



Appeal Decision

Site visit made on 8 August 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2023

Appeal Ref: APP/D5120/C/22/3295903

15 Courtland Grove, London SE28 8PA

- 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 Mr Jan Kosco against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The enforcement notice was issued on 24 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission;
 1. The material change of use of the premises to two (2) self-contained units of accommodation.
 - The requirements of the notice are:
 - 1) Cease the use of the premises on the first floor, outlined in red on the attached plan and known as 15 Courtland Grove as two self-contained units of accommodation.
 - 2) Remove all kitchen facilities from the room at the front left-hand side of the property, including all cupboards, sinks, boilers, worktops, ovens, hobs as shown in 'Photographs A.'
 - 3) Remove the internal door locks facilitating the unauthorised sub-division of the premises. That being, the door on the front left and the door to the flat to the rear, as shown in 'Photograph B.'
 - 4) Remove all resultant materials from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) 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.
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Decision

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

Procedural matters

2. The appeal was only lodged under grounds (c) and (d). However, it is clear from the substance of their submissions that the appellant is also seeking to appeal under ground (b), in so far as they consider that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. As the Council have provided detailed comments on the appellant's statement, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.

The appeal on Ground (b)

3. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
4. The appeal site is a first floor flat within a purpose-built block of flats, located within a predominantly residential area. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes. The concept of physical and functional separation is a significant factor. The Council consider that the appeal site has been split into two self-contained flats and therefore two separate "self-contained" planning units.
5. The appellant disputes this and states that only small internal alternations were carried out which do not amount to material change of use of the premises to two self-contained units of accommodation, under section 55 of the Act. He states that there is still only one front door, a shared hallway which contained a shared washing machine (now removed), only one shared supply of water and electricity for the whole property. The appellant states that whilst the front kitchenette and shower room is used predominantly by the occupier of the front bedroom, these facilities are located via the shared communal hallway, which is used by the other occupier of the property, and therefore is not self-contained. He also argues that the rear bedroom/living accommodation should not be considered self-contained as it does not have its own front door and access is also through a shared communal area.
6. For the allegation to be correct, there would need to be 2 separate self-contained units of occupation and hence 2 separate planning units. When considering physical separation, the layout of the property including any impediments to the free flow of occupiers between different parts of the dwelling is necessary to consider. It is also necessary to consider whether each unit of accommodation has the distinctive characteristic of a dwellinghouse. Case law has established that this as "its ability to afford to those who used it the facilities required for day-to-day private domestic existence." This is a question of fact and both actual use and the physical characteristics need to be considered.
7. When the Council inspected the appeal site, the hallway of the premises led to three locked doors. They state that the rear locked door provided access to a main room which contained a kitchen, including a fridge, freezer, dishwasher, cooker with oven, sink and a separate microwave. There was a living area comprising a sofa and television, and there were two further internal rooms comprising a small bedroom and a toilet/shower room. I also observed a similar layout during my site inspection, although the sleeping accommodation was in the same room as the living area and kitchen. This separate residential unit was accessed behind a lockable door. Despite being accessed via the front door and shared communal hallway, the Council observed that this rear room was occupied and functioned independently from the front of the property, containing the facilities required for day-to-day living.
8. With regard to the remainder of the property towards the front of the premises, the Council observed that the locked room on the right-hand side of the

hallway was occupied by another tenant. That room comprised a bedroom/living area and Officers were informed that the occupier of that room had exclusive access to the locked kitchen, toilet, and shower room on the left-hand side of the communal hallway. This kitchen also contained various white goods including a cooker with oven, sink, fridge, and freezer. The appellant accepts that these facilities are used predominantly by the occupants of the room on the right of the hallway.

9. Nevertheless, given these sanitary, and kitchen facilities are separated from their bedroom/living area by the shared communal hallway, which is useable by the occupant of the rear room, these rooms at the front of the premises cannot be correctly described as 'self-contained.' Therefore, I find that the facilities for day to day living for a separate self-contained flat did not exist when the notice was issued. As such, having carefully considered all of the evidence before me, I conclude, on the balance of probabilities, as a matter of fact and degree, the premises comprise a self-contained flat and a non-self-contained residential unit.
10. For the above reasons, I conclude that the use of the premises has not changed to two self-contained units of accommodation, as alleged in the notice. The breach of planning control has not occurred, and the appeal succeeds on ground (b).
11. Under section 176(1)(a) of the 1990 Act, I have the power to correct, vary or amend the notice provided I am satisfied that there is no injustice caused to either party. However, in this case a correction to the allegation to a 'self-contained flat and a non-self-residential unit' may change how the parties would have presented their cases and give rise to other grounds of appeal. For example, an appeal under ground (a). In this regard, and having regard to my conclusion above, I shall not seek to correct the notice, as there would be prejudice to the appellant. Rather, I shall quash it.

Conclusion

12. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (c) and (d) do not fall to be considered.

R Satheesan

INSPECTOR