



Appeal Decision

Site visit made on 7 March 2022

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2022

Appeal Ref: APP/T5150/C/21/3274651

Land at 4 Brampton Grove, Wembley, London HA9 9QU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Charles Halpern against an enforcement notice issued by London Borough of Brent.
 - The notice was issued on 31 March 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to TWO dwellings and without planning permission, the installation of a door and window to the front elevation of the premises.
 - The requirements of the notice are:
 - STEP 1 Cease the use of the premises as TWO dwellings.
 - STEP 2 Remove the kitchen, the bathroom and all internal partitions in the single storey side extension (i.e. former garage).
 - STEP 3 Remove the lock on the internal door between the side extension (i.e. former garage) and the house.
 - STEP 4 Remove the unauthorised door and window, and install a window as shown in 'PHOTOGRAPH A' attached to this notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by the deletion of the words "and all internal partitions" and the insertion of the word "and" after the word "kitchen," in STEP 2 of Schedule 4.
2. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Appeal on ground (c)

3. This ground is that the matters alleged do not constitute a breach of planning control. The appellant contends that the premises have not been in use as two separate dwellings and that the accommodation in the former garage is ancillary to the use of 4 Brampton Grove as a single dwellinghouse. Therefore, the alterations that have taken place to the front elevation of the single storey side extension benefit from a grant of planning permission under Class A, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order, 1995 (as amended) (GPDO).
4. To the extent that the appellant considers the accommodation within the former garage to be ancillary, then this is more of a ground (b) point, i.e., that the alleged breach has not occurred as a matter of fact. I shall therefore

consider the points raised under both grounds (b) and (c), and I am satisfied that in doing so there is no injustice to either the appellant or the Council.

5. Section 57(1) of the Town and Country Planning Act, 1990, as amended (the Act) advises that planning permission is required for the carrying out of any development of land. Section 55(1) of the Act provides that: *“development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.’*
6. Section 55(3) of the Act states that: *‘For the avoidance of doubt it is hereby declared that for the purposes of this section – (a) 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.’* In addition, it is established case law that to be regarded as a dwellinghouse, the premises must possess the facilities required for day-to-day domestic existence.
7. The main issue is therefore whether the use of 4 Brampton Grove as two separate dwellings occurred as a matter of fact. The burden of proof falls on the appellant to make out their case and the test is the balance of probability. In addition, section 174(2)(b) is worded in the past tense, and the question is whether the breach had occurred by the date of the issue of the enforcement notice.
8. The accommodation in the former garage comprises a double bedroom, a bathroom with toilet, hand basin and shower, and a living/kitchen area. At the time of my site visit the living/kitchen area had a sofa, desk with chairs and other household items, as well as kitchen units, including a worksurface, fridge, cooker with hob and washing machine. There is no doubt in my mind that the accommodation has all the facilities required for private domestic existence.
9. In addition, the accommodation has a separate means of access which enables it to function as a self-contained dwelling. Access is available to the accommodation through a front door which is separate from the front door of the original dwelling. Furthermore, it has a back door leading from the bedroom to the rear garden area. Although there is a doorway connecting the accommodation to the ground floor kitchen which belongs to the original dwelling, until recently this door had a lock on it. The accommodation within the former garage is physically separate from the main/original dwelling and is clearly able to function as a separate dwelling.
10. The appellant does not dispute that the former garage has been previously occupied by a couple with a tenancy agreement, and no evidence has been provided which would demonstrate that they were living as part of or sharing all the facilities in the original dwelling. Although the accommodation is not registered for separate Council Tax and shares utilities with the original dwelling, that does not alter the fact that it can function as a separate dwelling, and a new planning unit has been created. Similarly, the absence of a separate parking area, a garden, or the fact that the accommodation does not meet nationally described space standards, is not fatal to it being regarded as a separate dwelling.

11. I conclude that on the balance of probability the use of 4 Brampton Grove as two separate dwellings occurred as a matter of fact and the appeal on ground (b) fails.
12. To benefit from a grant of planning permission under Class A, Part 1, Schedule 2, Article 3 of the GPDO, development must take place within the curtilage of a dwellinghouse. However, Article 3 (5) of the GPDO advises that permission granted by Schedule 2 does not apply if, *"(b) in the case of permission granted in connection with an existing use, that use is unlawful."*
13. I appreciate that the original garage door had been replaced by a window many years ago, when the garage was first converted to residential use. However, on the balance of probability, the more recent replacement with a separate new front door and window, in that location, facilitated the use of the former garage as a separate dwelling. Considering that the use as a single dwelling is unlawful, permission granted by Class A, Part 1, Schedule 2, Article 3 of the GPDO does not apply.
14. Development took place for which no planning permission was granted by the local planning authority. This material change of use and the operational development is not permitted under any provision in the GPDO. A breach of planning control occurred and the appeal on ground (c) fails.

Appeal on ground (f)

15. Section 173 of the Town and Country Planning Act, 1990 (as amended), indicates that there are two purposes which the requirement of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
16. The appellant believes that the requirements are excessive as he considers the accommodation to be ancillary to the main dwelling. He states that the couple who lived in the former garage have already moved out, and the lock on the connecting door removed. He considers the installation of the kitchen, bathroom and partition walls not to be development and the front door and window permitted development. In addition, he advises that the partitions were in place when he purchased the property and additional kitchen facilities are necessary for religious purposes.
17. Section 173(5) of the Act gives the power to require the alteration of buildings for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purposes of facilitating the unauthorised use, even if those works in their own right might not constitute development, so that the land is restored to its condition before the change of use took place.
18. The installation of the kitchen, bathroom, front door, window and the lock on the internal door facilitated the use of the former garage as a separate dwelling. Although I have taken into consideration the appellant's view that a separate kitchen is necessary for religious purposes, there is no evidence that the kitchen was installed for that purpose. Consequently, I am satisfied that the removal of the kitchen, bathroom, new door, window and lock does not exceed what is necessary to remedy the breach.

19. However, the former garage was originally converted to provide accommodation ancillary to the main dwelling many years ago. It is therefore likely that there were some internal partitions in place within the former garage before the unauthorised use occurred. I do not consider that the removal of the partition walls is necessary to remedy the breach of planning control and to that extent the requirement to remove them is excessive. I shall vary the notice accordingly. To that limited extent the appeal on ground (f) succeeds.

Human Rights

20. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified in the reasons for issuing the notice, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Conclusion

21. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Elizabeth Pleasant

INSPECTOR