



Appeal Decision

Site visit made on 28 July 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25TH AUGUST 2020

Appeal Ref: APP/U5930/C/20/3248528

1 Palamos Road, London E10 7JF

- 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 Irfaan Chariwala against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice, numbered 085947, was issued on 10 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land (outlined by the red dotted line in attached Plan A) from a single dwellinghouse to two separate self-contained dwellings, by materially changing the use of the side extension (outlined by the yellow dotted line in attached Plan A) to a separate self-contained dwelling.
- The requirements of the notice are:
 - 1) Cease the use of the land as two separate dwellings;
 - 2) Cease the use of the self-contained unit in the side extension for separate residential use;
 - 3) Remove from the self-contained unit in the side extension any cooking and food storage equipment and all associated drainage connections which facilitate the use of the side extension for separate residential use;
 - 4) Remove from the self-contained unit in the side extension the toilet/shower/washbasin and all associated drainage connections which facilitate the use of the side extension for separate residential use;
 - 5) Remove all additional boilers from the Land which facilitate the unauthorised use of the side extension as a self-contained dwelling;
 - 6) Remove all additional energy meters from the Land which facilitate the unauthorised use of the side extension as a self-contained dwelling;
 - 7) Remove all internal partitions and divisions which facilitate the use of the side extension as a separate self-contained dwelling, which include the partitions around the shower area in the self-contained unit; and
 - 8) Remove from the Land all resultant debris.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in sections 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part on ground (f) and the enforcement notice is upheld with the corrections and variations set out below in the Formal Decision.

Preliminary matter

1. The appeal was made on ground (f) only. However, the appellant does not consider that the use of the extension amounts to the creation of an additional dwellinghouse. Although ground (b) had not been selected on the appeal form, I consider the argument is that the alleged breach had not in fact occurred. The appellant and the Council were offered an opportunity to comment on this hidden ground of appeal. The appellant confirmed my approach and the Council made representations. Injustice would not be caused as the appeal parties

have had an opportunity to provide additional evidence. I will proceed on this basis.

2. The breach of planning control alleged to have occurred as set out in the notice, while being correct, can be simplified to "a material change of use from one self-contained dwellinghouse to two self-contained dwellinghouses". My variation of the notice in this regard would not cause injustice to the appellant or the Council.

Ground (b)

3. Article 3(1) of the Use Classes Order¹ (the UCO) states that "where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or other land for any other purpose of the same class shall not be taken to involve development of the land". The exception to this is where an additional dwellinghouse would be created; section 55(3)(a) of the Act² confirms that "the use as two or more separate dwellinghouses 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".
4. To succeed on ground (b) the appellant must show, on the balance of probability, that the use of the building identified in the notice has not changed from a single dwellinghouse to two separate dwellinghouses.
5. The appellant claims that, since purchasing the property, the extension has been used by his father as a bedroom and bathroom facility, when he came to stay during a period of ill-health. The extension has however generally been used for storage purposes. The evidence shows that this type of use of the extension was ancillary to the occupation of the property as a single dwellinghouse.
6. The appellant further advises that he undertook no works to facilitate the residential occupation of the extension. He has taken no payment and there is no legal or other form of contract relating to the occupant's stay.
7. The Council's justification for the notice is based upon the side extension containing all the necessary facilities to be occupied as a separate dwelling and there being no internal means of access between the extension and the dwelling.
8. While there is no statutory definition of "dwellinghouse", in *Gravesham*³ the Court accepted that whether a building was or was not a dwellinghouse was a matter of fact. The distinctive characteristics of a dwellinghouse was its ability to afford to those who used it, the facilities required for day-to-day domestic existence. In this instance, the extension contains a toilet and shower room and I saw that the remaining floor area is occupied by a bed, a cupboard that has the appearance of a kitchen double base unit and a fridge. A microwave and worktop oven occupied the top of the cupboard. Notwithstanding the rudimentary nature of the cooking facilities, the extension has all the facilities required to provide for the occupant's day-to-day domestic existence.

¹ Town and Country Planning (Use Classes) Order 1987 as amended

² Town and Country Planning Act 1990 as amended

³ *Gravesham BC v Secretary of State for the Environment* [1982] 47 P.&C.R.142

9. The appellant advises that he has allowed the extension to be occupied by a friend's estranged wife (the occupant), as a favour. This occupation was intended to be for a short period of time while the occupant found alternative housing. Since taking up residence the occupant has had recurring health problems, which have resulted in hospitalisation on more than one occasion. The Council's Housing Department is in the process of finding the occupier a permanent home, elsewhere. While the personal circumstances of the occupant are unfortunate, they do not change the relevant facts of this case.
10. I find that, based on the evidence before me, that the extension forms a dwellinghouse for planning purposes and it has been occupied as a separate dwellinghouse during the period leading up to the issuing of the notice. The matter alleged in the corrected notice, a material change of use from one dwellinghouse to two dwellinghouses, has in fact occurred.
11. For the reasons given above, the appeal on ground (b) fails.

Ground (f)

12. Having regard to the requirements of the notice, its purpose is to remedy the breach of planning control arising from the material change of use from one dwellinghouse to two dwellinghouses. To succeed on ground (f), the appellant must show that the requirements of the notice exceed what is necessary to remedy the breach.
13. Section 174(4) of the Act confirms that, amongst other things, the notice can only seek to restore the land to its condition before the breach took place. That can only be achieved by ceasing the unauthorised use and this requirement is not excessive. That said, however, requirements 5(4) and 5(7) seek the removal of the toilet/shower/washbasin, associated drainage and all internal partitions and divisions, including those around the shower area. The appellant argues that the toilet and shower room existed prior to his purchase of the property.
14. The appellant has provided a copy of the sales brochure, prepared prior to his purchase of the property. This shows on the floor plan that a toilet and shower room existed within the extension at that time. The brochure also contains photographs of the various bathrooms and shower rooms within the property and the one within the extension can be identified. Based on this evidence, the toilet and shower room existed prior to the breach of planning control. To require its removal would be excessive. I find that Paragraphs 5(4) and 5(7) should be deleted as they go beyond what can legally be required within the notice and, as such, no injustice would be caused.
15. Requirement 3 of the notice refers to the removal of cooking and refrigeration equipment from the self-contained unit as well as "all associated drainage connections". Cooking and refrigeration equipment are unlikely to have associated drainage connections, and this appears to be a typographical error. The correction of the notice by the deletion of these words would cause no injustice.
16. Accordingly, the appeal on ground (f) succeeds in so far as the notice is varied.

Overall Conclusions

17. For the reasons given above I conclude that the appeal on ground (b) fails but the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Formal Decision

18. It is direct that the Enforcement Notice is corrected by the deletion of the words "*the material change of use of the Land (outlined by the red dotted line in attached Plan A) from a single dwellinghouse to two separate self-contained dwellings, by materially changing the use of the side extension (outlined by the yellow dotted line in attached Plan A) to a separate self-contained dwelling*" and the substitution of the following words "*a material change of use from one self-contained dwellinghouse to two self-contained dwellinghouses*" in paragraph 3, the matters which appear to constitute the breach of planning control.
19. It is directed that the Enforcement Notice is varied by the deletion of (i) the words "*and all associated drainage connections*" in paragraph 5, what you are required to do, sub-section(3); and (ii) the deletion of all the words in paragraph 5, sub-sections (4) and (7).

For the avoidance of doubt, the requirements are now as follows:

- 1) *Cease the use of the land as two separate dwellings;*
 - 2) *Cease the use of the self-contained unit in the side extension for separate residential use;*
 - 3) *Remove from the self-contained unit in the side extension any cooking and food storage equipment which facilitate the use of the side extension for separate residential use;*
 - 4) *Remove all additional boilers from the Land which facilitate the unauthorised use of the side extension as a self-contained dwelling;*
 - 5) *Remove all additional energy meters from the Land which facilitate the unauthorised use of the side extension as a self-contained dwelling; and*
 - 6) *Remove from the Land all resultant debris.*
20. Subject to these corrections and variations the appeal is dismissed, and the enforcement notice is upheld.

M Madge

INSPECTOR