The Planning Inspectorate

Appeal Decision

Site visit made on 23 March 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Appeal ref: APP/N5090/C/20/3263099
12 Wykeham Road, London NW4 2SU

- The appeal is made by Mr Joseph Abraham under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Barnet Council.
- The notice was issued on 9 October 2020; reference No. ENF/1733/18.
- The breach of planning control was: Without planning permission, the conversion of property into 3no self-contained flats.
- The requirements of the notice are:
    1. Cease the use of the property as self-contained flats.
    2. Amend the property to the approved layout shown in plan No's. 06.940.28 (dated Jan 2016), 06.940.29 Rev A (dated Mar 2016) and 06.940.30 Rev A (dated Mar 2016) from planning application 16/0674/FUL including but not limited to the following:

       On the lower ground level, removal of all but one kitchen; removal of all bathrooms and all bathrooms (sic) and reconfiguration of the internal walls to match the "proposed" lower Ground Floor Plan (ref. 06.940.28). On the ground floor level, removal of all but two bathrooms, removal of all but one bedroom and reconfiguration of the internal levels to match the "proposed" Ground Floor Plan (ref. 06.940.29 Rev A). On the first floor level, removal of all kitchens and reconfiguration of the internal walls to match the "proposed" First Floor Plan (ref. 06.940.30 Rev A). On the second floor level, removal of all kitchen facilities, including all kitchenettes, and reconfiguration of the internal walls to match the "proposed" Second Floor Plan (ref. 06.940.30 Rev A).
    3. Permanently remove all constituent materials resulting from the works in 1. and 2. above from the property.
- The period for compliance with the requirements is 9 months.
- The appeal was made on grounds (a), (c) and (f) as set out in the amended Act.
- As there was an appeal made on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. The fee for the deemed application to be considered was paid.

Summary of decision: The appeal succeeds. The enforcement notice is quashed. The deemed application for planning permission has not been considered.

Appeal property

1. The appeal property, No. 12 Wykeham Road, is a modern house, built on 4 levels to a design approved by planning permission 16/0674/FUL dated 7 March 2016. Changes to the internal layout led to the Council concluding that the house is not a single family dwelling as approved, but has been set out as 3 self-contained flats.

The enforcement notice

2. The Council issued a Planning Contravention Notice, (PCN), dated 4 March 2019 in respect of works at 12 Wykeham Road alleging "the erection of building containing three self contained flats". The notice is unclear as to whether this was seen to be an unauthorised new building and not the incomplete 16/0674/FUL permission building. If it was the 16/0674/FUL permission building, the PCN appears to improperly anticipate an unlawful use.

3. The enforcement notice's description of the alleged breach of planning control differs from that in the PCN. The words: "*conversion of property into 3no self-contained flats*" implies works to a lawful residential building to facilitate its use as 3 self-contained residential units and that the unlawful use had started, (the matters subject to enforcement action must have taken place; an enforcement notice cannot be issued in relation to a prospective breach - *R v Rochester-upon-Medway CC ex parte Hobday* [1990] JPL 17; [1990] JPL 923). The notice's first requirement: "*Cease the use of the property as self-contained flats*" points to it being a change of use notice; from a lawful use of one dwellinghouse to use of 3 separate residential flats that had started. I assume that to be the position, although the Council could have been acting upon its adaptability to use as 3 flats, rather than an actual use as such.

4. Uncertainty about the notices may have led the Appellant, Mr Abraham, to take what seems contradictory action. He refuted the assertion that the property comprised 3 flats. He said he and his wife occupied the property, together with his family living together as one household. He made that clear in his response to the PCN. However, the Council advised Mr Abraham to submit an application for planning permission for the conversion of the property to 3 flats otherwise enforcement action would be taken. He did so, although it seems futile to apply for permission for a use Mr Abraham had denied and did not seek, especially where the Council were determined to enforce against such use.

The appeal on ground (c)

5. An appeal on ground (c) asserts that those matters set out in the enforcement notice, if they occurred, do not constitute a breach of planning control.

6. Mr Abraham, said the property was a single family dwelling, used as such. There had not been a breach of planning control. He made no claim that a change of use of the house to 3 separate residential flats did not require planning permission. His assertion that such a change of use had not happened may more pertinently, be an implied ground (b) appeal, where it is said that the matters alleged in the notice have not, as a matter of fact, taken place. However, as changes were made to the internal layout of the house, whilst not themselves requiring planning permission, they appeared to the Council to have facilitated an unlawful change of use to 3 self-contained flats. It is appropriate to deal with this matter as a ground (c) appeal.

7. Planning permission 16/0674/FUL was granted for: *Demolition of existing detached single dwelling and erection of three storey dwelling including basement level and lightwell to front, with associated amenity space, soft landscaping, refuse storage, cycle storage and off street parking.* Mr Abraham accepted that internal modifications had been incorporated. That was in order to enable him and his wife to benefit from support and care from their wider family members in their old age and infirmities.

8. There is no definition of the term 'dwellinghouse' in the Act, but in the case of *Gravesham BC v SSE & O'Brien* [1983] JPL 306 it was held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. A self-contained flat is normally a dwellinghouse for the purposes of the Act. In The Town and Country Planning (Use Classes) Order 1987 (as amended) a Class C3(a) use is a dwellinghouse occupied by a single person or by people to be regarded as forming a single household. A single household is to be construed in accordance with s.258 of Housing Act 2004 – defined in subsection (2) as including persons who are all members of the same family (as defined in subsection (3)) or persons whose circumstances are described in regulations. There is no limit to the number of people who may live together as a single household in a C3(a) dwellinghouse.

9. A material change of use of a residential planning unit occurs when it is sub-divided to form separate planning units, (*Wakelin v SSE & St Albans* DC [1978] JPL 769). However, it will be necessary to establish whether there are indeed separate dwellings as a matter of fact and degree. That is, to consider here whether the approved internal layout has been altered such as to provide physically distinct and separated units of accommodation and whether the occupants of No. 12 lead lives in separate households to other occupants.

10. Mr Abrahams said the property is occupied by him, his wife and his family and living together as one single household. Building such a large dwelling was to enable Mr Abrahams and his wife to benefit from support and care from their wider family members, especially to help with longstanding medical problems and disabilities. Whilst kitchens and bathrooms were not shared, services such as heating, hot water and electricity were not separated, being accessed and maintained in one utility room.

11. The ground and lower floors of No. 12 are occupied by Mr and Mrs Joseph Abraham. The first floor was occupied by Mr Abraham's brother, although I understand that, sadly, Mr Abraham's brother has died leaving that floor unoccupied. The second floor is occupied by Mr Abraham's cousin's family. The close-knit family are of Jewish faith. They share frequent meals together on the Sabbaths and Jewish holidays. They interact with each other on a daily basis for social reasons or for providing support to Mr Abraham and his wife. All members of the household are said to have unrestricted access to all parts of the house on all floors provided by the staircase and a disabled access lift and to the rear garden. The family were not all of orthodox Jewish faith. It was not possible to share kitchens with non-orthodox persons. It was said to be essential that different living arrangements were available in different parts of the household.

12. The enforcement notice alleges that the changes made to the 16/0674/FUL approved layout of the house have brought about a material change of use of

the house, from a single dwellinghouse to 3 self-contained flats. Although those internal changes could help make for a straightforward conversion and change of use to use as 3 flats, that is not how Mr Abrahams and his family occupy the house. They are a related family, with some variations in lifestyles and observance of the Jewish faith which, for instance, brought a need for separate kitchens to provide for diverging adherence to Jewish food laws, or Kashrut. Despite such differences which at may at times lead to some more separation than might be found in typical family life, the evidence is that the Mr Abraham's family occupation of No. 12 remains that of a single family dwellinghouse.

13. The appeal on ground (c) succeeds. The enforcement notice is quashed. The appeal on grounds (a) and (f) do not fall to be considered.

FORMAL DECISION

14. The enforcement notice is quashed. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended has not been considered.

John Whalley

INSPECTOR