



Appeal Decision

Site visit made on 1 December 2021

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 February 2022

Appeal Ref: APP/H5390/C/20/3260516

Land at 31 Rylett Road, London W12 9SS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hugo Murat Kerim Fair against an enforcement notice issued by London Borough of Hammersmith and Fulham.
 - The enforcement notice was issued on 24 August 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission conversion of the property into 2 self-contained flats; a 1 bedroom flat at basement level and a four bedroom flat at ground and first floor levels.
 - The requirements of the notice are to: Cease the use of the property as two self-contained flats and restore the property into a single dwellinghouse by carrying out the following remedial works: Remove the kitchen and all associated fittings from the basement.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

The 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. In 'legal' grounds of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. The appeal property is a large Victorian house arranged over 3 levels: basement; ground and first floor. In 2015 planning permission¹ was granted for the erection of a single storey extension fronting Binden Road elevation; erection of a single storey rear extension following the demolition of existing conservatory; installation of new doors to replace the existing windows at ground floor level to the side elevation; further excavation of the existing basement including the formation of lightwells; erection of an external staircase

¹ 2015/00521/FUL granted by notice dated 11 June 2015

from basement to ground floor level and the erection of railings at garden level fronting Binden Road elevation; associated external alterations. The plan² which accompanied the application shows the layout of the basement to include a kitchen/living room, a bathroom and a bedroom, an internal doorway to the rest of the house and an external doorway leading to a courtyard.

5. At the time of my site visit, I was greeted at the front door at 31 Rylett Road by the appellant and an officer from the Council. We proceeded through the house and downstairs to the basement area. There was a large room which seemed to act as a storage area and from this room, a lockable doorway led through to the appellant's living quarters.
6. The space in the basement was set up to provide self-contained living accommodation as shown on the plans approved with the 2015 permission. Lockable glazed doors provided access directly to the rear garden via steps which lead up from the basement. I noted that there was no house number, letter box or doorbell/knocker on the external door to the basement and that the only access to the basement flat from the street was through the house, either via the front door or through the utility room and into the rear garden. I did observe that there was a gateway opening in the rear garden boundary wall with Binden Road that had been bricked-up in a basic fashion on the road side. To the inside of the garden wall, the wooden gate remained in place.
7. The appellant's statement provides that the property has not been converted into 2 self-contained flats while the appellant himself tells me that he planned to use the accommodation "like a 'granny flat' (so that I could retain my independence but have my son, living in the house, on hand if required)". This was sought through the 2015 application. The accommodation has also allowed the appellant, who is classed as Clinically Extremely Vulnerable, to remain safely within the family home during the Pandemic.
8. The appellant's evidence is largely derived from his own recollections which he has entitled "Synopsis – with Timeline and References" in appendix 4 of his statement. There is some discrepancy in the evidence provided by the appellant and information provided by his agent. I am advised there is only one set of each utility service supplied for the whole property and that it would be impossible to separate the gas-fired system for hot water and under-floor heating used throughout the whole property. Whereas the appellant provides that separate meters were installed for electricity.
9. From evidence supplied, it seems to me that the reason to seek the subdivision of the basement flat from the remainder of the house, through the 2019 application, was instigated because Thames Water recommended installation of two meters when the appellant decided to change from a rateable value basis to a metered basis for billing. The appellant claims that the issue with Thames Water not being able to provide separate water meters to the property was because it was registered with Royal Mail as one address. Planning application³ 2019/02734/FUL was refused by notice dated 11 February 2020.
10. Notwithstanding this, I am informed that the whole property is owned by the appellant and is occupied by the appellant's sons and family as well as the

² Drawing ref WD2002 Rev 01

³ Retention of the conversion of the property into 2 self-contained flats; a 1 bedroom flat at basement level and a four bedroom flat at ground and first floor levels.

appellant himself. No part of the house is rented out and only one set of Council tax is paid for the entire property. The appellant has provided a copy of the Council Tax band listing for 31 Rylett Road from the Valuation Office Agency.

11. Whilst I saw on my site visit that the arrangement for separate living exists, that does not necessarily mean that is what has occurred. There are no physical barriers preventing access between the basement and the rest of the property. Moreover, given the configuration of the shared garden and some shared utilities, I am not convinced a separate planning unit has been formed.
12. As a matter of fact and degree, I consider the basement area to be more akin to a "granny annexe" which accommodates a member of the family who lives with their relatives but maintains a degree of independence through self-contained accommodation. If the basement was lived in separately from the house, it is likely that a material change of use of the property would occur which would be classed as development and require express planning permission. Furthermore, Condition 12 of ref: 2015/00521/FUL requires the basement floorspace to be used only in connection with, and ancillary to, the use of the remainder of the ground and first floors as a single dwellinghouse.
13. Consequently, I conclude that on the balance of probability, the matter as alleged in the notice has not occurred. The appeal on ground (b) succeeds and I shall quash the notice. Consequently, the remaining grounds of appeal do not need to be considered.

S A Hanson

INSPECTOR