

Appeal Decision

Site visit made on 26 February 2020

by John Whalley

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

Decision date: 5th March 2020

**Appeal refs: APP/D5120/C/19/3240455; APP/D5120/C/19/3240456
147 Hurst Road, Sidcup DA15 9AH**

- The appeals are made by Mrs Lisa Wright, (Ref: APP/D5120/C/19/3240455), and Mr Dean Wright, (Ref: APP/D5120/C/19/3240456), under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Bexley Council.
- The notice was issued on 15 January 2019; reference No. 18/00136/ENF.
- The breach of planning control was: Without planning permission, there has been a material change of use of the property shown outlined in red on the plan attached to the notice to use as two self-contained units of accommodation.
- The requirements of the notice are:
 1. Cease the use of the building shown in the approximate location outlined in red on the plan attached to the notice as two self-contained units of accommodation.
 2. Remove all kitchen appliances, covers, and sinks from the self-contained unit of accommodation shown in the approximate location outlined in blue on the plan attached to the notice.
 3. Re-instate an internal doorway shown marked 'A' on the plan attached to the notice titled Plan 2.
 4. Remove the door from the ground floor front elevation of the property shown in the approximate location marked 'B' on the plan attached to the notice titled plan 2.
- The period for compliance with the requirements is 6 (six) months.
- The appeals were made on ground (c) as set out in the amended Act.

Summary of decision: The enforcement notice is varied and upheld

Appeal property

1. The appeal property, No. 147 Hurst Road, Sidcup, is a semi-detached house with a flat roofed 2 storey side and rear extension. There is also a small single storey extension to the side of the large extension.
2. The house has been divided into 2 self-contained flats by physical internal separation, such that one unit occupies the front and rear south-western part of the building; the other unit occupying the rearwards north-eastern corner. The front door to the larger, front part of the original house is set back, at the side of the 2 storey extension. There is another front door to the separate, rear part, in the small side extension facing the road.

The appeals on ground (c)

3. An appeal on ground (c) asserts there has not been a breach of planning control. The Appellants said they were not appealing against the alleged use of No. 147 Hurst Road as 2 separate dwellings. They had no intention of breaching any planning permission granted. Their case was that requirements 2, 3 and 4 of the notice were excessive or inappropriate. Such matters are more applicable to appeals on ground (f). The division of a single dwellinghouse into 2 separate units of accommodation amounts to a material change of use of the property. That change of use requires planning permission, (section 55(3)(a) of the Act). The appeals on ground (c) fail.

The implied ground (f) appeals

4. An appeal on ground (f) says the requirements of an enforcement notice are too onerous and that something less would be appropriate. That is, in effect, what the Appellants were saying in their ground (c) appeals.

Requirement 1.

5. The notice's first requirement is that the use of No. 147 Hurst Road as two self-contained units of accommodation should cease. As in para. 3 above, the Appellants said they were not appealing against a cessation of the use of the house as 2 separate dwellings. No case was made for that use. Requirement 1 is apt and reasonable.

Requirements 2, 3 and 4

6. Requirements 2, 3 and 4 require physical alterations of the property. The Council correctly pointed out that in respect of any works that facilitated or supported an unlawful use, even where those works were operational development which may not themselves have required planning permission, an enforcement notice can require the removal of those works. The case of *Somak Travel v SSE and LB Brent* [1987] JPL 630 is authority for that position; also see *Hereford CC v SSE & Davies* [1994] JPL 448 where it was decided that an enforcement notice could require the removal of internal works from a house used for bedsits. It was for the Inspector determining an appeal to decide whether such requirements were appropriate.

Requirement 2.

7. Mr and Mrs Wright said they did not understand why they were not allowed to have further kitchen facilities within what they described as the side extension; (Requirement 2 - Remove all kitchen appliances, covers, and sinks from the self-contained unit of accommodation).
8. In my view, requirement 2 is not necessary. If part of the house were to be used by a member of the family but who wished to retain a degree of independence, it would not be unreasonable for them to enjoy use of separate facilities, such as an additional bathroom, or separate cooking facilities. Especially as requirement 2 does not require the permanent removal of the extra kitchen facilities, I delete requirement 2.

Requirement 3.

9. Requirement 3, the installation of a doorway in the dividing partition between the 2 parts of the house, is necessary to ensure that the house physically

reverts to one residential unit. Requirement 3 is appropriate and proportionate. It is not deleted.

Requirement 4

10. Requirement 4, removal of the second front door to the road fronting façade of the house, would help to ensure that No. 147 reverts to a single unit. The Appellants, however, pointed to a planning permission, (*ref: 15/01584/FUL for a single storey side and rear extension, 7 September 2015*), which showed a double door French window in the single storey side extension facing the road. But what has been provided is a single part glazed door that has the appearance of another front door to a separate unit of accommodation. I consider it reasonable to retain requirement 4 to ensure that perception is removed. A reversion to the layout permitted by the September 2015 permission may be capable of implementation.
11. Appeals on ground (f) would have succeeded to the extent that requirement 2 is deleted. Otherwise, the appeals fail and the enforcement notice is upheld.

FORMAL DECISION

12. The enforcement notice is varied by the deletion of para. 5. 2. on page 2 of the notice – that is the deletion of the words: *"2. Remove all kitchen appliances, covers, and sinks from the self-contained unit of accommodation shown in the approximate location outlined in blue on the plan attached to the notice."*. Requirement 3 in para. 5. on page 2 of the notice is renumbered "2.". Requirement 4 in para. 5. on page 2 of the notice is renumbered "3.". Subject to that, the varied enforcement notice is upheld.

John Whalley

INSPECTOR