



Appeal Decision

Hearing Held on 9 October 2020

Site visit made on 9 October 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2020

Appeal A) Ref: APP/N5090/C/19/3220504 & 3220505 Land at 14 Uphill Drive, London NW7 4RR

- 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 Act).
 - The appeals are made by Mr Stewart Kerry and Ms Sarah Kerry-Hurn against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 17 December 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the subdivision of the property into 3 self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as self-contained flats;
 2. Amend the property to the approved layout shown in plan No's.
A-(11)011 (dated 06-01-2016),
A-(11)-014 (dated 06-01-2016) and
A-(11)-017 (dated 06-01-2016)
from planning application 16/7759/HSE including but not limited to:
removal of all but three bathrooms as shown on the "proposed" first floor plan (ref. A-(11)-014) and all but one kitchen which is shown on the "proposed" ground floor plan (ref. A-(11)-011);
 3. Permanently remove all constituent materials resulting from the works in 1. and 2. above from the property
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 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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Appeal B) Ref: APP/N5090/X/19/3222313 14 Uphill Drive, Mill Hill, London NW7 4RR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Stewart Kerry against the decision of the Council of the London Borough of Barnet.
 - The application Ref 18/6080/191, dated 11 October 2018, was refused by notice dated 12 November 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is described as "Use of 14 Uphill Drive as a single dwelling house occupied by an extended single family household, notwithstanding internal alterations not defined as development."
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Appeal A) Decision

1. It is directed that the enforcement notice is corrected by deletion of the 2nd requirement at section 5 and its substitution with the following:-

“2. remove 2 of the existing kitchens and therefore retain only 1 kitchen”.

Subject to the correction, the appeals are allowed and the enforcement notice is quashed.

Appeal B) Decision

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

The enforcement notice – wording and procedural issues

3. The Council confirms that the purpose of the notice, with respect to S173(4) of the act, is to remedy the breach of planning control. The first requirement at section (5)(1) of the notice to cease the use of the property as self-contained flats, would achieve that. However, the Council considers that some of the internal works have enabled the alleged use to take place such as the installation of kitchens and bathrooms. At the hearing I raised concerns that I have with the second requirement as it is worded imprecisely. Use of the term “including but not limited to” suggests there is something else to do which is unspecified. The ‘something else’ may possibly be what is shown on referenced plans. However, although the plans were provided to me, they are not part of the notice. Due to these imprecise terms and reliance on plans which are not part of the notice, the notice does not tell the recipient on its face, what they must do. It was also pointed out by the appellants that the referenced plans do not accurately represent the layout of the dwelling even if bathrooms and kitchens were to be removed. Fundamentally however, the appellants have understood what the Council is trying to achieve.
4. The Council acknowledged at the hearing that they would not be concerned about all of the bathrooms being retained as long as only 1 kitchen remained which in their view would then prevent use as 3 flats. The appellants also confirmed that correcting the notice to that effect would not cause injustice. I will therefore correct the notice to that effect prior to considering the grounds of appeal. I consider that I can do so using my powers under S176(1)(a) without causing injustice to either main party.
5. There was no dispute about the factual occupation of the property or the internal works that have been undertaken. The dispute relates mainly to whether those matters have involved a material change in the use of the building requiring planning permission, which falls within the remit of ground ‘c’. The appellants take exception to the word “subdivision” however within the description of the alleged breach. The degree of subdivision is a part of the mix of factors related to whether there has been a breach of planning control.
6. The matters raised by the appellants with respect to ground ‘b’, would be more appropriately dealt with under the appeal on ground ‘c’ (as well as the appeal relating to the LDC). I will therefore consider the appeal on that basis.

The Appeals on ground (c) and against refusal of the LDC

7. The appeal against the notice in ground 'c' and with respect to the LDC is that what is alleged does not constitute a breach of planning control. The main issue is whether there has been a material change in the use of the building to 3 separate, self-contained flats.
8. Number 14 Uphill Drive is a large building in a busy part of north-west London within a mainly residential area. The area contains other similarly large buildings and my attention has been brought to a number of these that contain several flats, including the adjoining property. There is no dispute that No 14 was erected as a single dwelling house and that a number of alterations have been made to it over the years. The building is also within a spacious plot similar to other nearby properties with large rear and front gardens, including a hard-surfaced parking area at the front.
9. Originally the dwelling, I am told, was a 5 bedroom property although prior to the most recent alterations, it had only 4 double-bedrooms, 2 bathrooms and was occupied by 6 people. Over 3 floors, it presently has 7 bedrooms, a kitchen on each floor as well as multiple bathrooms. Each floor has bathroom facilities not connected to bedrooms. The building is occupied by 7 people.
10. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes. The concept of physical and functional separation is a very significant factor. The Council consider that the single dwellinghouse has been split into three flats and therefore three separate planning units. The appellants maintain that it is still a single planning unit used as a single dwellinghouse.
11. For the allegation to be correct, there would need to be 3 separate units of occupation and hence 3 separate planning units. When considering physical separation, the layout of the property including any impediments to the free flow of occupants between different parts of the dwelling is necessary to consider. It is also necessary to consider whether each floor has the distinctive characteristic of a dwellinghouse. The *Gravesham*¹ case defined this as "its ability to afford to those who used it the facilities required for day-to-day private domestic existence." My reading of this case was that as well as having those facilities present, the chalet to which the case relates, had also been used as a separate dwellinghouse and the periods of non-occupation were not sufficient for it to lose those characteristics. It is therefore necessary to also consider how the property functions which will be partly determined by its physical state, its overall character and also the nature of the occupation at the time the notice was issued.
12. By way of illustration, a typical block of flats may have a communal entrance from the street leading to the individual flats possibly with entry systems close to the main entrance. Each flat would normally have a lockable front door behind which each unit will be equipped with all of the facilities required for day to day living. Each flat would have occupiers who would enjoy private space that other people in the block could not access without permission. In that

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

situation, each flat would clearly represent a separate unit of occupation and there would be multiple planning units within the block.

13. As one approaches the appeal property, it is set behind robust walling with a remote-controlled security gate and then the front area is laid out for the parking of vehicles. There are no separate entry details at the front gate or at the front door. On walking through the front door into the ground floor lobby, an elevator door is noticeable immediately. In my experience, it is unusual to have a feature such as this within a single dwelling and it does give an immediate impression of being within a communal block. However, it was explained at the hearing that this is a means of disabled access as the ground floor is occupied by one of the appellants and his wife who has accessibility problems. The elevator accesses the landing on the first floor but at top floor level, it opens out into the main open-plan living space on that floor. Any person living in the property who uses the elevator can travel between floors without any need to seek permission to do so. Similarly, there are no locks to impede access between different parts of the building from the stairs.
14. Each floor of the property does have a kitchen along with living rooms, bedrooms and bathrooms. These facilities could potentially provide the ability to live in separate parts of the building independently of other residents of the building, whether as a family unit or otherwise. There is however no reason in law why the existence of facilities that could potentially provide self-contained accommodation should become a separate planning unit. The layout is such that it would not take much to provide "private domestic existence" in the context of Gravesham, such as locks on certain doors, perhaps a lobby around the elevator on the top floor and other impediments to free access around the property. However such constraints do not exist. It is possible for all residents of the property to access all floors with no apparent physical restrictions and the elevator enables this even when one of the occupants has limited mobility.
15. Much has been made of the fact that the occupiers of the dwelling are related to each other and the Use Classes Order² (UCO) definition of Use Class C3 "dwellinghouses". Even if the occupants all fall within the statutory definition of a single household³ as they are all either married or couples and are relatives of each-other, that is primarily of relevance to the purposes of the UCO. It does not follow that because in that context there is a single household, that there are not 3 separate flats within this building.
16. However, the occupants of this property are clearly a very close-knit family. The occupants of each floor have divergent approaches to the same faith and the differing ways that they each prepare food is at least part of the reason for having separate kitchens on each floor. Notwithstanding this, all of the family get together regularly including for weekly traditional sabbath meals. There is also regular informal inter-generational care and socialising. The older generation live on the ground floor and help to look after their grandchildren and have done so over the years. However, the grandchildren and children who live above also help the older generation. I gained a distinct impression at the hearing that the everyday interactions between the various relatives within the building overall, are informal, casual and the layout does not prevent such relaxed, regular encounters from happening. Whilst each of the residents will enjoy some separation, privacy and independence from each other, from the

² The Town and Country Planning (Use Classes) Order 1987 (as amended), Schedule 1, Part 3, Class C3

³ Housing Act 2004, section 258

evidence provided and what was discussed at the hearing, I do not consider that this is sufficient to indicate that they have lifestyles that are substantially private and detached from each other.

17. Overall, this is a large building and even before internal arrangements were undertaken to give the current facilities, it included accommodation to enable occupation by a similar number of people. I do not consider that any external or internal changes have made a significant difference to the character of the building or the external areas around it. Furthermore, for the above reasons, I consider as a matter of fact and degree and on the balance of probabilities, that the building has not been subdivided into obvious physical and functionally separate units of occupation. It remains as a single planning unit which I consider therefore remains as a single dwellinghouse.
18. The use as alleged therefore did not constitute a breach of planning control and the appeal on ground (c) in relation to Appeal A) and also Appeal B) are therefore allowed.

Appeal A) Conclusion

19. On the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (f), (g), (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Appeal B) Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 14 Uphill Drive as a single dwelling house occupied by an extended single family household, notwithstanding internal alterations not defined as development, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Dr Malcolm Hockaday FRTPI	Planning Consultant
Mr Stewart Kerry	Appellant
Mrs Sarah Kerry-Hurn	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Turner	Enforcement officer
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INTERESTED PARTIES

Mr Wayne Salt
Ms Janet Cohen

DOCUMENTS

- 1 Drawings for planning permission 16/7759/HSE
- 2 Barnet Sustainable Design and Construction Supplementary Planning Document 2016
- 3 Barnet's Local Plan Core Strategy adopted 2012, extracts from section 10
- 4 Barnet's Local Plan Development Management Policies adopted 2012, extract from section 2
- 5 Emerging Barnet Local Plan, extracts from sections 1, 2 and 5
- 6 Emerging London Plan, December 2019, Policy H2 and extracts from section 4
- 7 National Planning Policy Framework, section 5
- 8 Barnet Residential Design Guide Supplementary Planning Document 2016

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on dated 11 October 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building has not been subdivided into obvious physical and functionally separate units of occupation and remains as a single planning unit in use as a single dwellinghouse.

Signed

A Harwood

Inspector

Date 26 October 2020

Reference: APP/N5090/X/19/3222313

First Schedule

Use of 14 Uphill Drive as a single dwelling house occupied by an extended single family household, notwithstanding internal alterations not defined as development

Second Schedule

14 Uphill Drive, Mill Hill, London NW7 4RR

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 26 October 2020

by Andy Harwood CMS MSc MRTPI

Land at: 14 Uphill Drive, Mill Hill, London NW7 4RR

Reference: APP/N5090/X/19/3222313

Not to scale:

