



Appeal Decision

Site visit made on 9 March 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2021

Appeal Ref: APP/M5450/C/20/3249191

Land at 20 Camrose Avenue, Edgware HA8 6EG

- 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 Lance Coutinho against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 12 February 2020.
 - The breach of planning control as alleged in the notice is 1. Change of use of the Land from use as a single family dwelling house to use as four flats in the main dwelling, and one flat in the outbuilding (Unauthorised Use), and 2. The unauthorised front to side extension (the Unauthorised Extension).
 - The requirements of the notice are 1. Cease the Unauthorised Use; Remove all kitchens from the Land except one from the dwelling house; 3. Remove all bathrooms from the land except two from the dwelling house; 4. Remove all internal partitions from main dwelling house that enable the Unauthorised Use; 5 Remove the front door to the Unauthorised Extension and infill the resultant opening with materials that is similar in appearance to existing building; 6 Remove all materials associated with the conversion of the dwelling house into flats; 7. Remove all fencing that enables the subdivision of the rear garden; 8. Demolish the outbuilding shown hatched in blue on the Annexed Plan 2. Remove from the Land all material and debris arising with compliance with the requirements of the notice; 9. Make good any damage caused to the building as a result of the above steps and ensure that all materials used shall match those used in the existing building.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
-

Decision

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

Appeal on ground (b)

2. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred.
3. The Council has included dated photographs of each of the rooms in the main appeal building, dated 28 March 2019, in appendix 4 of the delegated officer report. The appellant does not dispute that these are a reflection of the internal configuration and use of the former single dwellinghouse appeal building when the notice was issued. Whilst things have now changed internally, including the removal of the kitchen units/counters from the second floor, it is necessary that I determine this appeal based on the situation that existed when the notice was issued.

4. In summary, the photographs show that the ground floor flat Nos 1 and 2 were self-contained in so far that they had their own cooking, toilet and personal washing facilities. The first floor accommodation (i.e. referred to by the Council as flat No 3) had its own cooking, toilet and personal washing facilities. However, the evidence before me, including a typed note on the kitchen door, is such that this kitchen was used by both the occupiers of the first floor accommodation and the second floor accommodation (i.e. the latter referred to by the Council as flat No 4). The second floor accommodation had personal washing and toilet facilities but did not include the sort of facilities needed for cooking such as a cooker, hob and/or microwave. Indeed, the note on the kitchen door on the first floor stated, *"you may cook using the gas hob, oven and microwave"*.
5. The evidence before me therefore demonstrates that when the notice was issued, while the second floor did include kitchen type units/counters, a fridge, kettle, toaster and toastie maker, it did not include what could reasonably be considered to be cooking facilities. Instead, the evidence is such that the occupiers of this accommodation used and shared the first floor kitchen for cooking, i.e. use of the oven, microwave and hob. Indeed, the note on the kitchen door stated, *"please clean up after yourself when cooking is complete"*.
6. The Town and Country Planning Act 1990 refers to a *"flat"* as meaning a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally. Section 254(8) of the Housing Act 2004 differentiates between Houses in Multiple Occupation and self-contained flats. It defines a self-contained flat as *"a separate set of premises which (a) forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants."* Basic amenities are defined as a toilet, personal washing facilities and cooking facilities.
7. Based on the evidence above, I find that the first floor did not include a self-contained flat: it did not include all three basic amenities available for 'exclusive' use of its occupants. In respect of the second floor, this was not in use as a self-contained flat: it did not include cooking facilities. As a matter of fact and degree, I do not consider that when the notice was issued the first or the second floors could be considered to be two self-contained flats as they did not afford those that used such space the self-contained facilities required for day-to-day private domestic existence.
8. The Council claim that when the notice was issued, the outbuilding was used as one flat. However, the Council's photographs, dated 28 March 2019 in appendix 4 of the delegated officer report, showed that while there were kitchen type units and counters (now removed), there were no cooking facilities.
9. The appellant claims that the outbuilding has been used on an incidental basis in association with the primary use of the land as a single dwellinghouse. This is a ground (c) claim, but it has not been necessary for me to consider such a matter further as the evidence before me demonstrates that when the notice was issued the outbuilding did not include one of the three basic amenities to be considered a self-contained flat, i.e. it did not contain cooking facilities. Therefore, and as a matter of fact and degree, I do not consider that when the

notice was issued the outbuilding was a self-contained flat as it did not afford those that used such space the self-contained facilities required for day-to-day private domestic existence.

10. I have considered whether I could correct the breach of planning control without any injustice being caused. I consider that there would be injustice caused to the appellant if I were to correct the breach of planning control in the notice. This is because a ground (a) appeal has been lodged and the appellant's case under this ground would likely be different based on a corrected breach of planning control. Furthermore, a correction of the breach of planning control may have implications in terms of the requirements of the notice and hence the appellant's appeal made under ground (f).
11. Therefore, on the balance of probability, and taking into account the evidence that is before me, I conclude that the alleged breach of planning control has not occurred. Therefore, the ground (b) appeal succeeds. As the appeal on ground (b) has succeeded, the enforcement notice will be quashed. It is not therefore necessary for me to determine the appeals made under grounds (a), (c), (d), (f) and (g) of the Act.

D Hartley

INSPECTOR