



---

## Appeal Decision

Site visit made on 18 May 2022

**by S A Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 June 2022**

---

**Appeal Ref: APP/R5510/C/21/3266213**

**The Glade, 10a Cavendish Close, Hayes, Middlesex UB4 8AJF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Gurdeep Kaur against an enforcement notice issued by London Borough of Hillingdon.
  - The notice, numbered HS/ENF/017809, was issued on 25 November 2020.
  - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of a single family dwellinghouse into two (2) separate self-contained residential units.
  - The requirements of the notice are to: (i) Cease the use of the property as two (2) separate self-contained residential units and; (ii) Remove all but one kitchen from the dwellinghouse to include oven, hob, extractor unit, sink, work surfaces and kitchen style cupboards. Disconnect from source hot and cold water supply, gas and foul waste drainage and remove all redundant pipework and; (iii) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the dismantling works listed in (ii) above.
  - The period for compliance with the requirements is three (3) months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) 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 have lapsed.
- 

### Decision

1. It is directed that the enforcement notice be corrected by:
  - (i) deleting the sentence under section 3 of the notice and substituting it with "Without planning permission, the change of use of a single family dwellinghouse into two separate dwellinghouses."
  - and
  - (ii) deleting requirement (i) under section 5 of the notice and substituting it with "(i) Cease the use of the property as two separate dwellinghouses; and"
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld as corrected.

### Matters concerning the notice

3. The breach of planning control as alleged in the notice is 'without planning permission, the change of use of a single family dwellinghouse into two (2) separate self-contained residential units'. Section 55(1) of the 1990 Act defines the meaning of development as including the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse. It follows that the wording of the allegation and the requirements should be

corrected to accord with the Act. It is open for me to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act. I am satisfied that no injustice will arise to either of the main parties in me so doing.

### **The appeal on ground (b)**

4. An appeal on ground (b) is a legal ground of appeal and is a claim that the matters alleged at Section 3 on the enforcement notice have not occurred as a matter of fact. The appellant must therefore demonstrate that there has not been a material change of use of the single dwellinghouse into two separate dwellinghouses.
5. The appeal concerns the circumstances leading up to, and at the time of the issuing of the enforcement notice. The burden of proof in appeals on ground (b) falls to the appellant to show that the matters which appear to constitute the breach of planning control, have not occurred. The test of the evidence is on the balance of probability. The planning merits of the matter alleged do not fall to be considered.
6. The Glade is a detached bungalow located on a plot between and set-back behind two rows of two-storey red brick terraced houses. The council consider that the former garage building, which is attached to the bungalow, has been converted to, and is being used as, a separate dwelling. The council's evidence includes photographs taken inside the former garage, dated 28 November 2019, when an unannounced site inspection took place following a report of an individual residing in the building for several months. The individual claimed to be staying in the unit for a couple of weeks whilst waiting to be accommodated elsewhere by the appellant.
7. While there is no statutory definition of "dwellinghouse", in established case law<sup>1</sup> the Court accepted that whether a building was or was not a dwellinghouse was a matter of fact. The distinctive characteristics of a dwellinghouse was its ability to afford to those who used it, the facilities required for day-to-day domestic existence.
8. The photographs provided by the council show the floor covered with laminate and two radiators on the wall. A separate bathroom provides a shower, basin and toilet. The main room is equipped with a washing machine, microwave, 'kitchen-style' wall cupboards, fridge freezer, wardrobe and double bed. There are items of domestic paraphernalia and a couple of standalone heaters. Notwithstanding the rudimentary nature of the cooking facilities, the extension has all the facilities required to provide for the occupant's day-to-day domestic existence.
9. At the time of my visit, the bathroom was devoid of any toiletries and in the main room, the white goods and bed had been removed. The space was occupied with domestic storage such as suitcases, bags of clothes and baby equipment. There were items of furniture, such as a wardrobe and sofas and what looked like a divan folded in two. The former garage was accessible via a pedestrian door from the driveway and there was a door leading to the rear garden. There was no interconnecting door to the main house.
10. Although it appeared at my visit that the alleged use as a separate self-contained dwelling was not occurring at that time, the Council's evidence shows

---

<sup>1</sup> *Gravesham BC v Secretary of State for the Environment* [1982] 47 P.&C.R.142

that the former garage was set up to be capable of providing independent living accommodation, and the photographs indicate that that was what was occurring. Although the notice was issued sometime after the breach was first detected, and the alleged use appears to have since ceased, it makes no difference whether the breach had been genuinely stopped or not. S174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice. If the alleged activities had taken place, an appeal on ground (b) cannot succeed simply on the basis that such activities have since ceased.

11. I note that the appellant says on the appeal form that she has 'not used the property in an unauthorised pattern'. However, the onus is on the appellant to 'show' that the matters alleged have not occurred. The sparse nature of the evidence from the appellant is insufficient to satisfy the onus of proof and therefore, I consider that, on the balance of probability, the breach of planning control has occurred.

12. Accordingly, the appeal on ground (b) fails.

*S A Hanson*

INSPECTOR