



Appeal Decision

Site visit made on 16 April 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2024

Appeal Ref: APP/D1780/C/23/3325538

4 Orwell Close, Southampton SO16 9EP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Abbotts Langley Nominee Ltd against an enforcement notice issued by Southampton City Council.
 - The notice was issued on 8 June 2023.
 - The breach of planning control as alleged in the notice is the material change of use of the land to two separate self-contained dwellinghouses.
 - The requirements of the notice are: (i) Cease the use of the land as two separate self-contained dwellinghouses; (ii) Remove the kitchen and cooking facilities facilitating the use as two separate self-contained dwellinghouses from the ground floor flat shown green on plan A3/40C/02 attached to the notice; and (iii) Remove the locks from the internal doors of the room marked 'reception' between the rooms marked 'hall' and 'kitchen' shown on plan A3/40C/02; and (iv) Remove all resulting materials from the land.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be varied by in paragraph 5, step (i) deleting 'two.' Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. Reference in the enforcement notice requirements to the number of separate self-contained dwellings in the unauthorised use is unnecessary. The allegation specifies the precise number of dwellings comprised in the unauthorised use. It is sufficient to require the use as more than one dwelling to cease. Reference to ceasing the use as two dwellings may also lead to uncertainty as to what the notice actually requires, for example in the event of a future unauthorised use of the property as three or more dwellings. Therefore, I shall vary the notice to delete reference to the number of dwellings in step (i). In doing so, I am satisfied that there would be no injustice to either the appellant or the Council.

Ground (b) appeal

3. The ground of appeal is that the matters alleged in the notice have not occurred. It is for the appellant to prove why their appeal should succeed on

this ground, the relevant test of the evidence being on the balance of probability.

4. The appeal property contains an enlarged two storey, mid-terrace dwelling. During my visit, I saw that on the ground floor at the end of the hallway there was a room in use as a living area, beyond which was a fitted kitchen. Apart from a shower room, the other rooms on the ground floor were vacant. Kitchen fittings and appliances had been removed from one of those rooms, although the associated pipework together with a heating boiler remained. On the first floor were four rooms being used as bedrooms, together with a bathroom.
5. During visits to the property in early 2023, the Council recorded that in addition to the shower room there was a reception room, living room, kitchen and study in the now vacant part of the ground floor. The Council stated that from these rooms, it was only possible to access the living area and kitchen at the end of the hallway and the rooms on the first floor via doors that were fitted with locks.
6. At the time of the Council's visits, part of the ground floor thus provided living accommodation that could function independently and exhibited a significant degree of physical separation from the living accommodation in the rest of the property. The part of the ground floor in question had the ability to afford to those who used it the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwellinghouse according to established case law¹. This suggests that there were two units of separate self-contained living accommodation at the property when the Council visited.
7. According to the appellant, the property had been occupied by members of the same family. However, that in itself would not be conclusive of use as a single dwelling. Whether a property is in use as a single dwelling does not rest solely on the occupiers being related to one another. Neither is the existence or otherwise of two separate dwellings contingent on whether suitable fire protection and sound insulation measures have been provided.
8. Moreover, little firm evidence was supplied to support the appellant's claim that the property had only been used as a single dwelling. It was unclear for example whether the persons formerly occupying the now vacant part of the ground floor had shared their living activity in company with the family occupying the rest of the property. Furthermore, no details were supplied concerning how the property had been let and in relation to the arrangements for utilities and other services. Therefore, the available evidence shows that, as a matter of fact and degree and on the balance of probability, at the time the notice was issued the property was in use as two separate self-contained dwellings.
9. As noted above, since the issuing of the notice the part of the ground floor in question has been vacated and its kitchen taken away. Also, the locks fitted to two of the internal doors on the ground floor have been removed. As ground (b) is worded in the past tense however, none of this is relevant to the consideration of whether the breach described in the notice had occurred. The last use of the property was as two separate self-contained dwellings and that remains the position. The breach has occurred as a matter of fact.

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

10. Consequently, the appellant has been unable to show that the matters alleged in the notice have not occurred, the available evidence suggesting otherwise. The ground (b) appeal fails.

Conclusion

11. For the reasons given above I consider that the appeal should not succeed.

Stephen Hawkins

INSPECTOR