



Appeal Decision

Site visit made on 5 August 2020

by Simon Hand MA

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

Decision date: 22 October 2020

Appeal Ref: APP/U5360/C/19/3241370 70 Tadworth Road, London, NW2 7UD

- 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 Chaim Reiner against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, numbered E/15/0070, was issued on 10 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a mixed use as two flats and a three bedroom House in Multiple Occupation (HMO).
 - The requirements of the notice are STEP 1 cease the use of the premises as flats and a House in Multiple Occupation (HMO), and its occupation by more than ONE household, and remove all items, materials, equipment, partitions, fixtures and fittings associated with the unauthorised change of use from the premises. This includes; the removal and demolition of the single storey rear extension; the removal of all items and debris arising from that demolition; the removal of all kitchens and cooking facilities, except ONE, on the ground floor of the premises; and the removal of all bathrooms and toilets, except ONE, from the premises. STEP 2 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include bedrooms and a bathroom on the first floor and a kitchen, dining room and lounge on the ground floor. STEP 3 Demolish the unauthorised rear extension of the property and remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised use and development from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (d), (f) 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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Decision

1. It is directed that the enforcement notice be corrected by substituting "*three flats*" for "*two flats*" in the allegation. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

The appeal on Ground (b)

2. This ground is that the matters alleged have not occurred. The appellant argues first that there are 6 bedrooms but the allegation only concerns 5 (that is 2 x one bed flats and a 3 bed HMO). This is correct, and the Council accept there is an error in the allegation, which should refer to three flats not two. I accept that this was a genuine error, it is the Council's case that the use of the

rooms has been fluid and they have changed from flats to an HMO and back somewhat randomly, hence I would assume their error. I consider that the notice can be corrected, it does not materially alter the allegation that the building is being used for a mixture of flats and an HMO. Pinning down exactly what each room is actually used for is an important part of the appeal and I shall deal with this below, hence the allegation was never going to be able to describe the use of each room with any certainty.

3. The appellant also argues that there is no mixed use and never has been. They purchased the building as a dwelling in 2014, converted it into a 6 bed HMO and then have used it as 6 self-contained flats from early 2015 onwards. This ground, and effectively the ground (d) as well, turns on the question of what is a flat. In planning terms a self-contained flat is a separate dwelling whereas an HMO is a single dwelling in use by people sharing (or not having access to) at least one facility. *Gravesham*¹ is the lead case on defining a dwelling from where springs the idea that a dwelling is a building that ordinarily affords the facilities required for day to day private domestic existence. The Housing Act 2004 at section 254 deal with HMOs and creates a number of tests, including that those who occupy the building must share one or more basic amenities (or their accommodation must lack one or more basic amenities). Basic amenities are defined as a toilet, personal washing facilities and cooking facilities.
4. A problem has arisen in many flat/HMO cases because the idea of 'basic amenities' has been confused with the *Gravesham* test of 'facilities required for day to day private existence'. The two are not necessarily the same. Thus a room in an HMO might well consist of a bed, table and chairs and a small ensuite bathroom. There is no doubt this lacks the basic facility for cooking. Add in a fridge under a worktop and storage cupboard and the room is still lacking cooking facilities. However, plug in a microwave and suddenly, it is often argued, you have a self-contained flat. That is clearly not the case. I refer to an appeal decision from 2012² where the Inspector described the kitchenettes as 'Elfin units' which were free standing combined units, which had a built-in sink, a 2 ring electric hob, small fridge and a microwave oven. These, according to the Inspector, clearly contain the basic amenities referred to in the Housing Act but not the necessary *Gravesham* facilities. He said "*I do not accept that the separate facilities provided for cooking were what would normally be associated with use as a dwelling house. The "Elfin" units might be adequate for occasional use but, to my mind, they are too small, and basic, for normal every day residential use*". In other words they did not pass the *Gravesham* requirement of providing a facility for day to day private domestic existence.
5. This is not to say that it is impossible to use them in a day to day sense, clearly, some people can happily survive on a microwave alone, but *Gravesham* is concerned with what would generally be considered by reasonable people to comprise the test for a dwelling, not the bare minimum that it is actually possible to survive on. Otherwise the confusion that has occurred in this case sets in, where, if the plug-in hob is removed from the room, it turns from a flat to a room in an HMO, and back the next day. That is clearly a nonsense.

¹ *Gravesham BC v SSE* [1984] 47 P&CR 143

² APP/T5150/C/12/2173635, 2 Baker Road, London, NW10 8UA. Issued 24 July 2012

6. When I looked round the building on my site visit I saw the rooms were very small. Room 1 contained a sink, fridge and a hob plugged in. There was a microwave on the floor not plugged in because there was no-where for it to go. Room 2 sacrificed the small dining table to accommodate the microwave. Rooms 3, 4 and 5 had fridges, sinks, hobs and microwaves, but very little storage space for food. Room 6 had no fridge or microwave, and the hob was on the floor not plugged in. All the rooms had small ensuites but were cramped with little or no extra storage space, the residents having to choose between clothes, personal possession and food storage. Thus while most of the rooms did contain the basic amenities none could, by any stretch of the imagination, be said to provide "*the facilities required for day to day private domestic existence*". From the evidence provided by the appellant it appears this has been the case since they purchased the property
7. On that basis alone I would find the building had not been converted into a mixture of flats and an HMO. However, the building also contained two shared kitchens. One on the first floor did not seem to be used, but contained an oven with four ring hob with an extractor unit over, and a washing machine as well as a number of empty kitchen units. There was another kitchen in the loft which was clearly used, probably by the occupant of the adjacent room 6 who had no cooking facilities. The kitchen contained food and washing up and another large oven and hob as well as a fridge. There seemed nothing to stop this kitchen from being used by anyone in the building. In my view therefore the residents of the building did have the opportunity to share one or more basic amenities. No70 was thus clearly being used as a 6 bed HMO.
8. It follows from this conclusion that the mixed use as alleged has not taken place and the appeal succeeds on ground (b), albeit not for the reasons claimed by the appellant. In my view the building has always been used as an HMO for 6 people.
9. I shall allow the appeal and quash the notice. Consequently, the other grounds do not need to be considered.

Simon Hand

Inspector