
Appeal Decision

Site visit made on 28 February 2017

by Simon N Hand MA

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

Decision date: 07 March 2017

Appeal Ref: APP/T5150/C/16/3156747
2 Wimborne Drive, London, NW9 9UA

- 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 Jayprakash Doshi against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/16/0022, was issued on 30 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the premises from one to two dwellings.
 - The requirements of the notice are STEP 1 Cease the use of the premises as more than one unit of self-contained residential accommodation and remove all kitchens, except ONE, remove all separating doors and partitions, and remove all other items, equipment, and materials associated with the unauthorised use from the premises. STEP 2 Carry out works so that they reflect the proposed Ground Floor plan (Drawing no. PL-1) as approved under planning permission no.13/0432, a copy of the plan is attached to this notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is varied by deleting the phrase "remove all separating doors and partitions" from "STEP 1" and by deleting "STEP 2" in its entirety from the requirements. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background to the Appeal

2. In 2013 planning permission was granted by the Council for an existing side extension to be further extended to provide a wheelchair access bathroom and bedroom. The appellant says this was for his disabled mother. In 2014 the Council made a visit to the site and noticed minor variations from the plans, including a side door ramped access to the drive, but noted the disabled bathroom was completed. They obviously decided not to pursue the changes.
3. In January 2016 another enforcement visit was made, but access to the extension was not possible. However the appellant informed the officers that a kitchen and bathroom had both been installed in the extension. The Council also noted the internal connecting door between the main house and the extension had been blocked up, a separate curtilage created for the extension

and a new post box had been installed for “No 2b”. They deduced a separate residential unit had been created and issued the notice subject to this appeal.

The Appeal on Ground (b)/(c)

4. This ground is that there has not been a breach of planning control because the development already has permission. In fact the appellant is actually arguing the breach of control alleged has not occurred as a matter of fact, which is ground (b), but given I have arguments from both parties on the matter I do not consider there would be any injustice to consider it as a ground (b) appeal.
5. The appellant says the side annex was never used as a separate dwelling. He quickly realised it was not suitable for his mother, as she cannot look after herself, and so he converted it into an annex for his daughter and son-in-law to live in. However, they did not occupy it as a separate unit but shared the same lifestyle as the occupants of the main house.
6. I have been given no evidence to support this suggestion, nothing has been provided by the daughter, nor any explanation as to what form the shared lifestyle took. The physical evidence is not disputed, with the internal door blocked and a separate curtilage created, with a separate entrance to the unit from the side and its own access from its now private yard to the street through a gate. It also had all the internal requirements for separate day to day living, as well as its own post-box.
7. I noticed on my site visit the internal arrangements were still set out as for a separate dwelling, albeit with the internal door re-opened. This gave access to a small lounge, which also had a single bed in it, and from there to a large kitchen diner, with the door to the outside courtyard. Beyond the kitchen diner was a double bedroom, occupying the space where the disabled bathroom had been, and a separate small bathroom. I also noticed the front garden wall had been built up and the decorative pierced concrete blocks backed by mirror glass to create complete privacy from the road for the former private yard created for the annex. Consequently, I have no choice but to conclude that a separate dwelling was created. The appeal on ground (c) fails.

The Appeal on Ground (a)

8. The appellant argues that no material change of use has occurred and none is intended. He is going to use the structure as a family annex to house a live-in carer, and occasional use by his mother. To that end the kitchen should be allowed to remain.
9. I agree with the Council that this appeal is misconceived. The allegation is the creation of a separate dwelling and the ground (a) appeal can only refer to development that is part of that allegation. No planning permission is actually needed for an annex as long as a separate dwelling is not created. I shall deal with the kitchen under ground (f). The appeal on ground (a) fails.

The Appeal on Ground (f)

10. I accept the appellant’s argument that it is not inherently unreasonable to have two kitchens in a single property, although I note the court case referred to a dwelling arranged over several stories that had been converted into a number of flats which is not the case here. However in this appeal, I have found that there was a material change of use and a second dwelling was created. As

such, the kitchen was an integral part of that material change of use and so it is entirely reasonable for the Council to require it to be removed.

11. However, I agree that there would seem to be no reason to reinstate the disabled bathroom, which is no longer needed by the appellant, as long as the kitchen is removed and no separate curtilage is created the annex cannot be used as a separate dwelling. The internal partitions are also not an essential part of the material change of use. I shall amend the requirements to delete "STEP 2" and part of "STEP 1" accordingly.

Simon Hand

Inspector