



Appeal Decision

Site visit made on 15 November 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2022

Appeal Ref: APP/U5930/C/21/3284495

Land at 31 Belvedere Road, London E10 7NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stephen Willie against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The notice was issued on 10 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a Class C3 (dwellinghouse) use to a House in Multiple Occupation (HMO) use.
 - The requirements of the notice are: 1) Cease the use of the land as a House in Multiple Occupation (HMO) use; 2) Remove one of the two WC/shower/bathrooms on ground or first floor levels, including toilets, sinks, shower units, bath units, and associated fixtures, fittings and drainage connections; and 3) Following compliance with Steps 1)-2) above, remove from the land all resultant removed items, waste materials and detritus.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) 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 have lapsed.
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Decision

1. It is directed that the enforcement notice be varied by deleting step 2 in paragraph 5, with the consequential renumbering of step 3 to step 2 and the deletion in that step of "-2". Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Mr Stephen Willie against the Council of the London Borough of Waltham Forest. This application is the subject of a separate Decision.

Ground (c) appeal

3. The ground of appeal is that the matter alleged in the enforcement notice does not constitute a breach of planning control. It is for the appellant to show why their appeal on this ground should succeed, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains an early 20th Century mid-terrace dwelling, in which the living accommodation is arranged over three floor levels.

5. The notice alleges an unauthorised material change of use of the property. The notice does not make a separate allegation of unauthorised works. As a result, any internal works undertaken at the property cannot be considered in isolation from the material change of use. A notice directed at a material change of use can legitimately require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be immune from enforcement action, so that the land is restored to its condition before the change of use took place¹. The appeal on this ground is therefore misconceived.
6. Moreover, that there has been a material change of use from a Class C3² dwelling to use as a House in Multiple Occupation (HMO) is not in dispute. The making of a material change in the use of any building or other land amounts to 'development' as defined in s55(1) of the Act. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act.
7. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 3, Class L, grants planning permission for a change of use from a Class C3 dwelling to a small HMO in Class C4. However, on 16 September 2014 a Direction under Article 4(1) of the previous GPDO came into force throughout the Council's administrative area. The effect of this Direction is that a change of use from Class C3 to Class C4 has required express planning permission since the above date.
8. No grant of express planning permission for the change of use of the property to an HMO was drawn to my attention. At s171A(1)(a), the Act defines a breach of planning control as carrying out development without the required planning permission.
9. As a result, the appellant has been unable to prove that the material change of use to an HMO does not constitute a breach of planning control. The ground (c) appeal fails.

Ground (d) appeal

10. The ground of appeal is that it was too late to take enforcement action against the matter alleged in the notice. The appellant also has to show why their appeal on this ground should succeed, applying the same standard of proof as set out above.
11. At s171B(3), the Act provides that where there has been a breach of planning control consisting of a material change of use (other than to use as a single dwelling), no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. This would be the relevant time limit in the event the use of the property as an HMO were to fall outside of Class C4. For the use as a Class C4 HMO to be immune from enforcement action it would have to have begun prior to 16 September 2014, when the Article 4(1) Direction came into force. The four-year time limit on taking enforcement action at s171B(1) of the Act does not apply in respect of operations that facilitate an unauthorised use.

¹ *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630.

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

12. The building works undertaken at the property between around 2000 to 2003, including a loft conversion with a dormer and rooflights and a ground floor extension, are not indicative of any use other than as a single dwelling taking place at that time. There is little clear and compelling evidence of the change of use of the property to an HMO having occurred more than ten years prior to the date the notice was issued and then having continued without material interruption up to that date. Similarly, there is little evidence of any use as a Class C4 HMO having occurred prior to 16 September 2014 and then having continued without material interruption up to the notice date.
13. Consequently, on the balance of probability the use of the property as an HMO is not immune from enforcement action, nor are any works that facilitate the use. The appellant has been unable to show otherwise. The ground (d) appeal also fails.

Ground (f) appeal

14. The ground of appeal is that the notice requirements are excessive.
15. An enforcement notice can have the purpose of remedying the breach, including by discontinuing any use of the land or by restoring the land to its condition before the breach took place as provided by s173(4)(a) of the Act, or it can remedy any injury to amenity which has been caused by the breach as provided by s173(4)(b).
16. Although the notice does not state as such, its purpose is clearly to remedy the breach. The notice requires the unauthorised use as an HMO to cease, together with the removal of works that the Council allege facilitate the unauthorised use, so as to restore the property to its condition prior to the breach taking place.
17. In respect of facilitating works, step 2 requires the removal of one of the two bathrooms on ground or first floor levels of the property. However, documentary evidence supplied by the appellant clearly shows that the ground floor bathroom was installed at the property almost twenty years ago in conjunction with the authorised use as a single dwelling. It is not unreasonable to assume that the first floor facility originated around the time the property was built. As a result, it is unlikely that either the ground floor or first floor bathrooms were installed as part and parcel of, or integral to, the unauthorised material change of use. An enforcement notice cannot require the removal of works that were undertaken for a different, lawful use and which could be utilised in that other lawful use if the unauthorised use ceased³.
18. In any event, it is not especially unusual for a dwelling with four bedrooms over three floor levels, as in this instance, to have a bathroom facility on each floor for the convenience of its occupiers. A similar observation could not be made however in respect of having additional kitchen facilities on two or more floors. There is no sound reason to think that the occupiers of the dwelling would not wish to continue to benefit in future from having a bathroom on each floor. Works only affecting the interior of a building do not fall within the definition of development. Step 2 does not take away the appellant's lawful rights to undertake internal works at the property. This all raises the realistic prospect

³ *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin).

of the third bathroom being reinstated more or less immediately following compliance with the notice.

19. Consequently, even if it had been the case that step 2 does not require the appellant to do more than is necessary to remedy the breach, the step serves no useful purpose in the context of this particular property. Step 1 is sufficient for the purpose of remedying the breach in respect of the HMO use as this would restore the dwelling to its pre-breach condition. I shall vary the notice to delete step 2 accordingly.

20. Therefore, the ground (f) appeal succeeds to the limited extent set out above.

Conclusion

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

Stephen Hawkins

INSPECTOR