



Appeal Decision

Site visit made on 15 August 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2023

Appeal Ref: APP/N5090/C/23/3318154

Ashford Barnet Road, Barnet EN5 3HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Khandoker - Shakhawat Hossain against an enforcement notice issued by London Borough of Barnet.
- The notice was issued on 14 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of a garage to use as a self-contained dwelling house.
- The requirements of the notice are
 1. Cease the use of the habitable room in the garage as a separate dwellinghouse
 2. Permanently remove all bathroom fittings from the garage including basins, toilets and showers.
 3. Permanently remove all kitchen fittings from the garage including kitchen units, sinks, cookers and food preparation areas.
- The period for compliance with the requirements is 4 months
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - i) Deleting the allegation in full and replacing it with "without planning permission, a material change of use of the habitable room in the former garage to use as a self-contained dwelling house."
 - ii) Adding the word "former" before the word "garage" in requirements 1, 2 and 3.
2. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. The requirements include the cessation of the use of the habitable room in the garage as a separate dwelling house. The allegation is less clear as it refers to a change of use of a garage. Planning permission was granted for the conversion of the garage to a habitable room in 2015, the requirement wording is clearer than the allegation. I will therefore amend the wording of the allegation to match the requirement and add the word "former" before "garage." The allegation is therefore amended to "without planning permission, a material change of use of the habitable room in the former garage to use as a self-contained dwelling house." Requirements 1, 2 and 3 should then match requirements in referring to the habitable room in the former garage rather than the garage. These amendments do not cause any party injustice as the

allegation is being clarified to match the requirement and is not more onerous. The appellant has understood the nature of the allegation as he states that the garage has never been used as an independent unit. I will amend the allegation and the requirements accordingly.

Preliminary Matters

4. The appellant's evidence consists of two comments on the appeal form. The appellant was asked during the course of the appeal if he wished to pursue grounds (b) or (f). The appellant was also given the opportunity to provide a copy of the approved plan for the 'habitable room' as the Council no longer has a copy. No response was received. The appeal is therefore made on ground (c) only but I have addressed both of the appellant's comments as part of ground (c).

An appeal under ground (c)

5. An appeal under ground (c) is that there has not been a breach of planning control. The onus of proof is on the appellant to make out the case that there has not been a breach of planning control. The amended breach of planning control alleged is a material change of use of a habitable room in the former garage to use as a self-contained dwelling house.
6. The property is a two storey detached dwelling and planning permission was granted in 2015 for "First floor side/rear extension. Conversion of garage into habitable room." The allegation relates to the change of use of that converted habitable room to a self-contained unit. The appeal form states "*the garage has never been used as an independent unit. There is a door linking the garage and the dwelling. There is a utility room and a ground floor shower room within the garage.*"
7. The Council's evidence includes the unit being advertised on the website 'Open Rent' as a studio flat available to rent and the advertisement is marked as "let agreed" and a screenshot of the advertisement has been provided. The description in the advert refers to a "modern studio flat with separate kitchen." The benefits are described as "separate entrance, access to a large garden, bills included and a fully fitted kitchen with the studio flat being for single occupancy."
8. The advertisement clearly refers to a separate self-contained studio flat which has its own kitchen and shower room. Whilst the kitchen area is modest, the Council's photographs taken in January 2023 show kitchen units, a sink unit and a cooker hood and hob as well as a separate shower room with shower, sink and toilet. It is established case law that a distinctive characteristic of a dwelling house is its ability to afford an occupier the facilities required for day to day existence.¹ In the period prior to the notice being issued, the unit had sleeping, washing and cooking facilities and had been advertised as a studio flat with those facilities. A third party has referred to the creation of a fully self-contained flat with its own entrance to the side which was rented out and which was advertised again for rental in September 2022.
9. Whilst the appellant states that the unit has never been used as an independent unit, no information is provided to support that argument. The appellant has also chosen not to respond to the evidence of the Council or the

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P & CR ;[1983] JPL 307

comments of the third party about the layout of the self-contained unit or advertising and renting the unit out separately. Whilst there is a door linking the garage to the main dwelling, that door could be locked and there is a side door from the unit which means that occupiers of the unit can obtain access without going through the house itself. The appellant refers to a utility kitchen but does not describe any of its features or how it differs from any other kitchen. On the evidence before me, use as a separate self-contained unit as opposed to use as part of the main dwelling house has occurred and constitutes a material change of use.

10. The only other information relied upon by the appellant is a second comment in the appeal form as to why a fee should not be paid. A fee is not payable in any event as the appellant is not asking for planning permission to be granted under ground (a). However, the comment states "*the appeal is under ground (c) that there has not been a breach of planning control, the works can be executed under permitted development.*" No further details are provided. However, the allegation relates to a material change of use not the carrying out of works.
11. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. A breach of planning control comprises the carrying out of development without the required planning permission. The definition of development includes a material change of use. In the absence of express planning permission or permitted development rights for the development, a breach of planning control has therefore occurred. The appeal under ground (c) fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

E Griffin

INSPECTOR