



Appeal Decision

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/Z5060/C/20/3255780

Land and Premises at 25 New Road, Dagenham, RM10 9NH

- 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 Jason Moore against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - 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 second self-contained unit of accommodation, located on the ground floor within the property.
 - The requirements of the notice are Cease the use of the second self-contained unit of accommodation, located on the ground floor; Remove all alterations and fixtures enabling the creation of the second self-contained unit of accommodation, located on the ground floor; Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is 6 months.
 - 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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Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The Council identify the breach of planning control as a "second" self-contained unit of accommodation. It is assumed that the purpose of this description is to distinguish the alleged breach from a separately alleged self-contained flat at the property. That development was the subject of separate unsuccessful appeals¹.
3. The appellant declined to allow access to the appeal property. Accordingly my decision is made on the evidence before me, and without having had the opportunity to visit the site.

The appeal on ground (b)

4. The appeal is that that the matter alleged in the notice has not occurred. For the appellant to succeed on this ground, the onus rests with them to make out their case, on the balance of probability.
5. Within the grounds of appeal, the appellant simply asserts there is no self-contained, second flat on the ground floor. Reference is also made to internal

¹ Appeal refs: APP/Z5060/C/19/3241657 & APP/Z5060/C/19/3241658

alterations not constituting development and to there not being separate supplies of electricity and gas, which I shall deal with below as part of the ground (c) appeal.

6. As to whether a second self-contained unit of accommodation exists, having been denied the opportunity to visit the site, I am unable to rely on my own observations. However, I am in no doubt that the appellant's assertion that there is no flat is insufficient to discharge their responsibility, on the balance of probability. The ground (b) appeal fails.

The appeal on ground (c)

7. The appeal on ground (c) is that the matter alleged does not constitute a breach of planning control. The appellant states that the works involve internal refurbishment of an existing unit which has been part of the layout of the property, and does not involve separate utility supplies. He also refers to the provisions in s55(2)(a) of the Act which states that internal alterations to a building are not development.
8. It is the case that s(55)(2) of the Act states that "The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land— (a) the carrying out for the maintenance, improvement or other alteration of any building of works which— (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building..."
9. However s(55)(3)(a) of the Act states that "the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used." Section 55(1) of the Act states that the making of any material change in the use of any building constitutes development.
10. In the absence of a site visit, and notwithstanding representations regarding the lack of separate utility services being provided, there is insufficient evidence to persuade me, on the balance of probability, that a second self-contained unit of accommodation, requiring planning permission, has not been developed. The ground (c) appeal therefore fails.

The appeal on ground (f)

11. The ground of appeal is that the steps required by the notice to be taken are excessive. With regard to the unauthorised change of use the objectives of the notice are to discontinue the use of the land and to restore the land to its condition before the breach took place, by removing the enabling alterations and fixtures and removing the consequent waste. It follows that the purpose of the notice is to remedy the breach in accordance with the provisions of section 173(4) of the Act.
12. The appellant's case is that the requirement to remove all alterations and fixtures is vague and therefore excessive. He suggests that an appropriate lesser step would be to remove the kitchen unit. However, there is no information that leads me to doubt that the appellant is most likely to be the person with the best knowledge of what the previous condition of the property was. I therefore consider there should not be any significant difficulty in identifying the alterations and fixtures that have enabled the development.

13. Given that the purpose of the notice is to remedy the breach of planning control, this can be achieved by ceasing the use of the second self-contained unit of accommodation and by removing all alterations and fixtures enabling its creation. Having regard to the appellant's case I am not persuaded that these requirements exceed what is necessary. The appeal on this ground therefore fails.

Conclusion

14. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Roy Merrett

INSPECTOR