



Appeal Decision

Site visit made on 8 December 2022

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal Ref: APP/T5150/C/22/3296400

38A and B District Road, WEMBLEY HA0 2LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Miss Lisa Davis-Onwu against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/21/0719, was issued on 2 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flat.
 - The requirements of the notice are:
 - Step 1 Cease the use of the premises as a House in Multiple Occupation (HMO).
 - Step 2 Cease the use of the premises as flat.
 - Step 3 Remove all kitchens and cooking facilities, except ONE, from the premises and remove all associated items, debris and materials, arising from this removal, from the premises.
 - Step 4 Remove all bathrooms and bathroom facilities, except TWO, from the premises and remove all associated items, debris and materials, arising from this removal, from the premises.
 - Step 5 Removal all partition walls, facilitating the unauthorised change of use from the premises and remove all associated items, debris and materials arising from this removal from the premises, so that the layout of the premises is returned back to a single family dwellinghouse, with the same layout before the unauthorised change of use took place.
 - The period for compliance with the requirement is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Preliminary Matters

2. I consider this appeal can be determined without the need for a physical site visit given the written submissions and grounds of appeal pleaded. Both the appellant and the Council agreed to the appeal proceeding on this basis.
3. I shall refer to the 2 dwellinghouses as the downstairs flat and the upper floor flat. It is the downstairs flat that is used as the house in multiple occupation (HMO).
4. The internal access arrangements for the upper floor flat have been depicted on a plan provided by the appellant. The Council has confirmed the details on the appellant's plan to be correct.

Appeal on ground (c)

5. An appeal on this ground is that, if the matters alleged have occurred, they do not constitute a breach of planning control. It is for the appellant to show, on the balance of probability, that the material change of use of the premises to a house in multiple occupation (HMO) and flat is not development or it benefits from planning permission.
6. It is the appellant's contention that the premises have been used as 2 self-contained flats since 1985, and the material change of use of the downstairs flat to an HMO is permitted development. The use of the downstairs flat falls within Use Class C3: Dwellinghouse¹. The use of a dwellinghouse as a small HMO, accommodating not more than 6 residents, falls within Use Class C4. Class L, Part 3 of Schedule 2 of the GPDO² provides deemed planning permission for a change of use from Class C3 to Class C4.
7. Article 3(5)(a) of the GPDO however states that the permission granted by Schedule 2 does not apply if the permission granted in connection with an existing use, that use is unlawful. Therefore, before concluding on the ground (c) appeal, the lawfulness of the use of the downstairs flat and upper floor flat as dwellinghouses must be established. The ground (d) appeal will establish the lawfulness, or otherwise, of the downstairs and upper floor flats. I shall conclude on the ground (c) appeal later.

Appeal on ground (d)

8. An appeal on this ground is that, at the date the notice was issued, it was too late to take enforcement action. The appellant must show that, on the balance of probability, the use as an HMO and flat has achieved immunity due to the passage of time. The relevant period for converting one dwellinghouse into 2 dwellinghouses is 4 years, and the material date is 2 March 2018. Any 4-year period of continuous occupation starting on or before the material date is relevant. If the use of a single dwellinghouse is changed to an HMO, the relevant period for achieving immunity is 10 years.
9. There is no doubt that the premises was erected and originally used as a single dwellinghouse. The previous owner's statutory declaration states that, from the time of her purchase of the premises in 1985, her mother occupied the upper floor self-contained flat, while she occupied the downstairs flat. The previous owner's and her mother's occupation of the premises as 2 self-contained flats occurred from some point in 1985 to some point in 1998. While only the years have been provided, this period of occupation covers approximately 12 years, and as only 4 years of continuous occupation need to be shown, provision of the years is sufficiently precise.
10. The material change of use to 2 dwellinghouses occurred before the material date and therefore that use is lawful due to the passage of time. However, it is necessary to consider whether the use of the premises as 2 dwellinghouses has since been lost by abandonment, formation of a new planning unit, or a material change of use.
11. The previous owner's statutory declaration states that the upper floor flat was rented out from 1998 to 2019, and names and dates of occupation are

¹ Town and Country Planning (Use Classes) Order 1987 as amended

² Town and County Planning (General Permitted Development) (England) Order 2015 as amended

provided of 5 tenancies. While there may be some gaps between the dates set out, a dwellinghouse does not stop being a dwellinghouse just because it is unoccupied. Likewise, the premises being vacant between the previous owner advertising it for sale and the appellant purchasing, renovating, and securing tenants for the premises, does not demonstrate abandonment.

12. The premises has a single main purpose and has been occupied as 2 dwellinghouses since at least 1985. The premises are still occupied as 2 dwellinghouses, albeit one is used as an HMO. The extent of the planning unit has not changed.
13. The conversion of the downstairs and upper floor flats into a single dwelling house would not constitute development, s55(3) of the 1990 Act stating that it is only the use of a single dwellinghouse as 2 or more separate dwellinghouses that constitutes a material change of use. It is not sufficient to say 2 dwellinghouses are now a single dwellinghouse, changes would need to be made to prevent the use as 2 dwellinghouses, and occupation as a single dwellinghouse would need to have occurred before the use as 2 dwellinghouses could be lost.
14. The Council suggest that the email dated 12 June 2019, from the previous owner's legal representative to the Council, contradicts the previous owner's statutory declaration. However, the legal representative refers to the previous owner never having made any planning application or having converted the property into flats. Having regard to her statutory declaration, that is correct as she says the property was already 2 flats when she purchased it. The statement that '*The property is in fact a single dwelling house*' is not attributed to the previous owner. Regardless of the legal representative's claim in this email, the Council's response confirms that their records show the premises in use as '*2 unauthorised flats*' at that time. The Council did not accept that there was only a single dwellinghouse at that time. This email does not cast doubt on the accuracy of the previous owner's statutory declaration, to which I give significant weight.
15. The Regularisation Certificate issued on 8 August 2019 does not specify what works were carried out to revert the premises back to a single dwellinghouse. It confirms nothing more than that associated electrical and gas installations '*are in compliance with the requirements of the Building Regulations*'. There is nothing in the certificate to suggest that internal alterations have occurred to convert the 2 self-contained flats into one dwellinghouse or to show that the premises are or have been occupied as a single dwellinghouse. I give the Regularisation Certificate little weight.
16. The written particulars within the sales brochures refer to the property having a loft conversion and 2 bathrooms, and the thumbnail photographs show the premises to have 2 kitchens, one on the ground floor and one in the upper floor flat. While the premises may have been advertised for sale by the previous owner as a single dwellinghouse, there is nothing to show that the premises had been occupied before or after its sale in August 2019 as a single dwellinghouse.
17. There is nothing to show that the upper floor flat has been used for any other purpose than a self-contained dwellinghouse since 1985. I find the previous owner's version of events, that the upper floor flat was occupied by their mother and then by a succession of tenants, and that they occupied the

downstairs flat, to be more than probable. The lawful use of the premises as 2 self-contained flats had not therefore been lost before the downstairs flat was used as an HMO.

18. Reference is made to the whole premises having an HMO licence for its occupation by a maximum of 9 residents. Such a use of the premises would constitute a material change of use of the premises to a large HMO, a sui generis use falling outside the matters alleged. The existence of such a licence does not confirm occupation of the premises for such a use.
19. The more recent advertisements of the property, dated 25 February 2020 and 10 March 2020, clearly relate to the rental of double bedrooms within a house share, which the photographs and thumbnails show to be the downstairs flat only. As the use of the downstairs flat as an HMO commenced during 2020, it has not achieved immunity from enforcement action due to the passage of time, but such a use may benefit from deemed planning permission.

Conclusion on ground (d)

20. For the reasons given above, the use of the upper floor flat is immune from enforcement action due to the passage of time. The ground (d) appeal succeeds to this limited extent.

Conclusion on ground (c)

21. I have already found, under the ground (d) appeal, that the use of the downstairs flat as a single dwellinghouse had achieved immunity from enforcement action by 1998. Its use as a single dwellinghouse was therefore lawful before 2020, when the use as an HMO commenced. Article 2(1) of the GPDO states that *"dwellinghouse", except in...Part 3 (changes of use of Schedule 2 to this Order,...does not include a building containing one or more flats, or a flat contained within such a building'*. Class L of Part 3 did apply to the use of the downstairs flat as an HMO. The downstairs flat therefore has the benefit of deemed planning permission for the material change of use from a single dwellinghouse to an HMO.
22. For the reasons given above, the use of the ground floor flat as an HMO does not constitute a breach of planning control. The appeal on ground (c) succeeds to this limited extent.

Overall conclusion

23. For the reasons given above, I conclude that the appeal should succeed on grounds (c) and (d). The enforcement notice will be quashed.
24. In these circumstances, the appeal on ground (g) does not fall to be considered.

M Madge

INSPECTOR