
Appeal Decision

Site visit made on 13 October 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/Z5060/C/20/3254969

2 Verney Road, Dagenham RM9 5LL

- 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 John Morgan against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham (the LPA).
- The enforcement notice was issued on 10 June 2020.
- The breach of planning control as alleged in the notice is: without planning permission, the unauthorised creation of a side extension being used as a self-contained unit of accommodation.
- The requirements of the notice are:
 1. Remove the unauthorised side extension.
 2. Cease the use of the side extension as a separate self-contained unit of accommodation.
 3. Revert the property to a single-family dwelling.
 4. Remove all alterations and fixtures enabling the change of use to a separate self-contained unit of accommodation.
 5. Remove all consequent waste material from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

The Notice

1. The alleged breach of planning control is the creation of a side extension being used as a self-contained unit of accommodation. The allegation does not say what use the accommodation is for.
2. Nevertheless, reason four of the enforcement notice makes clear that, in the LPA's view, the development does not provide adequate parking for the number of residents the property would support. On that basis, I am satisfied the notice gives sufficient reason for me to conclude that the notice is intended to enforce against the erection of an extension to create a separate self-contained unit of residential accommodation. I can correct the notice accordingly to include the word residential in the alleged breach and to include the word within the requirements. Such corrections would not result in injustice to the appellant since the appeal form refers to the side ground floor flat. Nor would it result in injustice to the LPA.
3. The notice does not specify whether it attacks operational development or a material change of use, or both. Nonetheless, on a fair reading of the alleged

breach, as corrected, I consider the notice attacks operational development, that being the creation of a side extension, the use of which is a separate unit of residential accommodation. It is my view that the notice does not attack the use of a single dwelling house as two separate dwellinghouses which section 55(3)(a) of the 1990 Act confirms is a material change of use.

4. On that basis, I consider the requirements to revert the property to a single-family dwelling and to remove all alterations and fixtures enabling the change of use to a separate self-contained unit of accommodation are excessive since they go beyond what is necessary to remedy the breach of planning control. I will vary the notice accordingly to delete requirements 3 and 4 of section 5 of the notice.

The appeal on ground (b)

5. An appeal on ground (b) is made on the basis that the alleged breach of planning control has not occurred as a matter of fact. The onus of proof lies with the appellant and the standard of proof is the balance of probabilities.
6. Planning permission for the conversion of an existing garage to a kitchen and erection of single storey side extension to form an additional bathroom was refused by the LPA 29 May 2020¹. This sought permission retrospectively to retain a side extension and to use what is described as a previously approved garage as a kitchen.
7. The appellant's evidence is very limited. It is stated in the appeal form that the side ground floor flat does not exist. I saw from my site visit that an extension to the side of 2 Verney Road had been erected. Whilst it was apparent that the only access to the building was via the front door of 2 Verney Road, it seems that, at the date the notice was issued, there was a separate door in the front of the extension which provided independent access to the accommodation therein. The appellant accepts that there was an external door previously and I saw from my visit that there was a rectangular shaped section of external render on the property which was darker and of smoother texture than the rest of the property, suggesting recent replacement of the door.
8. The appellant indicates that the second front door was only to be used by the family and visitors. However, the appellant has not provided any substantive evidence which indicates that it was only used as such. Moreover, there is nothing before me to indicate that the side extension was occupied as part of the single dwellinghouse of No 2 or indeed that the extension was not used as a separate dwelling. I saw from my site visit that the side extension contained all the facilities necessary for residential occupation independent of No 2, including cooking and washing facilities.
9. The presence of a separate external door for independent access and the provision of all necessary facilities for independent occupation suggests that it appeared to the LPA at the date the notice was issued that the extension had been erected and its use was a separate dwellinghouse to No 2. Section 172(1) of the 1990 Act makes clear that the LPA may issue a notice where it appears to them that there has been a breach of planning control.
10. The appellant has failed to discharge the burden of proof which rests upon them in this instance. In the absence of any substantive evidence to the

¹ LPA Ref: 20/00515/FUL

contrary, I find that at the date the notice was issued, the creation of a side extension being used as a self-contained unit of residential accommodation had occurred as a matter of fact.

11. The appeal on ground (b) therefore fails.

Decision

12. It is directed that the enforcement notice be corrected by:

- inserting the word “residential” before the word “accommodation” in section 3 of the notice;
- inserting the word “residential” before the word “accommodation” in bullet point 2 of section 5 of the notice.

13. And varied by:

- deleting the words “revert the property to a single-family dwelling” and “remove all alterations and fixtures enabling the change of use to a separate self-contained unit of accommodation” in section 5 of the notice.

14. Subject to these corrections and variations, the appeal is dismissed, and the enforcement notice is upheld.

J Whitfield

INSPECTOR