



Appeal Decision

Site visit made on 20 January 2020

by Thomas Shields MA DipURP MRTPI

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

Decision date: 23 January 2020

Appeal Ref: APP/Q0505/C/19/3231893

Address 34 Kelvin Close, Cambridge, CB1 8DN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by professor Ali Kamali against an enforcement notice issued by the Cambridge City Council.
 - The enforcement notice was issued on 28 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a single residential dwelling house into two separate units of self-contained accommodation at the Land.
 - The requirements of the notice are:
 - (i) Permanently cease the use of the ground floor extension to the side and rear of existing dwelling as a separate unit of accommodation.
 - (ii) Remove all cooking and kitchen facilities from the ground floor extension to the side and rear of existing dwelling.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Act.
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Decision

1. It is directed that the notice be corrected by:
 - in Section 4(i) by deleting the words "ten years (Section 171B(3))" and substituting instead the words "four years."
2. The appeal succeeds in part on ground (f) only. As such, it is directed that the notice be varied by:
 - deleting all of the words in Section 5(ii) and substituting instead the words "Permanently remove all facilities for cooking, including electric hob and microwave oven, from the ground floor side extension".
3. Subject to the correction and variation the appeal is dismissed and the enforcement notice is upheld.

The Enforcement Notice

4. The alleged breach of planning control is a material change of use of a single residential dwelling house into two separate units of self-contained accommodation, and within the last ten years. However, the relevant period of time in which the Council could take enforcement action is four years from when the breach commenced (s.171B(2) of the Act). However, the submitted evidence does not indicate to me that an appeal on ground (d) would have succeeded and the appellant confirmed that he did not wish to pursue such an appeal. Consequently, there would be no prejudice to either party by my

correcting the notice so that it refers to four years. I have therefore done so using powers available to me under s176(1)(a) of the Act.

Grounds of appeal

5. The appeal was lodged on ground (c) (and not ground (b)). An appeal on ground (b) is a claim that the matters stated in the notice *which may give rise* to the breach of planning control did not occur as a matter of fact, whereas an appeal on ground (c) is a claim that those matters, if they occurred, do not constitute a breach of planning control. Part of the appellant's case is that the use as two units of self-contained accommodation has simply not occurred, and hence his case also properly falls to be considered under ground (b).
6. The Council would not be prejudiced by my including ground (b) since their submitted evidence on ground (c) equally seeks to demonstrate that the change of use occurred as a matter of fact. I will therefore also take account of ground (b). There is considerable overlap of the parties' evidence and factors in respect of these grounds of appeal and so I will deal with them both together.

Appeal on grounds (b) and (c)

7. The appeal building is a two storey semi-detached dwellinghouse. In 2013 planning permission was granted for a single storey side and rear extension, which the parties refer to as an annex. For clarity I shall do the same. The approved plans show the annex to contain a bedroom, utility room and bathroom, and with two forms of access. The first access is shown as internal from within the main house, by way of an internal door and opening in the original side wall of the house. The second access is externally, from a door in the side elevation of the annex. This layout was essentially the same as I saw during my visit to the appeal site.
8. The Courts have held that the burden of proof in these legal grounds of appeal falls to the appellant, and the test of the evidence is on the balance of probability. He must therefore demonstrate that prior to the issue date of the notice (28 May 2019) use as two self-contained units of accommodation had not occurred, or, if it occurred, that it does not constitute a breach of planning control.
9. There is no definition of 'dwellinghouse' in the Act. However, a self-contained unit of accommodation which provides the occupier/s who use it with the facilities required for *day-to-day private domestic existence* was held by the Court in *Gravesham*¹ to be the distinctive characteristic of a dwellinghouse. The appellant's reference to guidance on "self-containment"² is not inconsistent with *Gravesham*.
10. It is clear from all the evidence before me that the annex contained such facilities at the time of the Council's inspection in October 2018, having its own sleeping, cooking, washing and toilet facilities. During my visit to the appeal property I noted that the lock keyhole to the internal door from the main house

¹ *Gravesham BC v SSE and O'Brien*, [1983] JPL 306

² Housing Statistics and English Housing Survey: "...a dwelling is defined (in line with the 2001 Census definition) as a self-contained unit of accommodation. Self-containment is where all the rooms (including kitchen, bathroom and toilet) in a household's accommodation are behind a single door which only that household can use. Non-self-contained household spaces at the same address should be counted together as a single dwelling. Therefore a dwelling can consist of one self-contained household space or two or more non-self-contained household spaces at the same address".

had been covered with an overlaying plate, and the cooking facilities previously present (electric hob fitted into a base unit and a microwave oven) had been removed from the annex. However, their removal in part-compliance with the enforcement notice requirements does not affect my consideration of the appeal under grounds (b) and (c).

11. Notwithstanding that the annex contained living facilities, such that it might comprise a dwellinghouse consistent with *Gravesham*, the key issue is whether the annex was *used* in such a way as to form as a separate dwellinghouse.
12. In summary, the appellant states that following completion of the extension in 2014 the whole of the property was occupied as a single dwellinghouse by his family and himself. Then from 2016 it was let to tenants and occupied as a (whole) single dwellinghouse. He states that from 10 August 2018, he "*rented out the bedroom in the annex as well as a shower room/toilet*" to an additional occupier. His response³ to the Council's PCN⁴ confirms that the annex had been advertised through the University of Cambridge Accommodation website. He states⁵ that the occupier of the annex and the occupiers of the main house shared all external areas including use of outbuildings, and each had keys to lock/unlock the internal linking door from either side so that access to the boiler and meters in the annex was available to all occupiers.
13. However, although the front garden, side access, and rear garden including outbuildings, was shared by all occupiers, that is no different a situation to a block of flats (each one being a separate dwellinghouse) where occupiers share communal areas. Thus, sharing of the external areas does not demonstrate that the annex *itself* was not used as a separate self-contained unit of accommodation. Neither, by itself, does the sharing of utility services and method by which payment for them is made. Also, although the gas/electricity meters and boiler were potentially accessible to occupiers of the main house by unlocking the internal door, there is no detailed or direct recorded evidence to demonstrate particular dates when the meters and boiler were so accessed. Even allowing for such access, it is far more significant that there is no evidence which demonstrates that within the entire property some or all of the rooms for cooking, washing and toilet facilities (to enable private domestic existence) were shared by all property occupiers. In this regard the Council's evidence and photographs of their inspection in October 2018 provides evidence to the contrary.
14. The Council's evidence from their inspection and photographs is that the internal door between the annex and main house was lockable, and was also blocked on the annex side by a fridge and microwave oven on top. Also, the occupier at that time stated that she occupied the annex while a separate family occupied the rest of the house, that she did not use the rest of the premises beyond the internal door, and her access into and out of the annex was via the external side door. Further factors which indicate separate living are the dual existence of two unrelated households (the tenant occupying the annex, and the family occupying the main house) and the presence of a separate post-box at the front of the house marked "34 The Annex".

³ Dated 6 October 2018

⁴ Planning Contravention Notice, 25 September 2018

⁵ Appellant's Final Comments on Council's statement of case

15. Taking account of all the evidence before me, and on the balance of probability, I am not convinced that there was any sharing of the living facilities in the annex by occupiers of the main house or, conversely, sharing of the facilities in the main house by the occupier of the annex. Access by the occupier of the main house to the meters and boiler in the annex does not persuade me otherwise.
16. Given these factors I conclude on the balance of probability, and as a matter of fact and degree, that the annex was used as a separate unit of self-contained accommodation (a dwellinghouse) and therefore the use as alleged occurred as a matter of fact. Consequently, the appeal on ground (b) must fail.
17. Use of the property as two separate self-contained units of accommodation, following *Gravesham*, resulted in the formation of two separate dwellinghouses. In this regard s55(3)(a) of the Act states:

"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".
18. Therefore, the change of use amounted to a *material change of use* and comprised "development" as defined by s55 of the Act. It thereby required planning permission. Since no planning permission had been granted, it constituted a breach of planning control. Therefore, the appeal on ground (c), that there has not been a breach of planning control, also fails.

The appeal on ground (f)

19. Section 173 of the Act specifies two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
20. In this case the notice (as drafted by the Council) requires the use of the annex as a separate unit of accommodation to cease, and removal of all cooking and kitchen facilities from the ground floor extension to the side and rear of existing dwelling. It is clear therefore that the purpose of the notice falls within s173(4)(a) – to remedy the breach of planning control.
21. The Council has since clarified that the requirement at Section 5(ii) was not intended to seek removal of both kitchen facilities in the whole property. Indeed, I find such a requirement would be excessive in achieving the purpose of the notice.
22. In my view, a less onerous and disruptive action which would fully prevent self-contained living would be to permanently require removal of all cooking facilities (including electric hob and microwave oven) from the annex.
23. The appeal on ground (f) therefore succeeds to this limited extent and I have varied the notice at Section 5(ii) accordingly.

Thomas Shields

INSPECTOR

