Case Name: *London Borough of Brent v Secretary of State for Levelling Up, Housing and Communities & Anor* [2022] EWHC 2051 (Admin) (29 July 2022)

Full case: Click Here

Commentary: This was an appeal by the London Borough of Brent ("the Council") under section 289 of the Town and Country Planning Act 1990 against the decision of a planning inspector to quash an enforcement notice issued by the Council in respect of a terraced house at 51 Nutfield Road, London ("the Property").

On 1 February 2015, the owner of the Property notified the Council of an intention to build a rear single-storey extension pursuant to Class A.1(ea) of Part 1 of Schedule 2 the GPDO 1995 (legislation that was materially identical to Class A.1(g) under the GPDO 2015). The owner sought a determination as to whether prior approval was required for the proposed extension. The notification provided the dimensions of the extension and was accompanied by plans showing the proposed layout. In March 2015, the Council resolved in writing that prior approval was not required because the Property was at the time a dwellinghouse enjoying the claimed permitted development rights under Class A.1(ea) GPDO 1995. In February 2016, the subsequent owner of the Property set about building the extension and completed works to render the Property suitable for use as an HMO.

In December 2019, the Council issued an enforcement notice alleging a breach of planning control due to a) an unauthorised change of use of the premises to a House in Multiple Occupation (HMO) and flats and b) the erection of a single storey rear extension to the premises without permission.

The owner of the Property appealed the enforcement notice and it was successfully quashed. The Council contended that the Inspector erred in law in concluding that a single storey extension to the Property was permitted development under the GPDO 2015. The Council's grounds of appeal were as follows:

i) Although the Inspector had correctly accepted that the Property had been in use as a dwellinghouse at the time that the Council resolved prior approval for the extension was not required, the Inspector failed to go on to consider whether the Property was still in use as a dwellinghouse at the time when the extension was built.

ii) Even if the Property was in use as a dwellinghouse at the time that the extension was built, the extension was not built in accordance with the information supplied in the prior approval notification. The Inspector should have identified the substantial differences in its external appearance, internal layout and its use on his site visit.

In relation to ground i), the court held that the Inspector had not erred in law in concluding that, whether the Property fell within Use Class C3 or C4 at the time of

construction of the extension, it enjoyed permitted development rights as a "dwellinghouse" under the GPDO. He therefore made no error in concluding that it was academic whether the Property was extended whilst it was still occupied as a single-family dwelling or when already an HMO, following its permitted change of use under Class L of the GPDO. The claimant therefore failed on ground i).

In considering ground ii), the court noted that the Inspector was right to record that the Council did not contend in its enforcement action that the extension constructed was not that which had been found not to require prior approval. Further, the Inspector was not bound to raise the matter simply because his site visit in June 2021 showed a different layout from the plans submitted alongside the prior approval notification. The inspector therefore committed no error of law in proceeding on that basis. Ground ii) therefore also failed and the appeal was dismissed.

Case summary prepared by Emma McDonald