



Appeal Decision

Site visit made on 31 October 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/D5120/C/22/3301478

31 Izane Road, Bexleyheath, Kent DA6 8NU

- 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 Altin Kajnozi against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The enforcement notice was issued on 18 May 2022.
 - The breach of planning control as alleged in the notice is: without planning permission the material change of use of the premises to three (3) self-contained units of Accommodation.
 - The requirements of the notice are:
 - a. Case the use of the premises outlined in red on the attached plan as three self-contained units of accommodation.
 - b. Remove all kitchen facilities as shown in the Photograph A and Photograph B enclosed with this Notice from the rooms on the first and second floor of the premises, including all kitchen cupboards, plumbing, sinks, boilers, worktops, ovens, hobs and extractors.
 - c. Remove all debris, waste, materials, equipment resulting from complying with 5(a) and 5(b) above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) 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 site visit procedure was altered from an accompanied site visit to an access required site visit, as the Council Officer was not present when I arrived at the appeal site during the pre-arranged time and date. Both parties were subsequently written to explaining the change in procedure. As such the appeal will be determined on this basis.
3. I have also dealt with another appeal (Ref: APP/D5120/W/22/3301194) on this site. That appeal is the subject of a separate decision.

The appeal on Ground (b)

4. 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.
5. The appeal site is an end of terrace property, which has been extended with a loft conversion including a rear dormer and a single storey rear extension. The main issue is whether there has been a material change of use of the property by subdividing the property to create 3 self-contained units of accommodation. 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.
6. For the allegation to be correct, there would need to be 3 separate self-contained units of occupation and hence 3 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 should be taken into account. It is also necessary to consider whether each unit of accommodation has the distinctive characteristic of a dwellinghouse. Case law has established 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 needs to be considered.
7. The appellant refutes the allegation and states that the property is being used as a dwellinghouse. In support of this, the appellant has submitted a statutory declaration by Mrs Monika Kajnozi, co-owner of the property, where she declares to the best of her knowledge the property is currently being used as a single dwelling and all the occupants are related to each other. The appellant also states that the internal photographs submitted clearly show that the kitchens (on the first and second floor) are boarded and not in use, and that they are awaiting the determination of their planning appeal (ref: APP/D5120/W/22/3301194) for a 6-bedroom HMO before carrying out any remedial works.
8. The Council do not agree and state that the boards covering the kitchen units can easily be removed and if the kitchen were not intended to be used, then they would have been removed. They also highlight that the appellant's own internal photographs, show the hob and sink available for use. As such the Council consider that the kitchens remain capable of use, and from their own site inspection, the kitchen units and cupboards were not boarded up. Furthermore, the drawings submitted with refused planning application for the HMO (the subject of Appeal Ref: APP/D5120/W/22/3301194) do not show the existing kitchen units at first and second floor level, and therefore, there is no apparent reason why these kitchens were installed if they are not intended to be used.
9. When the Council inspected the premises, they found that the ground floor contained a kitchen/lounge area, a shower and toilet and three separate rooms. On the first floor, there was a separate self-contained unit of accommodation with a bedroom, kitchen and separate toilet and shower room.

Separate to this there were two further bedrooms and a shower room on the first floor. The loft room also contained one self-contained unit of accommodation with a kitchen, bedroom and a bathroom, and that all doors within the property contained locks. The Council also highlight that all rooms were available for rent on 'spare room' website and the two self-contained units were also advertised.

10. During my own site inspection, I observed a similar layout with the second floor comprising a lounge/kitchen area, a bedroom, with a double bed, and a separate shower room with toilet. This area clearly forms a separate residential unit. Whilst the kitchen units were enclosed with timber boards, I agree with the Council that these could easily be removed, and kitchens made available for use at any time. As such, the second floor contained all the facilities required for day-to-day living and formed a separate planning unit.
11. With regard to the first floor, one of the bedrooms also provided access to a separate kitchen area with kitchen cupboards and units and also contained a separate shower and toilet. Similar to the second floor, despite the fact that the kitchen units were boarded up at the time of my site inspection, it would not be difficult for someone to remove these board. As such, this first-floor area also contains all the facilities required for day to day living and forms a separate planning unit.
12. With regard to the remainder of the property, this comprises a living room, kitchen/dining area, two bedrooms and a bathroom on the ground floor and two bedrooms and two bathrooms at first floor level. However, the communal hallway on the ground and first floor which serves these various rooms are useable by all occupiers of the appeal site, including those in the separate first and second floor self-contained units. As such, these rooms on the ground floor and the remainder of the first floor cannot be correctly described as a "self-contained" unit of accommodation.
13. Furthermore, there is nothing before me to suggest the layout of the premises has changed since the notice was issued. I note the layout of the premises match those shown on the existing floor plans submitted with the planning appeal ref: APP/D5120/W/22/3301194, and the photographs attached to the Enforcement Notice. Therefore, I find that the facilities for day to day living for a separate self-contained unit of accommodation on the ground and part of the first-floor did not exist when the notice was issued.
14. As such, having carefully considered all of the evidence before me, as a matter of fact and degree, I conclude on the balance of probabilities, that the use of the premises has not changed to three 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).
15. 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 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

16. 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 (f) and (g) do not fall to be considered.

R Satheesan

INSPECTOR