The Planning Inspectorate

Appeal Decision

Site visit made on 7 September 2015

by P G Horridge BSc(Hons) DipTP FRICS MRTPI

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

Decision date: 11 September 2015

Appeal Ref: APP/Y5420/C/15/3004949
67 Scales Road, London N17 9HD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Haringey.
- The appeal is made by Buryfield Ltd.
- The Council's reference is FCV/2013/00952.
- The notice was issued on 12 January 2015.
- The breach of planning control as alleged in the notice is the change of use to six self-contained flats.
- The requirements of the notice are to cease the use as self-contained flats.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)[b] and [c] of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld

The appeal on ground (b)

1. This ground is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

2. The appeal relates to a two-storey end-terrace property close to Tottenham Hale transport interchange. Internally it contains 6 rooms, each with an ensuite toilet and shower and a sink unit incorporating a fridge and two-ring hob. In all but one of the rooms the hob has been rendered unusable by being covered with a large tile glued to the unit via a wood framework base. In the room where the tile and base have been removed to expose the hob, the latter appeared at the time of my site visit to have been disconnected from the electricity supply.

3. In the downstairs hallway, the space under the stairs is occupied by a kitchen work area containing a sink, hob, microwave and washing machine.

4. Each of the six rooms has its own lockable door and the rooms are numbered 1 to 6. The council notes that the property was occupied as a single dwelling until August 2013, following which an application was made to the Valuation Office in November 2013 to split it for council tax purposes into six separate units, referred to as Flats 1 to 6. The council says that it has received housing benefit claims, supported by copies of tenancy agreements, from some of the individual flats.

5. Each of the individual rooms contains all of the facilities normally required for self-contained occupation – in particular cooking, washing, food storage, toilet,

shower, eating and sleeping facilities - albeit the cooking facilities (the hobs) are now immobilised. It is not clear when this immobilisation was carried out but until it was done each room was clearly capable of occupation as a self-contained flat. The council says that a site visit was carried out on 10 November 2014 which confirmed that there were 6 units in the house. Irrespective of whether the property is now no longer in use as 6 self-contained flats, the appellant has failed to discharge the burden of proof that such a material change of use had not, as a matter of fact, taken place at the date of issue of the enforcement notice. The appeal on ground (b) therefore fails.

The appeal on ground (c)

6. This ground is that there has not been a breach of planning control because what has been carried out is 'permitted development' for which planning permission is granted by the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the "Order")[1]. Class I(b) of Part 3 of Schedule 2 to the Order permits the change of use from a single dwelling house (Use Class C3) to a house in multiple occupation (Use Class C4).

7. However, the conclusion in respect of the ground (b) appeal is that the change of use has been from a single dwelling house to six self-contained flats. This is a different change of use and one that is not permitted by the Order.

8. An Article 4 Direction is now in place which takes away the 'permitted development' right for changes of use from single dwelling houses to houses in multiple occupation. However, given the conclusion that the change of use that has occurred is one from a single dwelling house to six self-contained flats, this Article 4 Direction is not of relevance to the appeal.

Conclusions

9. The appellant has failed to discharge the burden of proof that the change of use alleged in the enforcement notice has not occurred as a matter of fact. Thus the appeal on ground (b) fails. Consequently, any permitted development rights to change from a single dwelling house to a house in multiple occupation that may have existed prior to the coming into effect of the Article 4 Direction are not engaged and the appeal on ground (c) fails also.

Formal decision

10. I dismiss the appeal and uphold the enforcement notice.

Peter Horridge

INSPECTOR

[1] This Order was superseded on 15 April 2015 by the Town and Country Planning (General Permitted Development) Order 2015. However, the relevant date for assessing whether the development is lawful is when it was begun, which in this case was before the new Order came into effect. In any event, the coming into effect of the new Order is of no material consequence as the relevant provisions under Schedule 2 to the Order remain unchanged, albeit with some minor re-wording and renumbering.