
Appeal Decision

Site visit made on 26 July 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 24 August 2017

Appeal Ref: APP/Y5420/C/16/3166099

Land and Building(s) known as 39 Crowland Road, London N15 6UL

- 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 Yosef Lowen against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 21 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a single family dwelling house to five self contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as self-contained flats.
 2. Remove from the property all but one of the kitchens, doorbells and any internal dividing doorways and partitioning facilitating the use of the property as self contained flats.
 3. Remove from the property all but one supply of electricity, gas and water.
 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
 - The period for compliance with the requirements is 5 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

The allegation in the notice

2. The notice alleges a material change of use. For clarity the wording should recite "to use as five self-contained flats". I will correct the notice accordingly under s176(1)(a) of the 1990 Act.

The appeal on ground (b)

3. The issue under ground (b) is whether the breach of planning control alleged has occurred as a matter of fact. The burden of proof is on the appellant to show on the balance of probability that the change of use to use as five self-contained flats has not in fact occurred. I am unable to take into account the planning merits of the development on this ground.
 4. The appellant's case is that the property is a house in multiple occupation (HMO) which by definition excludes accommodation consisting of self-contained flats. Whether a unit of accommodation is a self-contained dwelling (which may include a flat) or a room within an HMO is a question of fact and degree.
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5. There is no relevant statutory definition of a dwellinghouse. In *Gravesham B.C. v Secretary of State for the Environment and Another (1984) 47 P. & C.R. 142* it was accepted that a distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. Whether a building is or is not a dwelling-house is a question of fact. The criteria include both the physical condition of the premises and the manner of the use. However the actual use of the building is not itself conclusive.
6. No 39 is a two-storey residential building. According to the appellant it was sub-divided in October 2013 and the following month each unit was separately registered for Council tax e.g. as "Flat 1 at 39 Crowland Road" and so on.
7. The units are accessed separately off common passages, landings and stairs that lead from the main front door of the property. The ground floor hallway contains separate electricity meters for each of the units. To the rear of the ground floor there is a small room intended for communal use with a door leading to the rear garden. There is an oven with 4 ring hobs, a sink, a microwave and a washing machine. A sign prohibits cooking facilities inside the other rooms. The room is extremely small and its layout is such that only one or possibly two persons could occupy it at a time without discomfort. The cupboard below the sink is empty apart from papers and grilles from the oven. There are no tables or chairs and virtually no area for food preparation due to the microwave placed on the small worktop space.
8. Four of the units comprise a room behind a lockable door, containing a living and sleeping area together with a kitchen area, and a separate room with a shower, sink and wc. The fifth unit is similar but it has a separate bedroom.
9. The kitchen areas in the units are fairly basic, however they include a worktop with sink, cupboards and a free standing fridge. There was clear evidence that crockery and utensils had been washed up in the sinks. From the photographs supplied, the kitchen areas contained portable electric hobs on which hot food could be prepared. These have now been removed. By taking this equipment out of the units the appellant argues that the units lack a crucial characteristic of a separate dwelling and are therefore not in use as such.
10. The appellant also considers that I should disregard the photographs as he gave no permission to access the premises so they are "inadmissible as a point of law". I disagree. Strict rules of evidence do not apply here and in any case there is no evidence that permission from the appellant was required or that entry was gained by any illegal or covert means.
11. The authenticity of the photographs is not in dispute, nor the dates on which they are said to have been taken which are 23 October 2014 and 11 June 2015. As they are relevant as to the likely state of the premises before the notice was issued I take them into account.
12. In his final comments the appellant states that the images he submitted are dated prior to the service of the notice, but unlike the Council's photographs, they are not annotated with any dates. A letter to the Council in November 2015 states that none of the five rooms is provided with cooking facilities, however I have not been provided with any evidence to support the assertion that the images in the appellant's statement pre-date the notice.

13. The appellant highlights guidance in Annex 2 to Circular 10/1997¹ in arguing that a dwellinghouse must contain “the normal facilities for cooking, eating and sleeping”. This publication was withdrawn on 7 March 2014 and replaced by Planning Practice Guidance which omits this advice. The further extract submitted which repeats this wording is found not in that circular but in separate guidance, Communities and Local Government Circular 08/2010². However this publication was also withdrawn on 7 March 2014. In my view the lack of current detailed guidance is consistent with what was said in *Gravesham* to the effect that a commonly used word can give rise to difficulties of interpretation, but there can be more difficulties where a fixed definition is attempted. As both circulars are cancelled I see no reason to take them into account.
14. The phrase “ability to afford” is apt in my view to include the inherent permanent characteristics of the building, for example kitchen and bathroom fixtures and fittings, as well as its ability to accommodate those facilities requisite for daily living that are not affixed to the premises, for example adequate space in which to place a bed for sleeping or a cooker for cooking. The extent to which actual equipment may be present and/or used at a given time is of course relevant but not necessarily decisive.
15. The use of portable cooking appliances is said to be a breach of the terms of the tenancy agreements. I note that in *Gravesham* the restriction on the use of the entire dwelling during winter months was ineffective to deprive it of its essential character. However it is a question of fact and degree. I saw that some rooms contained items such as sandwich grills and toasters and it seems that some minimal hot food preparation is tolerated. The kitchen facilities present, both fixed and moveable make a significant contribution to the overall assessment of whether the units afford the necessities of day-to-day living.
16. The existence and nature of communal facilities are also relevant but I am not persuaded here that the availability of a separately sited cooking facility and a washing machine has changed the character of the units themselves. To my mind a washing machine, although convenient is not essential in a dwelling.
17. The meter separation could possibly be a feature of an HMO as much as flats, so does not weigh against the appeal. However the separate Council tax banding and specific description of the units as “flats” carries some weight in my opinion as it suggests they have not been treated as an HMO. Although the regime is separate from planning, if the property were an HMO it would be unnecessary to make each occupant liable for the tax. The explanation as to why they are separately assessed is convoluted and unconvincing.
18. I have not taken into account what is said by the Council about housing benefit in relation to the units as it is too vague to be able to assess its relevance.
19. To summarise it is clear that each unit is clearly capable of being occupied entirely independently. There are purposely designed facilities for the storage, preparation and consumption of food, present in each unit. Overall I consider that, as a matter of fact and degree, the units each possess sufficient facilities for living, sleeping, eating and washing to be characteristic of what is required for day-to-day private domestic existence. Each unit is physically and

¹ Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements

² Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation

functionally separate. Consequently each unit is a self-contained flat and a dwellinghouse that meets the test in *Gravesham*.

20. An Article 4 direction made by the Council came into force on 30 November 2013, and from that date a change of use from a building used as a Class A3 dwellinghouse to use as a C4 HMO required an express grant of permission. The sub-division of the property may well have occurred shortly prior to that date, however that is irrelevant if, as I have found to be the case, the subdivision has been into self-contained flats.
21. To conclude therefore, on the balance of probability and as a matter of fact and degree the change of use of the appeal property to use as five self-contained flats has taken place as alleged in the notice. The appeal on ground (b) therefore fails.

The appeal on ground (c)

22. In an appeal on this ground the appellant has to demonstrate on the balance of probability that the matters alleged in the notice to have occurred do not constitute a breach of planning control.
23. Interior works to alter living arrangements in a house do not by themselves constitute development. Section 55 (3) of the 1990 Act however states that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used.
24. I have found that the change of use that has occurred is from a single dwelling to use as five self-contained flats. According to the legislation that is a material change of use. By s55(1) development includes the making of any material change in the use of any buildings and s57(1) states that planning permission is required for any development of land which includes a building. No such planning permission has been granted and s171A(1)(a) states that development without the required planning permission is a breach of planning control. I therefore conclude on the balance of probability that the notice correctly alleges a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (f)

25. The issue on ground (f) is whether the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Having regard to those purposes that should inform such steps, it is clear that the main purpose of the notice is to remedy the breach of planning control.
26. A lesser alternative requirement to what is set out in the notice is suggested, namely that the Council should have simply requested that all portable cooking facilities be removed from the property and maintained as such in perpetuity. Since it has been found that the presence of such a portable facility is not in this case crucial to whether the accommodation meets the requirements for a dwellinghouse, it cannot avail the appellant to advance this as a lesser step as it will not provide a complete remedy to the breach.

27. The requirements of the notice are necessary and sufficient to remedy the breach by returning the property to a condition that is apt for its use once more as a single dwelling. Therefore the appeal on ground (f) must fail.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal decision

29. It is directed that the allegation of the breach of planning control in the enforcement notice be corrected by deleting "to five self contained flats" and substituting "to use as five self-contained flats".
30. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR