



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 29 May 2020

Appeal Ref: APP/A5270/C/19/3241278

21 Lowfield Road, Acton, London W3 0AZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Miss Anastasia Kim against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 16 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the side annexe to use as a separate self-contained residential dwelling.
 - The requirements of the notice are:
 - A. Cease the use of the side annexe as a separate self-contained residential dwelling;
 - B. Remove the kitchen and drainage connections from the side annexe;
 - C. Remove the internal partitions and fixtures and fittings that facilitate the unauthorised material change of use of the side annexe as a self-contained residential dwelling; and
 - D. Remove all resultant debris from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

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

Application for costs

2. An application for costs was made by the Council of the London Borough of Ealing against Miss Anastasia Kim. This application is the subject of a separate Decision.

Preliminary Matters

3. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. I have also had regard to a 'video walk through' of the premises provided by the appellant. The main parties have agreed to the appeal proceeding on this basis. The appellant points out that, had I undertaken a site visit, I would have seen a 'smart lock' system, which enables the occupants of the annexe to access the main property and its facilities at any time. This point is not in dispute and I have taken it as fact.

4. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on 'legal' grounds of appeal is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
5. The appellant states that the annexe has always had kitchen and drainage connections and so the requirement to remove these is onerous. Section 173(5) of the 1990 Act as amended gives power to require the alteration or removal of buildings or works, or the carrying out of building operations, for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development. In this case, the kitchenette and the associated drainage connections within the annexe enable it to function as a self-contained residential dwelling and, therefore, they facilitate the unauthorised use. Hence, it is not onerous to require the removal of the kitchen and drainage facilities.

Reasons

6. In considering this ground of appeal it is necessary for me to determine whether or not the matters alleged factually occurred at the date of the notice.
7. The appeal relates to a semi-detached bungalow, which has a single-storey structure at its detached side (the annexe). I understand that the property has been refurbished to a high standard, and the accommodation comprises six bedrooms within the main house and a further double bedroom within the annexe. Also, within the annexe, there is an ensuite shower room and a living area with a kitchenette.
8. The focus of the appellant's argument is that the alleged material change of use has not occurred because the property at 21 Lowfield Road, including the annexe, is in use as a large house of multiple occupation. It is contended that the annexe is used in connection with the main property, as opposed to being used as a self-contained dwelling. The appellant explains that, although the annexe is not linked internally to the main house, there are shared facilities – a washing machine/dryer, extended kitchen/communal space and a rear garden of which the occupants of the annexe have full and free use.
9. A Statutory Declaration has been submitted by the tenants of the annexe confirming their regular use of the washing machine, drying facilities and the rear garden. A further Statutory Declaration by the appellant confirms the use of the shared facilities by the tenants of the annexe. These documents carry significant weight as sworn evidence under the Statutory Declaration Act 1835.
10. There is no definition of "dwellinghouse" in the 1990 Act as amended, but in *Gravesham*¹, it was accepted that the 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.

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

11. The annexe has independent access and is not linked internally to the main property. It has its own separate living and sleeping accommodation, and contains toilet, washing and cooking facilities including a hob and oven, and a small fridge. Therefore, it contains all the facilities required for day-to-day private domestic existence. Although the tenants may choose to use the facilities in the main house, it is not necessary for them to do so.
12. The appellant accepts *Gravesham* as the leading authority but indicates the ruling is out-of-date because it fails to take account of modern expectations. Nonetheless, the access to the laundry facilities, a garden or larger kitchen is not a prerequisite under the established tests set out in *Gravesham*, although they improve the standard of accommodation and may make the development more acceptable in planning terms. However, there is no ground (a) appeal, and associated deemed planning application, so the planning merits of the development are not before me.
13. I understand that the annexe and main house share the same meters, however, this does not show it is part of a large house in multiple occupation. As explained, the crucial test is whether the annexe provides the facilities required for day-to-day private domestic existence, which it does.
14. Consequently, on the balance of probability, the matters alleged factually occurred at the date of the notice. Therefore, the appeal on ground (b) must fail.

Conclusion

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

Debbie Moore

Inspector