



Appeal Decision

Site visit made on 15 May 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 9th June 2023

Appeal Ref: APP/N5660/C/22/3290041

89 Lewin Road, London SW16 6JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Afroze Khan against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 10 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey ground floor L-shaped wrap around extension to the rear of the premises ('the unauthorised single storey rear wrap-around extension'), and the conversion of the premises into five self-contained flats on the ground floor, one self-contained flat on the second floor ('the six unauthorised flats'); and the use of the first floor as an HMO consisting of 4 bedrooms with a shared kitchen and bathroom ('the unauthorised HMO use').
 - The requirements of the notice are to:
 - a) Remove the unauthorised single storey rear wrap-around extension and reinstate the rear elevations of the premises as existed prior to the breach of planning control; and
 - b) Cease the use of each of the six unauthorised flats and remove all internal doors and partitions; all kitchen units, kitchen appliances, gas boilers, and associated fixtures and fittings and disconnect and remove all associated electrical, water and gas services, plumbing and wiring from the premises that facilitate the unauthorised use; and
 - c) Cease the unauthorised HMO use of the premises; and
 - d) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (c) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural matters/the enforcement notice

2. The appellant did not attend the pre-arranged site visit, nor did he arrange access. I made observations from the front of the property. In any respect, I am able to determine the appeal based on the papers.
3. The appellant argues in essence that the notice is unclear because the allegation states more than one matter said to constitute the breach of planning control. However, I do not agree as it is neither unusual, inappropriate or impermissible for a notice to target a composite mix of several acts of development giving rise to a breach. The notice clearly sets out what appellant has allegedly done wrong and what he must do to remedy it. Moreover, it is evident from the appellant's submissions in the appeal that he is clear on those points.

4. I also do not accept the appellant's assertion that it is unclear upon whom the notice has been served. He himself points to the list of 23 names and addresses of parties served with the notice. No ground (e) appeal has been made, and in any event, I have seen nothing to lead me to conclude that the Council failed in its obligation to serve copies of the enforcement notice as required by section 172 of the Act. Even were that not the case, the appellant's exercise of his right of appeal against the notice he undisputedly received has led to no substantial prejudice.
5. The decision whether or not to use the discretionary power of serving a Planning Contravention Notice was a matter for the Council. Further, the Council's decision concerning the expediency of issuing the enforcement notice (with or without reference to any local enforcement plan) is outwith my jurisdiction. Neither is it for me in my determination of this appeal to comment on the dispute the appellant highlights concerning the amended description for dismissed planning application 9/03587/FUL.
6. The appellant says that the Council has provided no evidence to justify that it is within time for taking enforcement action. However, no ground (d) appeal has been made and in any case the burden of proof is with the appellant – and not the Council – in respect to that legal ground of appeal.

Ground (b)

7. For an appeal to succeed under this ground, it is for the appellant to demonstrate to the standard of the balance of probabilities that matters stated in the notice have not in fact occurred. The appellant's case is that the ground floor is not used as self-contained flats. However, he has not provided substantive evidence with the appeal to support that statement. Further, I place significant weight on Council site visit observations and photographs which indicate that such a use has occurred¹.
8. For these reasons, I am not satisfied on the balance of probabilities that the matters stated in the notice have not occurred. Accordingly, ground (b) does not succeed.

Ground (c)

9. For success under this ground, the burden of proof is upon the appellant to demonstrate on the balance of probabilities that the matters stated in the notice (if they occurred) do not constitute a breach of planning control.
10. The first floor of the appeal property is said to contain 4 bedsit rooms accessed from the communal hallway and served by a communal kitchen and bathroom on that floor. The appellant says that general planning permission is afforded to this use by virtue of Article 3(1), Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015. That provision permits development consisting of a change of use of a building (including part of a building) from a use within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order² to a use falling within Class C4 (houses in multiple occupation) of that Schedule. Class C4 is use of a dwellinghouse by not more than 6 residents as a "house in multiple occupation".

¹ Even if not presently the case, although I simply note that I could see through the entrance of the property that nearby off a ground floor corridor was a door marked 'F2' which was fitted with a lock.

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

11. The appellant, upon whom the burden of proof rests, has provided no evidence of occupancy in order to demonstrate that the 'unauthorised HMO use' targeted by the notice falls within Class C4. Whilst there are 4 bedsits, I have seen no evidence that they are not in use in providing accommodation to more than 6 residents.
12. For these reasons, I am not satisfied on the balance of probabilities that a breach of planning control has not occurred in respect of each part of the notice allegation. Accordingly, ground (c) fails.

Ground (f)

13. For success under this ground, I must be satisfied that the requirements of the notice exceed what is necessary to achieve its purpose.
14. It is clear to me from the way the notice is drafted that its purpose is to remedy the breach of planning control (rather than to remedy injury to amenity) through requiring cessation of the unauthorised uses and restoration of the land to its condition before the breach took place. These requirements are entirely legitimate and not excessive. Moreover, the requirement for works to the unauthorised flats only relates to works 'that facilitate the unauthorised use' and so there is no requirement to remove internal doors and partitions, kitchen units/appliances, boilers and services which would be associated with lawful C3 use of the appeal property as a single family dwellinghouse.
15. Even were the purpose of the notice to remedy injury to amenity, no ground (a) appeal has been made seeking planning permission for the development. Accordingly, I cannot consider the merits of the appellant's scheme involving removal of the canopy to the unauthorised extension and an alternative treatment of the materials such as the incorporation of a greenwall.
16. For these reasons, the requirements of the notice are not excessive. Accordingly, ground (f) does not succeed.

Ground (g)

17. For an appeal to succeed under this ground, I must be satisfied that the compliance period set out in the notice falls short of reasonable.
18. The appellant has not provided reasons, or evidence, as to why all the requirements of the notice could not be reasonably completed within 9 months. It seems to me that that is ample time. Accordingly, ground (g) fails.

Conclusion

19. For the reasons given above I consider that the appeal should not succeed.

Andrew Walker

INSPECTOR