
Appeal Decision

Site visit made on 13 March 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2022

Appeal Ref: APP/T5150/C/20/3257390

2 Forest Gate, London NW9 0SP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr R Usmani against an enforcement notice issued by the Council for the London Borough of Brent.
 - The notice was issued on 30 June 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the erection of an additional single storey extension at rear garden level, and a roof terrace and canopy above that extension. ("the unauthorised development"); and
Without planning permission, the material change of use of the premises from one to two dwellings. ("the unauthorised change of use").
 - The requirements of the notice are:
STEP 1 Demolish the additional single storey extension at rear garden level, and demolish the roof terrace and canopy above that extension.
STEP 2 Remove all debris and items arising from this demolition and remove all materials associated with the unauthorised development from the premises.
STEP 3 Permanently cease the use of the premises as two dwellings.
STEP 4 Remove all additional partitions, kitchens, bathrooms, doors, staircase, and items associated with the unauthorised change of use of the premises from one to two dwellings, so that the internal layout is altered back to one dwellinghouse.
STEP 5 Remove the front door located at the front of the side extension and brick up the opening with bricks to match the existing brickwork.
 - The period for compliance with the requirements: 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. I undertook an unaccompanied site visit with the agreement of the parties.
3. The notice alleges that operational development in addition to a material change of use. The appellant concedes that the operational developments have been undertaken within the 4 years prior to the issue of the notice. The appeal on ground (d) cannot therefore succeed in relation to that part of the allegation. I am being asked therefore to only consider the appeal in relation to the material change of use.

The Appeal on ground (d)

4. The appeal on ground (d) is whether, at the date that the notice was issued, it was too late to take enforcement action against the unauthorised development.

5. The material change of use as alleged is not disputed by the appellant, this has involved the creation of an additional dwelling. There is therefore no dispute that there are now 2 dwellings within what was previously a single dwelling. It is necessary for the appellant to demonstrate that the use as alleged had occurred for a period of 4 years prior to the issuing of the notice. The material date is therefore 30 June 2016.
6. The appellant purchased the property as one dwelling in February 2016 which at that time included connected living accommodation within a former garage and side extension. The new dwelling is within what was the side extension including the former garage and access as a separate unit has been enabled by the insertion of an additional front door. Although I did not see inside the building, what is or is not present at the current time is less significant than what existed when the notice was issued and what has existed for any continuous period of occupancy.
7. The appellant has provided documentary evidence that at least some of the physical changes to the building were undertaken prior to the material date. The most noticeable of these would have been the insertion of the additional front door and windows which a 'Fensa' installer has certified as taking place on 4 May 2016 and this is verified by a Council Building Control 'application completion' record dated 3 May 2016. An energy rating certificate dated 4 May 2016 also appears to relate to these works.
8. At a visit by planning enforcement officers on 14 September 2016 the old window frame and glazed unit were in the front driveway and whilst that is several months after the appellant says the work took place, this is insufficient to question the reliability of the 'Fensa' and Building Control details or that they related to the installation of the additional door. The Council's view that this could have been a replacement door for the original dwellinghouse seems to me to be very speculative.
9. Another Building Control record relating to the removal of chimney breasts with a completion date of 26 April 2016 is also provided but I am not given any precise details of that or why it is significant. I have not been provided with details of what facilities existed at that time. No floor plans are provided to show what exists now or more importantly, because there is no dispute about the present situation, what existed when these physical works were initially undertaken. The Council does not explain why they have not asked the Building Control officer to provide evidence in this case of what they saw.
10. Some works were undertaken at the property more than 4 years prior to the issuing of the notice. It is necessary to understand whether those works were part of the creation of an additional dwellinghouse at that time. There is no definition of the term 'dwellinghouse' in the Act. It has been held in settled case-law however that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it, the facilities required for day-to-day private domestic existence. I cannot make assumptions about such matters and the Council has pointed out that the 'building notice' application form for the removal of the chimney states that the proposed use and present use were the same - "dwellinghouse". It does not help to demonstrate that the works were part of the installation of facilities to enable the creation of an additional dwellinghouse. The appellant's signed statutory declaration does not describe

what facilities were provided within what they describe as a separate “flat”, completed and occupied by 30 June 2016.

11. I am provided with a tenancy agreement and a sworn statutory declaration from a tenant who says that they rented “the flat” at “2a” from the appellant from 10 May 2016 until 15 October 2018 (tenant ‘AA’). Again, this statement does not specify what type of accommodation was available only that the property had “its own front door”. There is no indication therefore of what they define as a “flat”. The tenancy agreement includes what appears to be generic small-print relating to a dwelling but nothing specific about this property being a dwellinghouse within the well-established definition set it out above.
12. There is no indication in these documents by way of written description or use of a plan cross-referred to within the signed statements, to show if No 2a had viable facilities to be in self-contained residential occupation during this period. If there was separate occupation as opposed to just a written agreement to potentially occupy, the evidence is not clear about whether it was used as a separate, independent dwellinghouse or whether, for example, it was occupation of the extension in another way with some shared facilities. I need to make a judgement as a matter of fact and degree. If the facts are not clear, that undermines the appellant’s case.
13. The statutory declarations from third parties, neighbours who live in the area, indicate that the existence of some additional occupation was known about in the neighbourhood. They refer to the tenants using the extension coming to and from “the flat” since 2016 as well as coming and going on fairly continuous basis. These remarks are vague however and it is not clear from them how those neighbours know who was going in and out of the building or that they knew what facilities were available in what they refer to as a flat. The additional front door is clearly seen from the road and the statements corroborate the general point that the people may have been living at the address. However, these documents again do not help to demonstrate that the extension contained viable facilities as an additional, self-contained dwellinghouse rather than residential occupation in a different form.
14. The appellant’s evidence should not be rejected simply because it is not corroborated. If their evidence is sufficiently precise and unambiguous, it should be accepted. However, the appellant’s evidence is not sufficiently precise and unambiguous in my opinion, to demonstrate on the balance of probabilities that the change of use of the building as alleged occurred 4 years prior to the issuing of the notice. Given that the period of the tenancy and potential occupation by ‘AA’ straddled the material date, it is unnecessary to consider the evidence for subsequent tenants.

Conclusion

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

Andy Harwood

INSPECTOR