



Appeal Decision

Site visit made on 15 January 2024

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2024

Appeal Ref: APP/T5150/C/22/3311993

20 Rosemead Avenue, Wembley HA9 7EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Jesol Umeria of J S Property Homes Limited against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, ref. E/20/0133, was issued on 19 October 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 flat and a House in Multiple Occupation AND, without planning permission, the erection of a single storey rear extension AND, without planning permission, the erection of a roof extension. ("the unauthorised change of use and development").
- The requirements of the notice are to:
 - Step 1 Cease the use of the premises as a House in Multiple Occupation (HMO).
 - Step 2 Cease the use of the premises as flats.
 - Step 3 Demolish the unauthorised rear extension and remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised use and development from the premises.
 - Step 4 Demolish the unauthorised roof extension and remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised use and development from the premises.
 - Step 5 Restore the internal configuration so it consists of a family dwellinghouse with the original layout before the unauthorised change of use and developments took place.
- The period for compliance with the requirements is 6 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).

Decision

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

Preliminary Matters

2. The Council are of the view that if I consider the premises to be in use as a large HMO, I could correct the allegation accordingly. I have the power to correct any defect in the notice, but only if doing so would not cause injustice to either party. Notwithstanding the outcome of the ground (b) appeal, I am satisfied that there would be no injustice to the Council as they have suggested that I could correct the allegation to use of the premises as a large HMO.
3. Nevertheless, I consider there would be injustice to the appellant. Use of the property as a large HMO is materially different to that of a mixed use of a flat and HMO as the Council allege. Therefore, the appellant's case in relation to potential permitted development rights may differ from the case they have made under the ground (c) appeal. Furthermore, the appellant has not had the opportunity to advance a ground (a) appeal for this different alleged use.

4. Consequently, the notice is not correctable without causing injustice to the appellant. However, my decision to quash the notice leaves open to the Council the option of issuing a further notice with a corrected allegation.

The appeal on ground (b)

5. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, that those matters have not occurred.
6. The appellant does not dispute that a rear extension and a roof extension has been carried out at the appeal property. However, they argue that the property does not include any self-contained units of accommodation because all tenants share kitchen facilities. Therefore, they dispute that the property was in use as a flat and HMO at the time the notice was served. Instead, they are of the view that the property is in use as a HMO, and has been since before the notice was served.
7. In planning terms, a self-contained flat is a separate dwelling whereas a HMO is a single dwelling in use by people sharing at least one facility. *Gravesham*¹ is the leading authority on defining a dwelling, with the distinctive characteristics of a dwellinghouse being its ability to afford the facilities required for day-to-day private domestic existence. Section 254 of the Housing Act 2004 sets out a number of tests to be met for a property to be considered as a HMO, including, at s254(2)(f), if two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. Basic amenities are defined as a toilet, personal washing facilities, or cooking facilities.
8. Section 254(8) defines a self-contained flat as a separate premises which forms part of a building, either the whole or a material part of which lies above or below some other part of the building, and in which all three basic amenities are available for the exclusive use of its occupants.
9. During my site visit I observed that the property comprised of three bedrooms on the ground floor, rooms 1 to 3, each with en-suite facilities, and a shared kitchen with a sink, storage units, a built-in oven and hob, a fridge, and a microwave oven. At first floor, there were two further bedrooms, rooms 4 and 5, with en-suite facilities, and another shared kitchen with a sink, storage units, a built-in oven and hob, a fridge-freezer, a microwave oven, and a washing machine. On the second floor, and within the loft space, behind a single door were two rooms; a bedroom with en-suite facilities and a living room with desk and built-in storage units. This unit of accommodation is identified as room 6.
10. A fridge and a microwave oven were present in most of the bedrooms. Within the living room area of room 6 there was a free-standing fridge but no microwave oven at the time of my visit. Nevertheless, the Council have submitted photographic evidence that indicates a microwave oven and a plug-in hotplate were present within room 6 during its site inspection on 16 July 2020. On this basis, it is the Council's view that room 6 was in use as a self-contained flat.
11. However, given the transient nature of a microwave oven and a freestanding hotplate, I do not accept that these cooking facilities are enough to distinguish this part of the premises as a separate dwellinghouse. While these facilities might

¹ *Gravesham BC v SSE and Another* [1984] 47 P&CR 143

be adequate for occasional use, to my mind they are too small, and basic, to be relied on for everyday cooking purposes. Nor are they supported by sufficient storage or worktop facilities, or a sink, to support the cooking and preparation of food. Therefore, this does not pass the Gravesham requirement of providing a facility for day-to-day private domestic existence.

12. That is not to say that it is impossible for such basic facilities to be used on a daily occurrence, clearly, some people could happily survive on a microwave alone. However, Gravesham is concerned with what would generally be considered by reasonable people to comprise the test for a dwelling, not the bare minimum that someone may be content to survive on. Alternatively, the confusion that has occurred in this case would persist, where, if the plug-in hotplate and microwave are removed from the room, it turns from a flat to a room in a HMO, and back the next day if these items were returned. That would clearly be absurd.
13. Furthermore, the two kitchen areas contained a range of facilities to enable cooking and food preparation along with a washing machine, and both of these kitchen areas appeared to be accessible and readily available for use by all residents within the property, including those residing in room 6. In my view therefore the residents of the property share one or more basic amenities. The property was therefore clearly being used as a HMO.
14. I note the responses set out in the two Planning Contravention Notices (PCNs) that were completed and returned to the Council to aid its enforcement investigation. However, there is nothing in the responses to these PCNs to contradict the appellant's case or suggest anything other than the use of the property as a HMO.
15. For all these reasons, I find that a change of use to a mixed use of a flat and HMO has not occurred, and so the appeal succeeds on ground (b), in part, and only in respect of the alleged change of use.

The appeal on ground (c)

16. An appeal on ground (c) is made on the basis that the matters stated in the notice, if they occurred, do not constitute a breach of planning control.
17. This is a 'legal' ground of appeal, where the onus is on the appellant to make out their case, on the balance of probability. Their evidence should not be rejected simply because it is not corroborated. Instead, if there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
18. The appellant asserts that the single storey rear extension and the roof extension were completed lawfully as permitted development while the property was still in use as a single dwellinghouse. The single storey rear extension was the subject of an application for prior approval pursuant to the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). On 7 August 2018, the Council determined² that the prior approval of the authority was not required for this extension to the property. On 16 April 2019, the Council issued a Building Regulations Completion Certificate³ for the erection of a single storey rear

² Application Ref. 18/2565 Decision Notice, Appendix 2 of the Appellant's Statement

³ Completion Certificate Ref. BR/18/07592, Appendix 5 of the Appellant's Statement

extension and a loft conversion, along with some other alterations at the property.

19. There is no suggestion that the extensions to the property would exceed or conflict with the limitations and conditions set out in Schedule 2, Part 1 Classes A and B of the GPDO. Instead, the Council considers that the property was in a mixed use as a flat and HMO at the time these extensions were carried out. Therefore, they point out that the permitted development rights do not apply because these rights apply to dwellinghouses. However, given my findings in relation to the ground (b) appeal, there has not been a change of use to a flat and HMO, and instead it appears that the property is currently in use as a HMO.
20. Nevertheless, the Council received an initial complaint alleging an unauthorised change of use on 26 February 2020. It considered that a material change of use had occurred following a visit to the property on 16 July 2020. However, both the complaint and the Council's subsequent visit occurred after the completion of the rear and roof extensions, as confirmed by the Building Regulations Completion Certificate. There was no question at the time that these extensions were completed as to whether the property was in any use other than that of a single dwellinghouse.
21. Furthermore, the appellant states that the property was not occupied by tenants before May 2020. Tenancy agreements⁴ have been provided to support this assertion.
22. Bringing all of these points together, there is no evidence before me to suggest that the property was in any other use than that of a single dwellinghouse at the time that the extensions were constructed and completed. Nor has the Council produced any evidence to suggest otherwise or contradict the appellant's version of events.
23. Consequently, I am satisfied that the appellant has demonstrated, on the balance of probability, that the extensions were permitted development at the time they were completed. Therefore, these extensions do not constitute a breach of planning control and so the ground (c) appeal succeeds.

Conclusion

24. For the reasons given above, I conclude that the appeal should succeed on grounds (b) and (c). Therefore, the enforcement notice will be quashed. In these circumstances, the appeal on grounds (f) and (g) do not fall to be considered.

J M Tweddle

INSPECTOR

⁴ Assured Shorthold Tenancy Agreements, Appendix 6 of the Appellant's Statement