
Appeal Decision

Site visit made on 22 August 2022

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2022

Appeal Ref: APP/N5090/C/21/3283331

Land at 42 Hendon Avenue, London N3 1UH

- 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 Mrs M Khodamy against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0758/21, was issued on 27 August 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the garage into a self-contained residential unit.
 - The requirements of the notice are: (1) Cease the use of the garage as a self-contained unit of residential occupation. (2) Permanently remove from the garage all kitchen facilities, including kitchen units, sinks, cooking facilities and food preparation areas. (3) Permanently remove all constituent material resulting from the necessary works carried out in point (2).
 - The period for compliance with the requirements is three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Reasons

The Appeal on Ground (c)

2. An appeal on ground (c) is made on the basis that the matters alleged in the enforcement notice, if they have occurred, do not amount to a breach of planning control. When making an appeal on ground (c) the onus rests with the appellant to make their case. That evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse an application, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability.
3. The appeal relates to an outbuilding in the corner of the garden of No. 42 Hendon Avenue, a substantial detached house in a suburban location. Originally a garage, the building has now been converted into living accommodation. Aside from the small bathroom, which occupies one corner of the building, the rest of the accommodation is set within a single, studio-style, room. The small kitchen is equipped with an inbuilt hob, a sink and a small fridge/ freezer under the worktops. Elsewhere in the room there is a bed, a

sofa, a wall-mounted television, and clothes were hanging on rails in one corner. The bathroom contains a toilet, sink and shower cubicle. Thus, the building is equipped with all of the facilities necessary for day to day living.

4. I understand that the appellant's son lives in the building. Judging by the artwork on the wall, other decorative items, toiletries in the bathroom, the food in the fridge and the clothes on hangars the space was clearly occupied at the time of my visit. There is nothing to indicate that the way in which the building was being used was any different at the point the enforcement notice was served.
5. The appellant maintains that the structure should not be considered as a separate self-contained unit on account of the fact that the occupant is in the same family as the occupants of the main house and is able to share facilities of the host property. The Council contend that the development of a "granny annex" would not be permitted under Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and that a material change of use of the land has occurred.
6. Taking the Council's point first, Class E relates to the provision of new buildings for purposes incidental to the enjoyment of a dwellinghouse. Incidental uses would include purposes that are associated with the primary use of the dwelling such as sheds, garages or summerhouses. However, a building used to provide additional residential accommodation, for example, additional living accommodation used in association with the main dwelling would not be incidental but would amount to an extension of the primary use. New buildings designed to house such accommodation would fall outside of the development permitted under Class E.
7. In any event, the allegation in this case relates to the change of use of an existing building as opposed to the construction or provision of a new building. The building was originally constructed as a garage. As such, Class E is not directly relevant. The use of an existing outbuilding to provide additional residential accommodation may or may not result in a material change of use depending on the nature of the additional accommodation and how it is occupied. The existing use of the land is residential and additional residential accommodation would not necessarily amount to a material change of use if that accommodation was used as an extension to the primary accommodation of the host dwelling as opposed to a separate unit of occupation.
8. The precise way in which accommodation is used and the extent to which it is associated with the use of the host dwelling is crucial in determining whether such a material change of use has occurred. The Courts have held that the fact that a building may have all of the facilities required for day to day living does not automatically mean that its use will result in the creation of a separate dwellinghouse.
9. In *Uttlesford*¹ the issue related to a former garage that had been converted into a granny annex for an elderly relative of those living in the host dwelling, containing a small kitchen, bathroom, bedroom and space to sit. The judge held that there was no reason in law that accommodation containing all of those facilities would necessarily result in the creation of a separate planning unit. Rather, in that case, it was held that the accommodation would still fall

¹ Uttlesford DC v Secretary of State for the Environment & White [1992] CO/2114/90

within the same planning unit and the relative would remain part of the household, sharing space with the main household, albeit living in the annex with a degree of independence.

10. Consequently, consideration of whether a separate unit of occupation has been created is not a straightforward matter but a judgement is required based on the circumstances of any given case, as a matter of fact and degree. In this case, the building is of modest scale in comparison to the substantial size of the dwelling. It sits in the corner of the garden with no obvious demarcation between it and the space associated with the house. The glazed doors, which are the only means of accessing the building, open out onto the patio area adjacent to the swimming pool. The garden isn't unduly long such that the building is close to the rear of the dwelling.
11. There is no direct access to the street and those using the building need to pass through the security gates to the front or side of the main dwelling. It does not appear to have a separate postal address and there was no indication of separate meter cupboards or servicing. When viewed from the street the building retains the appearance of a domestic outbuilding and does not impact on the visual character of the area. Therefore, in a physical sense, the building still appears very much as part and parcel of the main dwelling.
12. The occupant is the son of the appellant and therefore closely related to those living in the dwelling. Representations from the neighbouring property at 95 Lyndhurst Gardens suggest that the occupant moved into the building following a disagreement with his parents. The appellant has not responded to that point. However, even if that were the case it does not indicate that he is no longer part of the main household.
13. Neither the Council, the appellant or interested parties have provided a detailed breakdown of the extent to which facilities are shared with the main house, for example, whether meals are taken with the family. Having inspected the property, the hob appeared little used and the fridge was stocked primarily with drinks, sweets and chocolate, as opposed to food that would be used to prepare meals. The appellant indicates that the occupant shares facilities in the dwelling. In the absence of any contrary evidence I have no reason to suppose that is not the case.
14. Information has been submitted from the neighbour relating to complaints relating to noise disturbance from music being played in the outbuilding. As well as direct correspondence with the occupant messages were also sent to his parents to ask if they could ensure that music was turned down. The information included descriptions of discussions between the appellant and her son in the garden. To my mind that correspondence depicts an ongoing close relationship which is indicative that the appellant's son was still part of the wider household.
15. I am mindful of the on-going neighbour dispute relating to noise disturbances and note the history of complaints to the Council's Environmental Health team. The enforcement notice would require the kitchen facilities to be removed but would not prevent the continued use of the building for the provision of sleeping accommodation. In other words, even if the notice was upheld, it would not necessarily eradicate any issues that may have arisen in that respect. Noise related complaints can arise at any residential property and whether a statutory nuisance is being caused would be a matter for

investigation under Environmental Health legislation. Therefore, that matter is not determinative in the issue of whether the building has been used as a separate dwellinghouse.

16. Overall, on the balance of the evidence before me, I find that the occupation of the outbuilding remains closely associated with the residential use of the main dwelling. There is no physical separation, no separate access or postal address, the occupant is a close relative of those living in the house and, although limited, the evidence indicates a likelihood that the occupant continues to share facilities with the host dwelling and maintains a relationship with those living within it.
17. In view of the above, notwithstanding the facilities available within the building, I am satisfied that its use is essentially an extension of the residential use in the main dwelling and that the occupation has not led to the subdivision of the planning unit or the creation of a separate dwellinghouse. It follows that there has been no material change of use and no breach of planning control has occurred.
18. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Chris Preston

INSPECTOR