
Appeal Decision

Site visit made on 24 January 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2022

Appeal Ref: APP/C5690/C/21/3277763
78 Downham Way, Bromley BR1 5NX

- 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 Mrs Udoka Okeke against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 9 April 2021.
 - The breach of planning control as alleged in the notice is the Change of use of 78 Downham Way London BR1 5NX from residential (C3 Use Class) to a Sui Generis short term holiday letting use, consisting of 2 apartments (1 x 1 bedroom and 1x 3 bedroom) without the benefit of planning permission.
 - The requirements of the notice are:
 1. Cease the use of the property for use as short term holiday letting accommodation.
 2. Cease the use of the property as two self-contained apartments.
 3. Remove all internal doors and partitions within the dwellinghouse, which divide the dwellinghouse into two separate apartments.
 4. Make good all damage resulting from the compliance with the requirements of this notice.
 5. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (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:
 - varied by deleting requirement 1 under section 5 (What you are required to do) and substituted therefore by the following requirement: "1. Cease the use of the property for use as short term holiday letting accommodation, other than in accordance with the Deregulation Act 2015".
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

The appeal on Ground (b)

3. 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.

4. The appellant states that the premises are not laid out as two separate self-contained flats, that there are no internal partitions which separate the two flats and there is only one kitchen which is shared between the whole dwellinghouse. Therefore, the appellant states that the two alleged flats cannot operate independently of one another, and that a site visit will confirm this.
5. The property has been previously extended with a single storey L-shaped rear extension. A planning application for the change of use of the appeal site from a residential (C3 Use Class) to a holiday let accommodation was refused on 10 June 2020¹. The subsequent appeal for the same change of use was also dismissed on appeal, on 12 March 2021². Following that dismissal, the Council's Enforcement investigation found on 18 March 2021, that the property was still being advertised on a number of holiday booking websites such as Booking.com, as two separate holiday lets/temporary accommodation (a one bedroom accommodation and a three bedroom accommodation).
6. The Council also advise that amended floor plans were submitted under the recently refused planning application for the holiday let accommodation¹ which show the one bedroom apartment consisting of a bedroom, bathroom and living area at rear of the property at ground floor level with the three bedroom unit in the remaining part of the property at ground and first floor level. I also witnessed a layout similar to this during my site visit. The single storey rear extension had its own separate and independent access at the side of the property and contained all the facilities required for day-to-day private domestic existence. This included a separate bedroom, a washroom/toilet, and a living/dining room which contained kitchen cupboards, a sink and electric sockets close to the kitchen worktops. The kitchen for the main/original property also had a lockable door at the rear, which meant that the rooms in the rear extension (the one bedroom unit) could easily be separated and used independently from those of the main property.
7. Therefore, the evidence does not clearly or unambiguously provide much detail to support the appellant's contention that the premises is a single family dwellinghouse. 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.
8. Accordingly, the appeal on ground (b) must fail.

The appeal on Ground (f)

9. 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".
10. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear from the requirements of the notice, which include the cessation of the use of the property for short term holiday letting

¹ Council ref: DC/20/115490.

² Appeal Ref: APP/C5690/W/20/3255388.

accommodation and two self-contained units, and the restoration of the property to its last lawful state as a dwellinghouse.

11. The appellant states the requirements of the notice are excessive since the first requirement denies her the right to use the property for temporary sleeping accommodation for less than 90 consecutive nights, contrary to Section 25 of the Greater London (General Powers) Acts 1973 (GLGPA73). The appellant also states that they are agreeable to a condition which prohibits the use of the property for short term let accommodation for more than 90 consecutive nights and agreeable to submitting a management plan to the Council for approval explaining how this will be administered. Furthermore, the appellant states that the use of the property as 2 self-contained flats has not occurred as a matter of fact.
12. With regard to the use of the property as two self-contained flats, I have found under the ground (b) appeal, that 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. Therefore, the cessation of the use of the property as two self-contained flats is not excessive to remedy the breach.
13. With regard to the first requirement and the use of the property for temporary sleeping accommodation³ the GLGPA73 was amended by the Deregulation Act 2015 (DA15) so as to introduce s25A and s25B. S25A provides that use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use if conditions are met:
 - The sum of (a) the number of nights as use as temporary sleeping accommodation and (b) the number of nights (if any) of each previous use as temporary sleeping accommodation in the same calendar year does not exceed ninety.
 - The person or at least one of the persons who provided the sleeping accommodation was liable to pay Council Tax in respect of the premises.
14. The first requirement of the notice which requires the cessation of the use of the property for short term holiday letting accommodation is not excessive to remedy the breach. It does not purport to stop the appellant from doing something they are entitled to do under the DA15. However, for clarification I shall direct that the first requirement of the notice be varied to state 'Cease the use of the property for use as short term holiday letting accommodation, other than in accordance with the Deregulation Act 2015'. This would also remedy the breach of planning control, in line with s173(4)(a) of the Act. Varying the notice on this basis would cause no injustice to either party, as it would not make it more onerous.
15. For clarification purposes only, I therefore conclude requirements of the enforcement notice should be varied accordingly.
16. The ground (f) appeal therefore succeeds to this limited extent.

³ Temporary sleeping accommodation' means use as sleeping accommodation which is occupied by the same person for less than 90 consecutive nights.

Conclusion

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

R Satheesan

INSPECTOR