
Appeal Decision

Site visit made on 19 September 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 20 October 2016

Appeal Ref: APP/N5090/C/15/3140011

Land at Ground Floor Flat, 2 Corringham Road, London, NW11 7BT

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Avi Dodi against an enforcement notice ref. ENF/01010/13/F issued by the Council of the London Borough of Barnet.
 - The notice was issued on 3 November 2015.
 - The breach of planning control as alleged in the notice is: Without planning permission, the sub-division of the ground floor flat to form three self-contained units of residential accommodation.
 - The requirements of the notice are:
 - 1 Cease the use of the ground floor of the property as three self-contained units of residential accommodation.
 - 2 Permanently remove all but one set of kitchen facilities (units, sinks, cookers and food preparation areas) from the ground floor of the property.
 - 3 Permanently remove all but one set of bathroom facilities from the ground floor of the property.
 - 4 Permanently remove all constituent materials resulting from the works above from the property.
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the ground set out in s174(2)(b) of the Act.
-

Decision

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

Preliminary matter

2. The flat comprises three rooms, each of which has (amongst other things) an integral shower/WC facility. At my site visit one of the rooms was laid out as a shared living room and kitchen space. There were no obvious cooking appliances within either of the other two rooms which appeared to be primarily bedrooms with associated private living space.
3. The appeal on ground (b), however, concerns the circumstances at the time of the alleged breach rather than the circumstances when the site visit took place. It is the evidence of use at that earlier time which will inform the decision.

The appeal on ground (b)

4. An appeal on ground (b) is that the matter alleged has not occurred as a matter of fact. Ground (b) is one of the legal grounds of appeal. In a
-

legal ground of appeal the burden of proof is upon the appellant. The test of the evidence is one of balance of probability¹.

5. The appellant disputes that the flat was divided into three separate units. He says that it had been re-organised internally so that it could be occupied by three persons on a shared basis. That (he argues) is not the use alleged in the enforcement notice.
6. There is no evidence from the appellant as to how the property was configured internally at the time of the breach². It is difficult to see how it could have been configured for use on a shared basis by three people (if each person had their own room) as the flat only has three rooms and thus there would have been no additional room(s) that could have been shared.
7. The Council's officer had visited the premises in August 2014 and had formed the impression that the flat had been subdivided into three units. He had gained access to one of the units and saw that it was a separate self-contained unit that had its own bathroom and kitchen facilities.
8. Whilst (as pointed out by the appellant) the flat has a single entrance door, each of the three rooms within the flat has a door with its own lock. I am told that there is only one supply of gas, electricity and water. However, in itself that would not be conclusive of shared use.
9. The Council has drawn attention to the Council Tax Valuation List which shows that a single ground floor flat was deleted from the List and that (from February 2014) three ground floor flats have been listed described as "Flat 1 ... front right", "Flat 2 ... middle left" and "Flat 3 ... rear right". The appellant argues that the valuation office records are not relevant to the question of whether the flat was sub-divided. However, I consider that this revised listing in an official public record is persuasive evidence that a subdivision of the flat occurred at around the time that the listing was changed.
10. I also take into account that interested parties, who live in close proximity to the site, say that they had observed conversion works being carried out including the installation of new pipe work, and that they have been aware of an increase in the number of people occupying the property, additional comings and goings and an increase in the amount of refuse.
11. Taking all these matters into account I find that the balance of the evidence is towards there having been a subdivision of the flat into three self-contained units of residential accommodation as alleged in the enforcement notice, as a matter of fact. The appellant has not discharged the burden upon him to prove otherwise on balance of probability.

¹ Balance of probability means likelihood. In other words it means that the assertion made is more likely than not to be correct (or incorrect as the case may be).

² The configuration of the flat is likely to have been different at the time of the breach from what I saw at my site visit. At my site visit it appeared that only two persons were in residence, the third room being laid out as a shared facility whereas the appellant says the flat was previously organised to accommodate three people.

Conclusion

12. For the reasons given above I conclude that the appeal should not succeed.

Susan Wraith

Inspector