



Appeal Decision

Site visit made on 13 October 2020

by **J Whitfield BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9th December 2020

Appeal Ref: APP/B5480/C/19/3237724

1a Chase Cross Road, Collier Row, Romford RM7 7AR

- 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 Thomas Robert against an enforcement notice issued by the Council of the London Borough of Havering (the LPA).
- The enforcement notice was issued on 30 August 2019.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the ground floor from A1 use to a residential (C3) unit.
- The requirements of the notice are:
 1. Cease the use of the ground floor as a residential unit (C3); AND,
 2. Remove all cooking facilities, residential fixtures and fittings and residential paraphernalia from the ground floor; AND,
 3. Remove all material and debris resulting from taking steps (1) and (2) above.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction.

The Notice

1. The notice alleges the material change of use of the ground floor of the premises from A1 use to a residential unit. A1 refers to Class A1 set out in the Town and Country Planning (Use Classes) Order 1987 (the Order). The purpose of the Order is to group together specific uses so that if land changes from one use to another it does not amount to development for the purposes of section 55(2)(f) of the 1990 Act. The use class therefore covers several uses and thus 'A1 use' is not a use of Land. This is a particularly pertinent point since the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which came into force on the 1 September 2020 revoked Class A from the Order.
2. Nonetheless, case law has established that a notice alleging a material change of use need not recite the previous use. Where the notice does recite the previous use, this should be correct but is open to correction on appeal, including omission where there is uncertainty. On that basis, given the lack of clarity in the allegation, I find it necessary to correct the notice by omitting the previous use. I am satisfied I can do so without causing injustice to either the appellant or the LPA.

The appeal on ground (b)

3. An appeal on ground (b) is made on the basis that the matters stated in the notice which may give rise to the breach of planning control have not occurred as a matter of fact. The onus of proof rests with the appellant.
4. The appellant indicates that when the previous tenant vacated the premises, it was occupied by others without his permission which ultimately required legal proceedings to resolve. However, what matters here is not who was using the premises but how they were using the premises.
5. The Council has provided photographs of the premises dated 11 December 2018. The photographs show it contained a kitchen area to the rear with cooking facilities, washing machine and fridge freezer. The appellant indicates that a kitchen with cooker had been present at the property for many years throughout its commercial use, as demonstrated by the business rates valuation from April 2010. Nevertheless, the images also show the front part of the ground floor contained tables, chairs and children's toys. The presence of fresh fruit and vegetables and cleaning products indicates that, on the balance of probabilities, at that time the ground floor was being used as residential accommodation.
6. Subsequent photographs dated 29 April 2019 show the ground floor of the property contained a dining table and chairs, children's toys and decorative pictures and a mirror on the walls. Again, food and drink in the process of being consumed is shown on the photographs, all of which points towards the ground floor of the premises being in use as residential accommodation at that time.
7. It is said by the appellant that, after legal proceedings, the occupiers left the property at some point in the last two weeks of July 2019. It is said that when he gained access in August 2019, the kitchen equipment and other fixtures and fittings had been stolen. The premises were later let to a commercial tenant from 19 September 2019. However, little evidence has been provided to demonstrate that was the case. There are no photographs or other documentation before me from either party which shows how the property was used in July or August 2019. Indeed, all the Council have provided is a photograph dated 30 August 2019 presumably showing service of the notice as it has been left attached to the external roller shutter door. There are no images of the internal areas of the premises.
8. Therefore, the evidence does not lead me to believe, on the balance of probabilities, that there had been any intervening change in the use of the premises back from residential since the Council's visit on 29 April 2019 up until the issue of the notice on 30 August 2019 as suggested by the appellant. Indeed, the fact that property was not let to a commercial tenant until 19 September 2019, after the notice was issued, suggests that any subsequent change of use from residential occurred after the notice was issued.
9. On that basis, the limited evidence leads me to conclude that the ground floor of the appeal property was in use as residential accommodation at the date the notice was issued. The matters stated in the notice which give rise to the breach of planning control have therefore occurred as a matter of fact.
10. The appeal on ground (b) fails.

Formal Decision

11. It is directed that the enforcement notice is corrected by the deletion of the words "from A1 use" from section 3 of the notice. Subject to the correction the appeal is dismissed, and the enforcement notice is upheld.

J Whitfield

INSPECTOR