
Appeal Decision

Site visit made on 7 July 2020

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 28 August 2020

Appeal Ref: APP/N5090/C/19/3241376

8 Orchard Crescent, Edgware HA8 9PW

- 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 Mrs Anna Etingen against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 14 October 2019.
 - The breach of planning control as alleged in the notice is the sub-division of the property into three dwellings comprising one self-contained flat to ground floor rear (edged red in the attached plan); one self-contained flat in the side extension (edged yellow); and a house in multiple occupation (Use Class C4) formed of the remainder of the property.
 - The requirements of the notice are 1. Cease the use of the side extension and the rear rooms as self-contained flats; 2. Cease the use of the property as a house in multiple occupation; 3. Permanently remove from the property all but one kitchen. The works to include the removal of kitchen units, sinks, cookers and food preparation areas from all but one room of the house; 4. Permanently remove from the property all but two bathrooms; 5. Restore the property to the state in which it was prior to the breach by removing any partition walls or entrance that creates self-containment; and 6. Permanently remove all constituent materials resulting from the works required above from the property.
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons

The ground (b) appeal

2. 8 Orchard Crescent was, originally, a two storey semi-detached dwelling. A side two-storey extension has been added to the building which the Appellant maintains is now in use as a House in Multiple Occupation (HMO). At first floor level the property has three en-suite bed-sits, one with two bedrooms and two with one bedroom, and there is a single en-suite bedsit in a converted attic space. There is, at ground floor level, residential accommodation that comprises an internal kitchen/dining space off which there is an internal shower room and two rooms with windows, a bedroom and a living room. There is a door off the ground floor hallway into this accommodation which is referred to in the alleged breach of planning control as 'one self-contained flat to ground floor rear'.

3. The residential accommodation at ground floor level contains all that is necessary for independent living and there is no doubt that it is in use as a self-contained flat. At ground floor level, other than this flat, there are two rooms both of which are fitted out as kitchen/dining rooms. The Council maintains, in the breach of planning control, that one of these rooms, the ground floor of the extension to the original dwelling, is also a self-contained flat. But there is no evidence to indicate that this room has ever been anything other than a kitchen/dining room providing necessary cooking and eating space for the HMO rooms at upper floor levels.

4. The Council has not submitted an appeal statement and has not therefore addressed the Appellant's contention that the breach of planning control has not occurred. There is not, as a matter of fact, a self-contained flat in the side extension and the appeal property has not been sub-divided into three dwellings. Variation of the breach of planning control would fundamentally change the allegation and would thus cause injustice to the Appellant. The ground (b) appeal succeeds and the enforcement notice has been quashed.

John Braithwaite

Inspector