



Appeal Decision

Site visit made on 22 August 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Appeal Ref: APP/N5090/C/22/3308255

34 Deans Way, Edgware HA8 9NL

- 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 J Faldes against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1020/20, was issued on 12 September 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the material change of use of the property to two separate dwellings*.
- The requirements of the notice are (1) to cease the use of the property as two separate dwellings; (2) remove kitchen facilities, expressed in the alternative; and (3) remove bathroom facilities from the ground floor.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Main Issue

1. The main issue in the case, given the single ground of appeal raised, is whether the allegation made in the notice is correct as a matter of fact. The Council alleges the subdivision of a dwellinghouse into two separate dwellings, the 'additional' alleged dwelling being a one-bedroomed flat to the rear of the house, whereas the appellant contends that all the accommodation is shared with no subdivision having occurred.

Reasons

2. In a case raising 'legal' grounds of appeal such as this one, the onus of proof lies on the appellant to demonstrate their case. The standard of proof is that of the balance of probability. Therefore for the appeal to succeed, the appellant must show that it is more likely than not that the Council's allegation is wrong.
3. The appellant has submitted no sworn statements or statutory declarations to say how the property has been occupied or used. A planning agent's statement contends that the dwelling is a shared accommodation of three persons on the upper floor with two persons at the ground floor level sharing the front living and dining room.
4. It was apparent from my site visit that some previous alterations to the property had since been removed. At the opening where the Council say the property had been internally subdivided, I saw that there was evidence of there having at some point been two adjacent doors. The Council have supplied photographic evidence of these having been lockable. Externally, two separate paths indicated where the garden had been subdivided into two.

5. The alleged additional dwelling consisted, at the time of my visit, of an open plan kitchen and living area, a bathroom, and a further room empty at the time of my visit. The Council have supplied photographs of this having previously been used as a bedroom, which would be consistent with the appellant's statement that two people were living on the ground floor. The Council's contention that the owner's agent had confirmed, in August 2022, that the property was subdivided was not challenged by the appellant. Nor was the Council's statement that each alleged dwelling had been rented out separately. Correspondence from an agent indicating that a planning application would be made for the rear of the ground floor to be used as a self-contained studio (consistent with the Council's allegation) was provided. This did not state whether the application was to be made retrospectively, but its timing is consistent with the Council's visit and reported discussion with the agent the previous week.
6. The balance of the evidence therefore points to the Council's allegation having been correct. The rear ground floor contained the facilities required for day-to-day living; it was confirmed as having been occupied by two people; and it was severed from the remainder of the house by the lockable internal doors and by the separate rear entrance and subdivided garden. Therefore as a matter of fact I find that the property had been occupied as two separate dwellings, amounting to the material change of use as alleged by the Council.

Conclusion

7. For the reasons given above I conclude that the appeal should not succeed.

Formal Decision

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

Laura Renaudon

INSPECTOR