The Planning Inspectorate

Appeal Decision

Site visit made on 6 September 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2022

Appeal Ref: APP/B5480/C/21/3270264
218 Lodge Lane, Romford RM5 2EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Scott Richards against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice was issued on 29 January 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a single dwelling to four self-contained flats.
- The requirements of the notice are to
  (i) Cease using the property as four self-contained flats;
  AND
  (ii) Carry out alterations to the internal layout of the property so that it accords fully with the proposed ground floor plan and proposed first floor plan approved under planning application P1869.17 attached to this notice as Appendix 1; Project NJH: 2O17-LL-ZXX, Date: Jan 2017, Sheet: 02 Rev B;
  OR
  (iii) Remove all the kitchen and cooking facilities except for one Kitchen and remove all bathroom and bathroom facilities except for one family bathroom and one WC;
  AND
  (iv) Remove all electricity meters/fuse boxes from the premises except for one which serves the whole premises:
  AND
  (v) Remove all locking mechanisms from all internal doors that facilitate the use of the property as four self-contained flats
  AND
  (vi) All materials and debris associated with steps i,ii,iii, iv & v above shall be totally removed from the site.
- The period for compliance with the requirements is 3 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 (the Act).

Summary of Decision: Subject to variations, the enforcement notice is upheld and the appeal is dismissed.

Decision

1. It is directed that the enforcement notice is varied by:

   (i) the deletion of the word "*four*" from requirement (i) so that it reads" Cease using the property as self-contained flats."

   (ii) the deletion of the word "*four*" from requirement (v) so that it reads "Remove all locking mechanisms from all internal doors that facilitate the use of the property as self-contained flats."

2. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary and Background Matters

3. The appeal is proceeding on the limited ground (b) only. There is no ground (a) appeal before me which would have included an application for planning permission and would have involved consideration of the planning merits of the appeal property. Issues such as space standards, parking, the appearance of the property and the benefits of providing housing are therefore matters which fall outside the remit of this appeal.

4. Planning permission was granted for a two storey extension to the side and rear of the appeal property in March 2018 when the appeal property was in use as a single dwelling house. There have been further applications including a planning application that was not validated but was subsequently withdrawn. A further application for a Certificate of Lawful use for a House in Multiple Occupation (HMO) has not been validated and that application's progress is a matter for the parties to resolve outside this appeal process.

5. The Use Classes Order does permit certain changes within the use classes without express planning permission. However, the Council issued an Article 4 Direction on the 13 July 2016 relating to HMOs. As a result, any change of use from a single dwelling house to HMO use after that date required express planning permission and cannot rely upon permitted development rights.

The Notice

6. The first requirement is to "Cease using the property as four self- contained flats." All self-contained flat use is required to cease. However, as drafted, the current wording could lead to interpretational problems in allowing for use as three self-contained flats rather than four. I will therefore amend the allegation to remove the word" four." I am satisfied that this amendment does not cause injustice to either party as it is clear from the notice that all flat use is unauthorised and is required to cease. For the same reasons, the word "four" is deleted from requirement (v). I will therefore amend the requirement by deleting the word "four" from requirements (i) and (v).

7. Clarification was sought from the Council about the requirements as they provide for alternatives and the small print on plan number 02-Rev B supplied was unclear. The first option (ii) is to re- instate the internal layout that was approved as part of the planning permission as shown on plan number 02-Rev B. The plan shows an internal layout of 3 bedrooms at first floor level with a bathroom and a living area together with a combined kitchen and lounge area at ground floor level. Compliance with this requirement would require removal of additional internal walls.

8. The second option (iii) requires the removal of all kitchens and cooking facilities and bathrooms apart from one of each. Whilst the Council has suggested that the second option could be deleted, in my view, this option is less onerous than the first option and the appellant would therefore suffer injustice if I now deleted the second option. Any use after compliance with the requirements by the appellant other than as a single dwellinghouse would require a planning application.

9. The appellant therefore has a choice of re-instating the layout shown on Plan number 02-Rev B in accordance with requirement (ii) or removing kitchens and bathrooms and kitchen and bathroom facilities apart from one of each as listed

at requirement (iii).There is no ground (f) appeal before me to indicate that the requirements are excessive. The case of Murfitt[1] has in any event established that the Council can require the removal of items such as shower rooms and kitchens or internal walls where they have facilitated the unauthorised use.

An appeal under ground (b)

10. An appeal under ground (b) is that the matters alleged in the notice have not occurred as a matter of fact. The burden of proof is on the appellant to show on the balance of probabilities that the breach has not occurred. The Council is of the view that a material change of use has taken place from use as a single dwelling house to use as self-contained flats.

11. Section 55 of the Town and Country Planning Act 1990 defines a material change of use as the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse. There is no express planning permission for a material change of use to self-contained flats.

12. The Council states that the appeal building was in use as a single dwelling house at the time of the submission of the planning application for extensions which resulted planning approval in March 2018. The appellant alleges that the appeal property is an HMO (House in Multiple Occupation) and has been since the issue of a licence on the 18 July 2018. There is no evidence before me of any grant of express planning permission for a change of use to an HMO which would have been required due to the Article 4 Direction coming into force in 2016.The lawful use of the appeal property is therefore as a single dwelling house. The only evidence relied upon by the appellant to support ongoing HMO use is the issue of the HMO licence and Plan Reference PL- 02.However, the planning and licensing regimes are entirely separate and the issue of a HMO licence does not mean that the planning use of the appeal property is as an HMO.

13. In planning terms, self- contained flats are separate dwellings. As established in Gravesham[2], a dwelling is defined as a single self-contained unit of occupation which contains the normal facilities for cooking, eating, washing and sleeping associated with use as a dwellinghouse. The plan supplied by the appellant shows the existing layout of the appeal building which supports the Council's allegation that a material change of use has taken place. The appeal property is divided into two flats on the ground floor and two flats on the first floor.

14. Each flat has its own shower room with shower, sink and toilet and a kitchen and a sleeping area. There are no shared facilities in the modest communal hallway and the outside door has four bells marked A, B , C and D, one for each flat. Each flat then has its own front door with its own lock. The Council has referred to occupiers having individual tenancy agreements.

15. At the site visit, I was able to visit all four flats and see the layout as shown on the plan. The appellant does not allege that the occupants share any facilities. The self-contained units do meet the Gravesham test of containing facilities associated with day to day domestic existence. The unauthorised use as self-contained flats alleged by the Council has therefore taken place and is ongoing.

[1] Murfitt v SSE & East Cambridgeshire DC [1980] JPL 598
[2] Gravesham BC v SoSE and Another QBD 8 November 1982 (1984) 47 P. & C.R. 142

16. The Council has set out in its statement why the appeal property is not a HMO for planning purposes despite having a HMO licence. The absence of any shared facilities and the designation of the HMO under the Housing Act mean that the appeal property does not in any event fall within the definitions of a C4 (HMO) set out in the Use Classes Order.

17. The appellant states that the HMO licence issued by the Council's licencing team permits a maximum of 8 occupants and is over the minimum space standards. The appellant has also highlighted the definition of a HMO set out in the Notes to the licence at paragraph 1. However, all of those matters relate only to the licensing regime and are not relevant in determining whether in planning terms a material change of use from a single dwellinghouse to self-contained flats has taken place. The Licence does also clearly state that planning permission is a separate matter.

18. On the evidence before me, I am satisfied, on a balance of probabilities, that a material change of use from a single dwelling house to self-contained flats has taken place. There is no express planning permission for such a change. The breach of planning control alleged in the notice has therefore occurred as a matter of fact. The appeal under ground (b) therefore fails.

Other Matters

19. Three individual tenants of the flats have written in support of the appeal and there are two objectors. I have taken into account comments in so far as they relate to the specific ground of appeal before me. I note that the tenants do not wish to have the disruption of leaving their home and two of the tenants have been in occupation for two years or more but equally the Council is entitled to seek compliance with the notice.

20. There is no appeal under ground (g) which relates to the period for compliance which remains at 3 months. I have not been supplied with copies of the tenancy agreements which are likely to contain minimum notice periods. However, the Council does have discretionary powers under Section 173A(1)(b) of the Act to extend any period of compliance should they consider that it is appropriate to do so.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall vary and uphold the enforcement notice.

E Griffin

INSPECTOR