

Appeal Decision

Site visit made on 13 March 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/F5540/C/16/3156995
62 Roxborough Avenue, Isleworth TW7 5HJ

- 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 A Musaraj against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 2 August 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property into two self-contained flats.
- The requirements of the notice are to:
 - (1) Cease the use of the property as two self-contained flats.
 - (2) Remove all but one of the kitchens and associated kitchen facilities from the property (i.e. including kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood. In addition to all to the above items all water and gas supply piping and all waste connections).
 - (3) Remove all but one of the bathrooms and associated bathroom facilities from the property (i.e. including bathroom cupboards, shower/bathing facilities, WC , wash basin and pedestal. In additional to all to the above items all water piping and all waste connections).
 - (4) Remove all resultant debris from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld subject to variation as set out in the formal decision at paragraph 18.

Application for costs

1. An application for costs was made by Mr Musaraj against the Council. This application is the subject of a separate Decision.

Ground (e)

2. Commonly known as a 'legal' ground of appeal, the onus of proof is firmly on Mr Musaraj. In this ground of appeal, it should be shown that, on the balance of probabilities, copies of the notice were not served as required by s. 172 of the Act. In that context, the submission is that, in serving the notice, the Council has got its procedures wrong. There is however no evidence to substantiate the claim that the notice has not been properly authorised or served on all those with an interest in the land. A timely appeal has been made thereby protecting interest in the land. Ground (e) therefore must fail.
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Ground (b) and (c)¹

3. In pursuing ground (b), the onus of proof is firmly on Mr Musaraj to show that the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities. If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make his version of events less than probable, there is no good reason to dismiss an appeal on any legal ground provided his evidence alone is sufficiently precise and unambiguous².
4. The claim is a simple one, namely, that the property has not been subdivided into two self-contained flats. The submission is that the alleged breach is factually incorrect because the property is in use as a single dwellinghouse. Mr Musaraj asserts that the property is occupied by his family and lodgers. He maintains there is no separate flat at first floor level because there is no cooking facility. That the property has one door to enter it, one electric, gas and water supply, one Council tax demand with one person paying these utility bills. A lodger may enjoy the garden as any other member of the household. That there is no difference in the current use in terms of the apparent level of activities, comings and goings.
5. The Council say officers discovered the property had been subdivided into two flats at a site inspection made on 13 November 2014. The ground and first floors had separate cooking, washing and sleeping facilities. Additionally, officers were informed by an occupant that tenants lived at first floor level and used the separate cooking facility to prepare meals. Photographic evidence shows the existence of a fully functional kitchen in a converted room at first floor level. Subsequent to that site visit, the separate cooking facility was removed.
6. On 22 July 2015, officials revisited the site and again found the property in use as two flats. Photographic evidence shows a kitchen situated at first floor level. Officers were informed the owner lived at ground floor level while three tenants occupied the first floor. Again after that site visit the cooking facility was removed. However, a further visit by officers revealed that a curtain segregated the ground floor unit from the first floor. But the latter contained a kitchen with cooking facilities such as a hot plate and microwave. There was also a fridge and sink. Tenants informed officials they used the kitchen area at first floor level and did not have access to the ground floor unit, or to the garden. There is no evidence to make less than credible this version of events.
7. Having regard to the leading authority *Gravesham*³, no. 62 had been physically and functionally subdivided into two separate self-contained flats. The building had two separate units of accommodation and each included facilities for day-to-day private domestic existence. It might be the case that cooking facilities and subdividing doors at ground floor level had been physically removed to show compliance. Nonetheless the evidence presented clearly shows that the building had changed use from single dwelling-house into two units of accommodation during the period leading up to the issuing of the notice. No plausible explanation has been provided to show how, who and when the property was occupied and used by people forming a single household. On evidence, it appears individuals or couples separately occupied and used two self-contained flats. I consider that the character of the property's use significantly changed from use as a single dwelling-house into two dwellings, due to the significant degree of physical and functional separation.

¹ There is significant overlap between these two grounds of appeal and I shall evaluate them together.

² See the case of *Gabbitts v SSE & Newham LBC* [1985] JPL 630.

³ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

8. While a change of use of a single dwelling-house to a House in Multiple Occupation may be permitted development by virtue of Class L, Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 and vice versa, the law does not authorise conversion of a single dwelling-house into two self-contained flats. In order to facilitate such a change of use, it is necessary to subdivide the original single dwelling-house into separate dwelling houses. Two self-contained residential planning units out of a single dwelling-house had been created at no. 62. In fact the change of use targeted in the notice obviously and clearly flies in the face of section 55(3) of the Act. It states that use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and of each part of it which is so used. That, in itself, means express planning permission is necessary for the subdivision of the property by operation of law, exemption from which is not permitted development.
9. Mr Musaraj refers to the case of *Palser v Grinling* [1948] AC 291 HoL, *Brooks and Burton v SSE* [1978] 1 WLR 1294 and *Barling (David W.) Ltd. v SSE* [1980] JPL 594. I have taken these judgements into account but they can be distinguished on the facts. On the circumstances of this particular case the appeal property formed two residential planning units as opposed to occupation and use by people forming a single household.
10. Pulling all of the above points together, on the balance of probabilities, the matters alleged in the notice occurred in fact. The material change of use of the property into two self-contained flats constitutes a breach of planning control because express planning permission has not been obtained. Therefore, grounds (b) and (c) must fail.

Ground (f)

11. From the notice as a whole it seeks to remedy the breach of planning controls by restoration, which is a purpose that firmly falls within the scope of s. 173(4)(a) of the Act. It is necessary to consider whether the steps required are excessive (s. 174(2)(f)).
12. It is apparent that the physical subdivision into self-contained flats involved considerable works of conversion. Cooking facilities have since been removed from the first floor kitchen but each flat possessed facility for independent living when the notice was issued. Clearly, the change of use of the property had been sustained by internal subdivision and installation of additional facilities. There is a fundamental and crucial link between the rearrangement of the whole building's layout and the subsequent use as two self-contained flats. In my assessment, the former facilitates the latter. Now, it is well established in case law that a notice can legitimately require the removal of works integral to and solely for the purpose of facilitating an unauthorised use.
13. I have some difficulty with a requirement that requires cessation of the property's use as *two self-contained flats* as the phraseology presents potential interpretational problems. For instance it could allow use as one flat. The appropriate requirement is as follows: *Cease the use of the property as self-contained flats* and this minor variation causes no prejudice to any party. The removal of the additional kitchen, specified in step 5(ii) is necessary to remedy the breach.
14. The use of the building would revert to single dwelling-house and the requirement to remove all but one bathroom is, in my opinion, a step too far. Saving the bathrooms from destruction would, nevertheless, achieve the purpose behind the notice. It

should be borne in mind also that the enforcement regime is not supposed to be punitive.

15. It is therefore reasonable to delete requirement 5(iii) as each additional bathroom could be utilised in association with the lawful use of the building. I am satisfied that no party will suffer any injustice from this variation. As I am varying the notice's terms, ground (f) succeeds to this extent.

Other matters

16. Arguments have been made that go towards planning merits as opposed to issues arising in the selected grounds of appeal. These are not pertinent to my assessment of this appeal.

Conclusions

17. For the reasons given above, and having regard to all other matters, I conclude that the appeal on grounds (e), (b) and (c) should not succeed. Ground (f) succeeds because I will vary the requirements prior to upholding the notice.

Formal decision

18. It is directed that the enforcement notice be varied by the following variations to section 5 what you are required to do:

(1) Delete all of the text in sub-section (i) and substitute by the following text:
Cease the use of the building as flats,

(2) Delete sub-section (iii) in its entirety.

For the avoidance of any doubt, the steps required to comply with the notice are now as follows:

Section 5 what you are required to do:

(1) Cease the use of the property as flats.

(2) Remove all but one of the kitchens and associated kitchen facilities from the property (i.e. including kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood. In addition to all to the above items all water and gas supply piping and all waste connections).

(3) Remove all resultant debris from the land.

19. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

A U Ghafoor

Inspector