to whether a breach of planning has occurred. The appellant has only appealed on ground (d) in relation to the self-contained flat. He has stated that if the separate uses had been specified, he would have submitted a ground (a) appeal and deemed planning application.

¹ Ref No: APP/M5450/C/18/3208573 – 19 July 2019

Furthermore, I cannot be certain that he would not have appealed on other grounds. As such, injustice to the appellant would result.

8. Moreover, I do not consider that it would be clear from that corrected description as to whether the alleged HMO use is considered to fall within Class C4 (Houses in Multiple Occupation) of The Town and Country Planning (Use Classes) Order 1987 (UCO) or not. The HMO licence issued from the Council for the main part of the property is for 5 occupants but the Council's Delegated Enforcement Report states that 9 people could occupy that part of the property. There is insufficient evidence before me to indicate which type of HMO use is alleged to have occurred. Injustice to both parties would result.
9. Consequently, in my judgement, I cannot correct the description of the alleged breach as injustice to the parties would result. My decision to quash the notice, on the other hand, leaves the option open to the Council of issuing a further, corrected notice, under the provisions of section 171B(4) of the 1990 Act, should it wish to do so.

Conclusion

10. For the reasons given above, I conclude that the enforcement notice is defective. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the ground set out in section 174(2) (d) of the 1990 Act does not fall to be considered.

D Boffin

INSPECTOR