



Appeal Decision

Inquiry Held on 8 August 2017

Site visit made on 8 August 2017.

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 October 2017

Appeal Ref: APP/T5150/C/16/3155429

No. 19 Corringham road, Wembley HA9 9PX

- 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 Mr Rehan Sheikh against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, ref. E/11/0627, was issued on 20 June 2016.
 - The breach of planning control alleged in the notice is without planning permission the material change of use of the premises to one self-contained flat and one House in Multiple Occupation (HMO) for more than six residents.
 - The requirements of the notice are to:
 1. Remove all but one kitchen, and all but two bathrooms from the premises.
 2. Remove all but six beds from the premises.
 3. Remove all partitions, fixtures and fittings that facilitate the unauthorised use from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) 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.

Application for costs

2. At the Inquiry an application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

The Inquiry

3. Evidence at the Inquiry was taken under oath or solemn affirmation.

Background matters

4. The appeal property is a substantial detached house on the western side of Corringham Road, within a predominantly residential area of similar houses. It is of two storeys and an attic, mainly of rendered masonry construction, with applied 'half-timbering' and a partly tile-hung bay window to the front. A single storey flat-roofed extension was built at the back of the house following grant of planning permission in 2008¹. The appellant said this was built in 2010.

¹ Planning permission ref. 08/2825, dated 22 December 2008.

5. Within the house, there are two bedsitting rooms and a WC off the entrance hall, as well as a kitchen. The garage on the northern side of the house and the room behind it have been converted to form a flat with one bedroom, a WC/shower/washbasin cubicle, and a living room with a somewhat rudimentary kitchen. The flat has external access from the passage along the northern flank of the house, and also has a door connecting with the kitchen in the main part of the house. This latter entrance was clearly a window/door opening originally in the external wall that has been blocked off with the door and a thin fibre cement panel.
6. On the first floor there are five bedsitting rooms – three to the front of the house, and two to the back – and two bathrooms, also at the back. At attic level there is a further bedsitting room and a separate bathroom.
7. At the time of my visit all 8 bed-sitting rooms appeared to be tenanted, as did the self-contained flat.

The appeal on ground (d)

8. This ground is that the alleged use is immune from enforcement action as a result of being out of time. In an appeal on ground (d) the burden of proof is on the appellant to show that on the balance of probabilities this is the case. The Council say that insofar as the alleged material change of use of the premises relates to a HMO for more than six residents the relevant period should be at least 10 years of continuous use prior to issue of the notice. Insofar as the allegation relates to a self-contained flat, the relevant period should be 4 years of continuous use prior to issue of the notice.
9. A self-contained flat is regarded as a single dwellinghouse, and in accordance with the provisions of s.171B(2) of the Act, the period after which it would become immune from enforcement action is 4 years beginning with the date on which the change of use took place. However, where units are not self-contained they are not used as dwellinghouses, and change of use from a single dwellinghouse to a *sui generis* HMO is governed by the 10-year immunity period set out in s.171B(3).
10. The appellant claims the property has been used as a HMO since 2002, when he bought it, and that there have been 9 or 10 people living there all the time, and sometimes up to 14 people.
11. The 2008 planning application form gives the appeal property as Mr Sheikh's address at the time, and the Design and Access Statement submitted with the statement refers to the property as 'a family dwelling house'. I would take this to mean that he and/or members of his family were living there at the time.
12. Mr Sheikh wrote to the Council in January 2011 stating that the extension works approved in 2008 were started in 2010; that the property was empty, and no rent was being paid. He said that previously there had been squatters there, but they had been moved out and his intention was for one family to live there, or possible 4 people sharing.
13. Following a complaint, a Council officer had visited the appeal property in January 2011, when Mr Sheikh had told him it was occupied by 2 tenants and his cousin – who looked after the house while the kitchen downstairs was being refurbished/extended. He said that once that was complete he would be moving in with his wife, or his extended family might move in. It was recorded

- by the Council that no. 19 was a 7 bedroom house with a kitchen, living room and 3 bathrooms. Again, I take this to mean that the entire building was used as a single dwellinghouse.
14. In June of the same year, a further visit was arranged. Mr Sheikh then said he was planning to move in to the property himself, or sell it. At the visit it was seen that there was a living room, large dining room and a kitchen on the ground floor. On the first floor two of the rooms that had previously been used as bedrooms were then in use as living rooms, and three of the rooms appeared to be occupied by tenants. Mr Sheikh said the attic room was unoccupied, and used by tenants as another living room.
 15. In a requisition for information of September 2011, Mr Sheikh responded that there was a single family living in the premises – relatives and family and friends who had come to stay, but paid no rent. In November 2011 a letter from Council Enforcement Services records the house being occupied by 4 related tenants, living as one household.
 16. No access was gained by an enforcement officer in November 2014 following a further complaint, but it was noted that there had been no apparent change since the previous visit, and that the building appeared 'almost totally unoccupied'. Further visits were made in May and June 2015, but again no access was gained.
 17. In his response to information required by a Planning Contravention Notice (PCN), dated 27 September 2015, the appellant stated the property had been in use as a self-contained flat, plus a house for fewer than 6 people since 2002, whereas it had previously been occupied by 8 people. However, at the Inquiry the appellant claimed that at the time of the PCN response someone else had been managing the property, who had been misinforming him as to how it was being used. He himself had no knowledge of the actual number of occupants, and had only discovered there were more than 6 when he checked in 2016. He now claims there have been 8 to 10 people or more living in the property, and that the flat has existed since July 2009.
 18. In an appeal on the legal ground (d), with matters of fact in dispute, it is settled law that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
 19. In this case the appellant's evidence for use of the property from the time he bought it in 2002 appears to be in flux – at some points I am asked to believe it is occupied by a single family, as in 2011, and at others by 8 or up to 14 unrelated occupants. On the evidence of the appellant's statements to the Council, and responses to requests for information the building was unoccupied in early 2011, shortly after that there were 2 tenants and a relative living there, and in September 2011 it was ostensibly in use as a family house. In the 2015 PCN response this had changed from being a Class C4 small HMO in 2015, to a *sui generis* large HMO without any apparent rhyme or reason. Each such change amounts to a material change of use.
 20. Mr Sheikh owns a significant number of properties, and clearly has much experience of letting, as well as of enforcement proceedings. I can give little

credence to his claim that he was unaware of the letting situation at the time of his PCN response.

21. Although the appellant claims the Council were aware of the presence of the flat and *sui generis* HMO in 2011, he appears to base this on the fact that the reference number of the enforcement notice is from that year. However, that date is no more than a record of when the first investigations were made, following a complaint. The Council's inspection in June 2011 did not record the existence of a self-contained flat, but the description was later amended following receipt of the PCN information. There is no evidence before me that the Council were aware of the self-contained flat in 2011.
22. Regarding the flat, it is claimed this was created in 2009 and has been in use since then. I note that the drawing for the extension approved in 2008 shows what is now the rear part of the flat as a part of the kitchen/dining room. I was told that the flat became seriously damaged by previous tenants, and it was necessary to remove the kitchen and shower, which were not replaced until the end of 2011, or the beginning of 2012. Mr Sheikh said that his elderly aunt had moved in to the flat at the end of 2012, and had remained ever since. Records of payments by the Local Authority to a tenant – quite possibly the appellant's aunt – show that she was in the flat at least from January 2013. However, it appears unlikely she still lives there, since I saw that clothing stored in the flat clearly belonged to a young man – said to be her nephew.
23. Part of a tenancy agreement submitted purports to show the flat was let for a period of a year from 15 June 2012 to Mr Patel. However, a web-site advertisement lists the flat for rent on 21 July 2012, as well as dates in August 2012, and includes the information that it had a brand new bathroom and shower with a combined WC.
24. The appellant has put nothing in to show when the garage was converted or refurbished, such as builders' quotations or invoices, any substantial records of who might have lived in the flat prior to January 2013, or evidence of receipt of rent. I find this lack of evidence over a claimed period of use of about 4 years creates a high degree of imprecision in the appellant's case. The only piece of clearly reliable documentary evidence directly related to the flat appears to be the local authority rent payments.
25. The appellant had indicated that he would be able to produce documents such as invoices relating to lettings, tenancy agreements, and builders' records showing when the flat and rooms had been occupied, and when construction works had been done. However, at the Inquiry I was told that all documentation had been handed to Mr Sheikh's agent, who was now very ill, and the papers had not been returned, or submitted as evidence. In the event the front sheets of 2 tenancy agreements were submitted. One of these - for letting the attic room for 6 months in 2005 – shows very little. The other for letting the flat is similarly vague, and conflicts with the letting advertisement, and the letting of the flat to the appellant's aunt. In my opinion the appellant's evidence is far from being either precise or unambiguous.
26. I was also told that said that the appellant's wife - or another un-named person - visited the property every week to collect rents. She claimed that all rooms and the flat are always fully occupied, and that rent books were kept. However, no documentary evidence of this was put forward.

27. Overall, if the appellant's statements – notably in his responses to the 2011 requisition for information and to the 2015 PCN - are taken at face value, there have been material changes of use of the main house from a Class C4 HMO, or possibly a single family house, to a *sui generis* large HMO in 2011 and in 2015. Furthermore, the building was apparently unoccupied at some time in 2011, which itself is likely to have broken any continuity of use. On this basis, I must conclude that on the balance of probabilities the use as a HMO for more than 6 residents has not been continuous for a period of 10 years or more prior to issue of the notice.
28. As regards the use of the flat, virtually no evidence has been submitted to show when the conversion took place, or when it was first occupied. The 12 month tenancy agreement with Mr Patel conflicts with the evidence of when the flat was advertised for rent, and the date when the appellant's aunt occupied the flat – as evidenced by the Council's payment notifications. I do not consider that on the balance of probabilities it has been shown the flat was in continuous use for a period of 4 years before issue of the enforcement notice.
29. The appeal on ground (d) therefore fails.

Alleged deception

30. If, as the appellant claims, the property has been in use as a HMO for more than 6 persons since 2002, then his statements in the 2011 and 2015 responses to Council requests cannot have been proper statements of the truth. He is experienced in the planning system and in letting property, and I am highly sceptical of his claim that he was unaware of the way in which the property was let. It appears to me that he told the Council whatever was convenient to him at any time, possibly to avoid enforcement action, or to avoid paying the requisite Council Tax.
31. Whatever his reasons, I consider he was making a deliberate attempt to conceal the actual use of the building, and to deceive Council officers. As a result, he would be able to benefit financially – despite his protestations that he could hardly cover his expenses. On the balance of probabilities I consider this was deliberate and positive deception, designed to frustrate the proper administration of the planning process. If, as he now claims, the uses had subsisted for the requisite periods, he cannot rely upon immunity from enforcement action under the provisions of s.171B(2) and (3) of the Act.

The appeal on ground (g)

32. The appellant argued that the 3 month compliance period is inadequate, since, on the basis that he believed he was certain of succeeding at appeal, he has not given notice to his tenants. A period of 6 months would be appropriate to give such notice and, if necessary, apply to the courts for possession.
33. The works required by the notice are relatively minor, and there would be little difficulty in carrying these out within the 3 month period.
34. No information has been put forward of notice periods in any tenancy agreements. A notice period of 2 months could reasonably be expected for termination of a tenancy. No particular reason was given as to why this would not be complied with, and therefore 3 months appears to me quite adequate. The appellant owns several residential properties in the Borough and, as the Council say, he would be well positioned to re-house tenants relatively quickly

and easily. Furthermore the Local Authority would exercise their role as housing authority.

35. If it were found necessary to apply to the courts for possession, I accept that a longer time might be needed. However, it is open to the Council to extend a compliance period under the provisions of s.173A(b) of the Act. If the appellant is able to provide sufficient justification for such an extension I can see no reason that they would not do so. The appeal on ground (g) therefore fails.

Other matters

36. The appellant argued that it was not reasonable to require removal of partitions, since the house had always existed in the present form, and no partitions had been introduced at any stage. This is effectively an appeal on ground (f) – that the steps required by the notice are excessive, and lesser steps would overcome the Council’s objections.
37. However, it is clear that the house has been much altered, both as authorised by the 2008 planning permission, and by such things as formation of the flat. It was not at all apparent where alterations might have been made. In the absence of any substantial evidence to show what has occurred in the way of alterations I do not find it unreasonable to require removal of any relevant partitions. Had an appeal been made on ground (f) it would have failed.

Conclusions

38. For the reasons given above I consider that the appeal should not succeed, and I intend to uphold the enforcement notice.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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| Rehan Sheikh (also giving evidence) | The appellant. |
| He called: | |
| Maria Rauf | The appellant's wife. |
| Yousuf Yosuf | Tenant of the appeal property. |
| Jahanzeb Abbasi | Tenant of the appeal property. |
| Paula Murray | Tenant of the appeal property. |

FOR THE LOCAL PLANNING AUTHORITY:

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| Nigel Wicks MRTPI | Chartered Town Planner, Principal of Enforcement Services Ltd. |
| He called: | |
| Scott Davies | Deputy Planning Enforcement Manager The London Borough of Brent Council. |

DOCUMENTS

- 1 Attendance list.
- 2 The Council's letter of notification of the appeal, dated 18 July 2017.
- 3 Letter of representation.
- 4 Witness statements for the following:
 Maria Rauf
 Rehan Sheikh
 Jahanzeb Abbasi
 Eileen Doyle
 Nishasat Khan
 Atul Agarwal
 Amir Raja
 Yousuf Yosuf
 Victoria Ibironice
 Paula Murray
- 5 Letter from Kube Properties to Mr Sheikh, dated 26 July 2017.
- 6 Appendices to Mr Scott's proof of evidence.
- 7 Brent Borough Council Landlord Payment Notifications
- 8 Extracts from 3 tenancy agreements.
- 9 Council Tax bill, dated 8 February 2017.
- 10 Property letting history, taken from the Zoopla web-site.

PHOTOGRAPHS

- 1 & 2 2 photographs of the front of the appeal property.
- 3 Photograph of interior of one of the rooms
- 4 Aerial photograph including the appeal property.