
Appeal Decision

Site visit made on 6 March 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 06 April 2017

Appeal Ref: APP/U5360/C/16/3155094

Land at 16 Brooke Road, Hackney, London N16 7LS

- 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 Usman Mapara against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 20 June 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the ground floor as two self-contained flats.
 - The requirements of the notice are:
 - I. Cease the use of the ground floor of the property as two self-contained flats and return the ground floor of the property to its condition before the unauthorised change of use was commenced.
 - II. Remove all partitions, fittings, fixtures and equipment that facilitate the use of the ground floor of the property as two self-contained flats.
 - III. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in s174(2)(b) and (g) of the Act.
-

Decision

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

Preliminary matters

2. Whilst the notice alleges a material change of use there is no reference within the allegation to the previous use from which the use has changed. The appellant considers the notice to be unclear on this point.
3. Both parties refer in their evidence to the previous use of the ground floor as a single flat for which Council Tax was paid. The appellant says the ground floor was in use as a single flat at the time he purchased the property in 1996. Although it would have been better for the notice to recite the former use I do not find this omission to defeat the notice, in particular because there appears to be common ground between the parties as to how the ground floor was used previously.
4. There is a requirement in the notice for the ground floor to be returned to its former condition.¹ The appellant (being the owner and part occupier of the property) is well placed to know of the property's "former condition". The

¹ S173(4)(a) of the Act provides that remedy of the breach can be achieved by (amongst other things) restoring the land to its condition before the breach took place.

Council also has some information about the state of the property previously from its Council Tax and planning records. Whilst there is nothing within the notice itself to enlarge upon this requirement, I am satisfied that the detail for how the property is to be returned to its former condition can be left to the parties in this case.

5. In all the above circumstances, I consider that the notice is sufficiently clear about what is being alleged and what is required to put matters right. It is unnecessary for me to make any correction to the notice in this regard.

The appeal on ground (b)

6. 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". In a legal ground of appeal the burden of proof is upon the appellant. The test of the evidence is one of balance of probability.²
7. The appellant argues that the ground floor has been split into two bedsits for lodgers, that the landlord has unrestricted access and that the living arrangements are combined. In the appellant's opinion there has not been a material change of use to use as two flats.
8. At my site visit I saw that the ground floor of the premises, essentially, comprised two distinct self-contained units accessed from a shared entrance hall and corridor. Within each unit there was an open plan kitchen/dining and lounge area, double bedroom and wc/shower room. The kitchen areas were equipped with worktops, units, cooker, hob, extractor and sink; and each unit had a boiler. The unit to the rear had access to a small outdoor decked area.
9. In the communal corridor there was a shared storage facility and, possibly, shared access to a cellar. Otherwise, there were no spaces and facilities which were obviously shared. As each unit, itself, contained all the facilities necessary for day to day private domestic existence, and bearing in mind that each of the units had its own lockable door, I consider it unlikely that combined living arrangements would have been taking place to any significant extent. The units contained all the facilities for everyday living and have been so used on balance of probability.
10. The previous use was as a single flat.³ There are now two flats. I therefore conclude that the development alleged in the enforcement notice has occurred as a matter of fact. The appeal on ground (b) fails.

The appeal on ground (g)

11. On ground (g) it is argued that a period of 12 months should be allowed to provide time for vacant possession to be secured, the appointment of a builder and the carrying out of the necessary works.
12. I acknowledge that a longer time period would be helpful to the appellant and his tenants in this regard. On the other hand I also take into account the public interests of securing timely compliance with the notice to remedy the

² Balance of probability concerns "likelihood". In other words, it means that the assertion being made is more likely than not to be true.

³ There is no contrary evidence. Therefore, on balance of probability, the previous use was a single flat.

harm which the Council has identified. I consider that the six month period specified in the notice strikes an appropriate balance between these conflicting private and public interests without placing a disproportionate burden upon the appellant and occupiers.

13. The appeal on ground (g) fails.

Other matter

14. Reference has been made to space standards for new dwellings. However, there is no deemed application or appeal on ground (a) under which I could have considered this matter. The matter has not influenced my findings on the grounds of appeal that are before me.

Conclusion

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

Susan Wraith

Inspector