



Appeal Decisions

Site visit made on 25 August 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2020

Appeal A Ref: APP/R5510/C/19/3239788

Appeal B Ref: APP/R5510/C/19/3239789

Land at 37 St Anselms Road, Hayes, Middlesex UB3 1SD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Tajinder Bath (Appeal A), Mr Baldev Bath (Appeal B) both against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 10 October 2019.
 - The breach of planning control as alleged in the notice is:
The unauthorised conversion and material change of use of the dwelling house into two separate self-contained residential units without the benefit of planning permission.
 - The requirements of the notice are:
 - (i) *Cease the use of the dwellinghouse as two separate self-contained residential units.*
 - (ii) *Remove all but one kitchen from the dwelling house to include oven, hob, extractor unit, sink, work surfaces, kitchen style cupboards, hot and cold water supply and foul waste drainage pipework.*
 - (iii) *Remove all the internal partitions and lockable doors dividing the dwelling house into two separate self-contained residential units to allow free internal passage to all areas.*
 - (iv) *Remove from the land all debris, items, appliances, fixtures and fittings, building materials, plant and machinery resulting from compliance with points (ii) to (iii) above.*
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Reasons

Appeals on ground (b) – that the matters stated in the notice have not occurred

2. An appeal on this ground places the onus of proof on the appellants, which is to be determined on the balance of probabilities. The appellants have explained that a second kitchen on the first floor was installed shortly after they bought the property, some 20 years ago, in order to cater for the different religious dietary requirements of a family member, whose bedroom was on the ground floor. That, in itself, does not amount to a material change of use of the dwelling house into two separate self-contained residential units. Such a use would clearly be incidental to the use as a single dwellinghouse.

3. However, the Council's evidence shows that a request was made to register the first floor flat as a separate unit for Council Tax purposes in November 2017, and that an inspection took place in 2019, which found that the premises were occupied by two separate households. At that time, the Council says that the ground floor flat contained two bedrooms, a kitchen/dining room, a living room and a bathroom with direct access to the rear garden and an outbuilding, whilst the first floor flat contained one bedroom, a kitchen, living room and bathroom.
4. On my site visit, I noted that the accommodations on each of the floors are separated from each other and contain all the facilities needed for independent use as two dwellings, including locked doors. I am satisfied that as a matter of fact, the property is used as two separate self-contained residential units, and that the matters stated in the notice have occurred. The appeals on ground (b) therefore fail.

Appeals on ground (d) – that, at the date when the notice was issued, no enforcement action could be taken

5. Again, the onus of proof on this ground lies with the appellants, with the test being on the balance of probabilities. Section 171B(2) of the Act says that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
6. The appellants have explained that the first floor kitchen was installed to cater for grandparents who lived with the family, and occupied a ground floor bedroom. This indicates to me that, at that time, the property was in use as a single family dwelling.
7. The appellants have provided me with a statement from a former tenant who confirms that there was a second kitchen and partitions when she lived there in 2015. The appellants themselves say that she occupied only a single bedroom, so this does not show that the property was in two flats.
8. A copy of a tenancy agreement for the period 1 October 2017 to 30 September 2019 has also been provided, but this indicates the tenancy covers 37 St Anselms Road, and there is no mention of flats or that the tenancy relates only to the ground or first floor. Accordingly, this provides no support for the ground of appeal. I have also been provided with an email from a former tenant who says that he lived at 37 Anselm Road from 2012 to 2015, and that there were partitions and a kitchen on the first floor, but again, there is no evidence concerning the use as two separate dwellings.
9. Accordingly, on the balance of probabilities, I find that the time for taking enforcement action had not expired on the date of issuing the notice, and conclude that the appeals on ground (d) fail.

Conclusion

10. For the reasons given above, I conclude that the appeals should be dismissed and that the enforcement notice should be upheld.

JP Roberts

INSPECTOR