



Appeal Decision

Site visit made on 17 August 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2021

Appeal Ref: APP/R5510/C/20/3263813

33 Royal Lane, West Drayton UB7 8DW

- 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 Ms Fanny Laura Araque against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 14 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a single family dwellinghouse into three (3) separate units of self-contained residential accommodation. ("the breach").
 - The requirements of the notice are:
 - (i) Cease the use of the property as three (3) separate self-contained residential units.
 - (ii) Remove all but one kitchen from the dwelling house to include oven, hob, sink, work surfaces, kitchen style cupboards and stop up all plumbing, electricity, and gas connections within the additional kitchens.
 - (iii) Create an internal access from the single storey side extension into the main dwelling house.
 - (iv) Remove the lockable front entrance door for the existing ground floor two (2) bed residential unit.
 - (v) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the dismantling works listed in (ii) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (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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Decision

1. It is directed that the enforcement notice is:
 - varied by deleting the words "Three (3) calendar months" within section 6 (Time for Compliance) and its replacement with "Six (6) calendar months".
 - corrected by deleting the existing first requirement, under section 5 (what you are required to do) and replacing it with "(i) Cease the use of the property as more than one residential unit".
2. Subject to this variation and correction, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary matters

3. The requirements of the notice, under section 5 (What you are required to do) is poorly worded, in so far as requirement (i) states "Cease the use of the property as three (3) separate self-contained residential units". However, it would be better if the notice did not require the use as x number of self-contained residential units to cease, because that does not prevent the use for x-1 number self-contained residential units to remain. It should therefore state "Cease the use of the property as more than one residential unit". My understanding of the notice is not affected by this minor error, and nothing within the appellant's submission indicates to me that it has been misunderstood by her as a result. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.
4. The appellant has not submitted her appeal on the basis of ground (b), 'that the allegation has not occurred as a matter of fact'. However, she has addressed this ground in her submission, in so far as she states there are two separately distinguishable spaces of self-contained residential accommodation rather than three separate self-contained units. I have therefore considered this under a ground (b) appeal below.

The appeal on Ground (b)

5. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
6. Although the appellant accepts that a breach of planning control has occurred with the creation of a separate self-contained studio within the single storey ground floor side extension, the appellant states that the remainder of the appeal site is one separate residential unit and therefore considers that there are only two separate self-contained residential units and not three. In particular, the appellant states that her family resides in the remainder of the property at ground, first and second floor level and that two of the bedrooms within the first and second (loft) floors are occupied by paying tenants. The appellant also states that the ground floor studio in the side extension is also occupied by a paying tenant.
7. Whilst there is no definition of a dwellinghouse within the Act, case law has established that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. This is a question of fact and both actual use and the physical characteristics needs to be considered.
8. In addition to the separate self-contained studio within the ground floor side extension (with its own independent access to the side), during my site I also observed that the remainder of the ground floor area contained a separate self-contained two bedroom residential unit, with its own living/dining/kitchen, a toilet/shower room, together with a utility area containing a washing machine and dryer. This separate residential unit was accessed behind a lockable door.
9. The first and second floors are accessed independently via the main staircase of the property and therefore access through either of the ground floor self-contained residential units was not required. The first and second floors

contained 4 bedrooms (with two bedrooms on each floor). The two top floor bedrooms also contained ensuite facilities with a shower. The kitchen on the first floor comprised kitchen units with a hot plate and various white goods including fridge, washing machine, microwave, and kettle. The first floor also contained a shower room, with a shower, toilet, and sink, and a further separate second toilet with a sink.

10. Therefore, the two separate self-contained residential units on the ground floor and the first and second floor duplex accommodation are all able to function independently from one another, and they each contain the facilities for day-to-day living. In addition, the appellant has confirmed in their appeal statement that in addition to their family occupying the premises, both the studio unit at ground floor level and two bedrooms at first and second floor level are let out to tenants.
11. As such, having carefully considered all of the evidence before me, I conclude, on the balance of probabilities, as a matter of fact and degree, that a material change of use as alleged in the notice had occurred when the notice was issued. There has therefore been a breach of planning control and the very limited evidence put forward in support of the contention that the breach has not occurred falls well short of discharging the burden of proof.
12. Accordingly, the appeal on ground (b) must fail.

The appeal on Ground (f)

13. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach". On this occasion the notice has been issued to remedy the breach of planning control rather than only remedy any injury to amenity.
14. Requirement (ii) requires the removal all but one kitchen from the property in order to return the property to a single family dwelling house. The appellant states that this requirement is excessive and that the breach can be remedied by removing the self-contained nature of access to the studio at ground floor level, and that the additional kitchens at ground and first floor level are proportionate and reasonable in the context of the property functioning as a Class C4 Use House in Multiple Occupation (HMO), under Class L of the General Permitted Development Order, 2015.
15. It is clear that the installation of the additional kitchens in the ground floor studio and at first floor have sustained the material change of use to three separate units of self-contained residential accommodation and to require their removal is not excessive. These facilities are part and parcel of the unauthorised use and should not be viewed in isolation as has been suggested by the appellant. Furthermore, no substantive evidence has been presented to demonstrate that these additional kitchens existed before the unauthorised change of use took place. Notwithstanding that these facilities may not require planning permission in their own right, a notice directed at a material change of use, as is the case here, may require their removal to remedy the breach.

16. Requirement (v) requires the removal of debris, fixtures, and fittings, resulting from the dismantling works listed in requirement (ii) and (iv). Whilst the appellant raises no objection to the principle of this requirement, she considers that this should be limited to the removal of debris resulting from the creation of an internal access from the single storey side extension into the main dwellinghouse and the removal of the lock as per requirement (iv). However, I have found above that the removal of all but one kitchen from the property is necessary and proportionate to remedy the breach. Therefore, it is not excessive to require the removal of all debris, fixtures and fittings resulting from the removal of the additional kitchens.
17. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
18. Therefore, the appeal on ground (f) fails.

The appeal on Ground (g)

19. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 to 6 months, since the property is currently occupied by tenants, and therefore additional time is required to allow the tenants to vacate the property and carry out the remedial works. In my view 6 months would strike a more reasonable and proportionate balance in this instance. I shall therefore extend the period from 3 to 6 months for compliance with the notice.
20. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and correction.

R Satheesan

INSPECTOR