Appeal Decision

Site visit made on 14 March 2022

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State.

Decision date: 11 April 2022

Appeal Ref: APP/Y5420/C/20/3256707
55 Handsworth Road, London N176DB

- 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 Bension Nassim against an enforcement notice issued by The London Borough of Haringey.
- The enforcement notice was issued on 25 June 2020.
- The breach of planning control as alleged in the notice is the material change of use to six (6) self-contained flats.
- The requirements of the notice are 1. Cease the use of the property as self-contained flats, 2. Remove from the property all but one of the kitchens, doorbells and any internal dividing doorways and partitioning facilitating the use of the property as self-contained flats, 3. Remove from the property all but one supply of electricity, gas and water and 4. Remove from the site any debris arising from compliance with steps 1, 2 and 3.
- The period for compliance with the requirements is 5 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) 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.

Decision

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

Reasons

Ground (b)

2. The appellant argues that the property has not been divided into six self-contained flats, but that it remains an HMO (house in multiple occupation), and has a shared kitchen.

3. The ground floor plan shows the communal kitchen, and this was seen to be the case at the site visit. The kitchen is not highly active, with only limited storage items that would be expected in a kitchen, but it is open to all residents. Each room has an en-suite shower room/toilet, and there are kitchen type cupboards, a sink and fridge in most of the rooms. There are locks on the room doors, each room has a separate electric supply and is separately taxed. At the site visit it was seen that there are some limited cooking facilities present in the rooms, consisting of either small microwaves or a slow cooker, each located on the floor, there not being room on any worktop.

4. The separate electric supply is a factor in considering whether something is a flat or not, but it is not determinative in itself. It is not unreasonable to have separate meters in an HMO, so that each of the occupants of the building pays for the energy that they have consumed.

5. Similarly, the paying of council tax is not indicative in itself of flats. The appellant says that when the tenants claim housing benefits it divides up the council tax without requesting it.

6. A problem has arisen in many flat/HMO cases because the idea of 'basic amenities' has been confused with the Gravesham test of 'facilities required for day to day private existence'. The two are not necessarily the same. A room in an HMO might well consist of a bed, table and chairs and a small en-suite, with a fridge, worktop and cupboards. If a microwave is added, it is often argued that you then have a self-contained flat. I do not accept that the separate facilities provided for cooking are what would normally be associated with use as a dwelling house. The small microwaves/slow cooker units in addition to the other facilities provided might be adequate for occasional use but, to my mind, they are too small and basic for normal everyday residential use. They do not accord with the Gravesham requirement of providing a facility for day to day private domestic existence.

7. This is not to say that it is impossible to use a microwave oven day-to-day. Clearly, some people can survive on a microwave alone, but Gravesham is concerned with what would generally be considered by reasonable people to comprise the test for a dwelling, not the bare minimum that it is actually possible to survive on.

8. The rooms, although with en-suites, were generally small and did not contain the basic amenities sufficient to provide "*the facilities required for day-to-day private domestic existence*". Taken as a whole, the limited facilities in the rooms and the presence of the communal kitchen and the way the building is used leads me to conclude that it is an HMO. While I attach a little weight in relation to electric supply and the tax situation, the way the property is being used does not lead me to conclude that it has been divided into flats, so there is no material change of use. The appeal succeeds on ground (b) and I do not need to consider the ground (f) and (g) appeals.

Graham Dudley

Planning Inspector