



Appeal Decisions

Site visit made on 15 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/T5150/C/21/3273293 (Appeal A) & 3273294 (Appeal B) 13 Elmstead Avenue, Wembley HA9 8NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ('the Act'). The appeals are made by Mr Marco Anthony Tora (Appeal A) and Mrs Pauline Tora (Appeal B) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 18 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a single dwellinghouse to two self-contained residential units.
 - The requirements of the notice are to:
 - STEP 1 Cease the use of the premises as more than one self-contained residential unit.
 - STEP 2 Remove all kitchens/cooking facilities, except ONE, remove the second front door and remove all associated materials, items and debris associated with the unauthorised use from the premises.
 - The period for compliance with the requirements is: 3 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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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellants state that the garage is part of the main house and used as such and is not a self-contained unit. This is a hidden ground (b), that those matters (stated in the notice) have not occurred. The appellants have also asked to be allowed to keep the second door. This is a hidden ground (f), that the steps required by the notice to be taken, exceed what is necessary to remedy the breach of planning control. Although the appellants ticked ground (c) only on the appeal form, both parties have been given the opportunity to comment on these matters through the appeal and so I shall consider these grounds accordingly.
3. The appellants raise matters relating to parking and noise in their appeal statement. However, They have not appealed under ground (a) and so I cannot consider planning merits.

Ground (b)

4. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. The main thrust of the appellants' case is that the garage is not a self-contained unit and is used primarily as a bedroom with en-suite shower room for Mrs Tora.

5. The garage has an ensuite bathroom and a fully equipped kitchen area, with a sink, cooker and fridge and a very modest yard area to the rear. I saw that the handle to the door between the garage and the main dwelling has been removed. From the photographs provided by the Council, it seems the handle has been removed for some time. This means that in order to get into the main house, users of the garage would need to exit the garage and use the front door to the main house or rely on someone from within the main house to give them access.
6. At the time of my visit, the bed was positioned in front of the door between the garage and the main dwelling. It would therefore be necessary to move the bed to enable the door between the main house and the garage to be opened. From the photographs provided by the Council, and given the layout of the garage, I consider it likely that the bed is usually positioned in this way.
7. An individual with limited mobility is, in my view, highly unlikely to choose to move the bed on a regular basis in order to access the garage. As such, I consider it highly unlikely that the occupants of the main house would choose to use the garage, whether for sleeping or washing, rather than the main house.
8. The appellants state that the garage has been used as very occasional short-term stays, most commonly for visitors to events at Wembley, limited to 2 people and that there have only been 20 guests totalling 25 nights in over a year. An online listing for the property describes it as an apartment and identifies it as the 'whole apartment', with washing machine, free WiFi and terrace. The listing includes a number of reviews, including one which says 'Everything you need for a short stay at the property'.
9. While the boiler and washing machine may also serve the main house, I consider it highly unlikely that the occupants of the main dwelling would seek to access them while the garage was being let out. Though the use of the garage for short-term letting may have been limited in duration, since the garage contains all the facilities for day to day living and has been used as a self-contained unit by visitors, on the balance of probabilities, I find the breach has occurred as a matter of fact and the appeal under ground (b) must fail.

Ground (c)

10. An appeal under ground (c) is made on the basis that those matters (the matters stated in the notice, if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities. As set out in Planning Practice Guidance (PPG), an applicant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
11. The appellants suggest that planning permission is only required for properties used as short term lets in excess of 90 days. It seems likely that the appellants are referring to the provisions of the Greater London (General Powers) Acts 1973, as amended by the Deregulation Act 2015, which provides that use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use if certain conditions are met, including the number of nights (if any) of each previous use as temporary

sleeping accommodation in the same calendar year does not exceed ninety. This does not, however, permit the subdivision of premises to create two or more separate dwellinghouses.

12. Section 55(1) of the Act sets out the meaning of development as including the making of any material change in the use of any buildings or other land. Section 55(3)(a) 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.
13. Although the square footage of the property has not changed, since the garage has all the facilities required for day to day existence and has been used as a self-contained dwelling, a material change in the use of the building has occurred. There are no permitted development rights under the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) for the subdivision of a dwellinghouse into two dwellinghouses.
14. Consequently, the material change of use of the premises from a single dwellinghouse to two self-contained residential units is development for which planning permission is required and the appeal under ground (c) must fail.

Ground (f)

15. An appeal under ground (f) is made on the basis 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The Council has confirmed that the purpose of the notice is to remedy the breach of planning control.
16. The appellants request they are allowed to keep the second front door as it is asserted to allow for easier access due to the steep driveway and steps to the front door. Although I would agree access into the garage from outside is easier as there are less steps, I saw that there is quite a step up from the accommodation within the garage to the accommodation within the main dwelling, which an individual with limited mobility is likely to find just as difficult, if not more difficult to use than the steps to the front door.
17. While the appellants suggest that the garage is used by Mrs Tora, given the above, I consider it highly likely that the works, including the installation of the second front door, were undertaken to facilitate the unauthorised change of use. Where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, as held in *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598, a notice may require that the works¹ are removed in order that the site is restored to its previous condition and the breach is thereby remedied.
18. The appellant has drawn my attention to a number of other properties along Elmstead Avenue which have a second door to the front of the premises leading to an annexe/garage conversion. Although not all of these may be the subject of an enforcement notice, the Council states that it has been consistent in requiring additional front doors to be removed in cases where an additional 'flat or flats' are created in the building and where the door facilitates that use.

¹ Which can include works which do not amount to 'development' at all but have facilitated an unauthorised material change of use, as held in *Somak Travel v SSE & Brent LBC* [1987] JPL 630.

19. In particular, the Council advise an enforcement notice for No 53 requires *inter alia* replacement of additional front door with a window. An additional door has been removed at No 65 and an additional door is required to be removed by enforcement notices at Nos 101 and 143. The Council advise that no additional dwelling has been created at No 105 and that the breach related to an outbuilding only. Consequently, the enforcement notice in that case could not have required the removal of the second front door.
20. The enforcement notice also requires the removal of all kitchens/cooking facilities, except one, and the removal of all associated materials, items and debris associated with the unauthorised use from the premises. Requiring items that relate to the unauthorised use to be removed would not prevent the use of such items in relation to the residential use of the dwellinghouse and so I consider the requirements are not excessive in this regard.
21. The removal of the front door would help prevent the resumption of the unauthorised use. Leaving the door *in situ* would make it more difficult for the Council to determine whether the use has been resumed. Given the above, requiring its removal is not, in my view, excessive and so the appeal under ground (f) must fail.

Conclusion

22. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

M Savage

INSPECTOR