



Appeal Decision

Site visit made on 10 December 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 17 December 2024

Appeal Ref: APP/A5270/C/24/3337406

80 The Ridings, Ealing, London W5 3DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Guity Mahmoudi against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 5 January 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the upper floors to use as two flats ("the Unauthorised Development").
 - The requirements of the notice are to:
 1. Cease the use of the upper floors as more than one flat.
 2. Remove from one of the flats the kitchen facilities, including kitchen sinks, work tops, cabinets and drainage connections, which facilitate the unauthorised development.
 3. Remove all internal partitions, doors and locks that facilitate the unauthorised development.
 4. Remove all debris resulting from compliance with the above steps.
 - The period for compliance with the requirements is 3 (three) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decision

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

Preliminary matters

2. The appellant has appealed on ground (c) of s174 of the 1990 Act only. While a request to add ground (a) was made by the appellant and accepted by the Planning Inspectorate and the Council, the appeal fee was not paid therefore the ground (a) appeal has lapsed.
3. From the appellant's limited grounds of appeal, it seems to me that the basis for the appeal is that the conversion of the loft space was granted planning permission for use as habitable space and that the space is not used for independent self-contained accommodation but is used in association with the residential use of their ground floor flat. Therefore, the appellant considers that the breach of planning control, as alleged, has not occurred. This is an appeal on ground (b). Accordingly, and as the Council has referred to those matters in its appeal statement, I shall deal with this matter as a hidden ground of appeal. Given the evidence before me, I can consider this without injustice to either party.

The appeal on ground (b)

4. The appeal on ground (b) is that the matters comprising the alleged breach of planning control *have not occurred* as a matter of fact. It concerns the

circumstances leading up to, and at the time when the notice was issued. To succeed on this legal ground, the onus is on the appellant to demonstrate with sufficiently precise and unambiguous evidence that the upper floors of the property (first and second) were not in use as two flats providing two separate units of accommodation. The test of the evidence is on the balance of probabilities.

5. The property has been subdivided horizontally into three separate areas. Title Deeds provided show the appellant to have a leasehold interest of the ground floor and gardens under one title since 2017; a leasehold interest of the first floor flat under another title since 2017; and a leasehold interest of the second floor flat under a further title since 2019. While it does suggest that each floor is a 'flat', that is not in itself an indication of how the spaces are or have been used.
6. The ground floor is occupied by the appellant and is accessed by a doorway on the side elevation of the house. The first floor provides independent accommodation as a three-bedroom flat which is let to tenants. On the second floor, which is within the roof, there is further habitable space. Both the first and second floors are accessed via the front door to the property. Stairs lead up from a small hallway to the first floor where there is an entrance doorway to the first floor flat. The stairs then continue up to the second-floor space. It is the subdivision of the first and second floors into two flats which is the subject of the notice.
7. To support its case for issuing the notice, the Council has supplied a copy of marketing material from "Rightmove" showing the upper floor advertised as a flat for open market rental. The material is noted as being 'last updated on 5 October 2020 and covering the period from 1 January 1995 to 25 August 2020 and contains property transactions which have been registered during that period'. It describes the accommodation as a new conversion second floor one bedroom flat in excellent decorative order with front door access and video entry phone. It is said to have a contemporary finish to the kitchen area and a luxury shower. Photographs are provided showing the internal layout of the accommodation and are representative of what I observed at the time of my visit.
8. This likely prompted a planning contravention notice (PCN) to be served on the appellant. The matters which appeared to constitute a breach of planning control are stated as being the material change of use of the premises to 3 self-contained flats. A copy of the completed PCN signed by the appellant and dated 22 November 2020 forms part of the Council's evidence. The appellant's response provided the following: There were two flats in the building dating back to 2006; there were two households consisting of five occupants; the loft was said to be used as an additional bedroom and as a utility; and they state that they are in the process of planning to convert the loft space to a self-contained flat.
9. The Council refer to a site visit that took place on 26 November 2020 during which it was noted that there were 3 buzzers at the front of the property and directional signage for the 'Ground Floor' and for the 'First Floor & Top Floor' indicating three flats. At the visit, it was stated, by the appellant, that there was no kitchen in the loft space and that the space was used by the tenants in association with their use of the first floor flat. No access was gained to either

the first floor or second floor, the reason given by the appellant was that the tenants were not at home.

10. In June 2021 an application for planning permission (ref: 214299FUL) was submitted to the Council for the conversion of the existing loft space into one self-contained flat. The plans showed the second floor arranged as part of the first floor flat, describing the rooms as bedroom, gym, bathroom and storage. It was proposed to merge the rooms into a single bedsit room and kitchen. The application was withdrawn in October 2021.
11. In response to a further PCN issued on 19 June 2023, the appellant claimed that the loft space was being used as an additional room for storage and by her son, and that the first floor flat was occupied by tenants. An arranged visit on 22 June 2023 by a Council Officer noted the following regarding the second floor flat: The door was lockable and there was an intercom; the space was clearly occupied by a young adult male and female; there were no cooking facilities but there were cooking utensils and pans – it was explained by the appellant's representative who was an older gentleman, that he was living there on a part time basis and that anyone who occupied the space used the cooking facilities in the ground floor flat which was accessed by exiting the property at the front and re-entering the property at the side.
12. The site was visited under warrant on 22 December 2023 by two Council Officers who recorded meeting the tenant of the loft flat, a young man, who stated that he and his girlfriend had been living in the flat in the roof space since August 2022 under a tenancy agreement and had been paying a monthly rent. During the visit it was noted that there were cooking facilities in the kitchen in the form of a moveable countertop cooker. At the time of the visit, the flat was described as fully self-contained.
13. Following the visit, a further PCN was issued by the Council on 5 January 2024. In the signed PCN response dated 16 January 2024 the appellant provided the following information about the use of the second floor loft flat: Members of the family use the loft flat from time to time; there are no tenancy agreements and no rental income is received; use of the loft flat began around 2021, but it is not always occupied; there are no cooking facilities in the loft flat so those who use it also use the facilities in the ground floor flat.
14. When I visited the property, I noted the camera and three buzzers by the door to the front of the property. At the first-floor level, a lockable door provided access to a self-contained three-bedroom flat. This flat was occupied independently from the remaining property. The staircase continued upward to the loft space where an entrance door opened into a room which contained a sofa, coffee tables and a television. The kitchen units and work surface had been removed, although the splash back tiling remained. In an adjoining room was a made bed and there were some personal items. There was a washing machine within the low sloping roof space, and a functioning shower room. A video entry phone was positioned on the wall by the entrance door and a thermostat to control the heating. The entry door had some kind of lock, although it seemed that the external handle had been replaced as there was no keyhole. The space was sparsely furnished and appeared as though it was being occupied in a manner akin to 'camping out'.
15. Drawing the presented evidence together, it is probable that the appellant has utilised the space at times as overspill accommodation in association with their

use of the ground floor flat. However, the Council's evidence indicates that there have been periods when the space has been used for independent residential accommodation, and rented to tenants separate from the ground and first floor flat. Although the kitchen has since been removed, it seems to me that the second floor has provided the necessary facilities for day-to-day living, and that as a matter of fact and degree, it had been used as such at the time leading up to the issuing of the notice.

16. In the absence of evidence from the appellant to persuade me otherwise, I consider that the breach of planning control, as alleged, has occurred and the appeal on ground (b) must therefore fail.

The appeal on ground (c)

17. An appeal on ground (c) is a claim that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal, and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
18. Under the grounds and facts section in the appeal form, the appellant states that "the whole dwelling house has been extender [*sic*] at the side and rear as well as loft to use them as habitat [*sic*] space and all done under planning permission and building control. So the use of loft space is not a breach of planning control."
19. As I have found under the ground (b) appeal, the upper floors are subdivided into a flat on the first floor and a flat within the second-floor loft space. While there may well be permission for habitable space within the loft, under s55(3)(a) of the 1990 Act the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. Thus, the use of the accommodation for a separate independent residential use would constitute development by virtue of s55 of the Act for which express planning permission would be required. As no planning permission has been granted for that use, the matters alleged in the notice constitute a breach of planning control.
20. The appeal on ground (c) therefore fails.

S A Hanson

INSPECTOR