

Appeal Decision

Site visit made on 10 August 2016

by George Mapson DipTP DipLD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 September 2016

Appeal Ref: APP/G5750/C/16/3144944
522a Barking Road, London, E13 8QE

- 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 Jacob Rahamim against an enforcement notice issued by the Council of the London Borough of Newham.
 - The Council's reference is 13/01745/ENFC.
 - The notice was issued on 22 January 2016.
 - The breach of planning control as alleged in the notice is:
"Without planning permission the material change of use of the property to six self-contained flats."
 - The requirements of the notice are:
*"1. Cease the use of the property as more than three self-contained flats.
2. Remove from the property three of the six kitchens.
3. Remove from the property any internal dividing doorways and internal partitioning that solely facilities the use as more than three self-contained flats.
4. Remove from the property all duplicate doorbells, duplicate signage and duplicate outside waste bins.
5. Remove from the property all but three supplies of electricity, gas and water.
6. Remove from the site all debris arising from compliance with steps 1, 2, 3, 4 and 5."*
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended. Since no appeal was made on ground (a) and no fees were paid, there is no application for deemed planning permission to be considered.
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Decision

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

Preliminary matters

The site visit

2. An accompanied site visit, arranged for 10 August 2016 at 12.00pm, took place. An officer of the Council attended at the arranged time, but the appellant did not attend and did not send his agent or a representative.
 3. While I was waiting for the appellant, the occupier of Flat 2 (the front flat on the 1st floor) entered the building and showed me into his flat. I was able to see the internal layout of the flat and the locks on the rooms within it. I was also able to see the locks on the rooms associated with Flat 1 (the rear flat on the 1st floor). I also saw the position of the flats on the 2nd and 3rd floors (and the locks on the front doors), but I did not enter them.
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4. There was no discussion of the appeal with the Council officer or the occupant of Flat 2. The site inspection was conducted as an unaccompanied one. I left the building at about 12:20pm. Throughout the duration of my site visit neither the appellant nor a representative made an appearance.

The appeal on ground (b)

5. An appeal on ground (b) is that the matters stated in the notice (which may give rise to the breach of planning control) have not occurred as a matter of fact.
6. In this case, the appellant contends that the 1st, 2nd and 3rd floors of the appeal premises are not used as six self-contained flats, as alleged, but are used as four "HMO" units on the 1st and 2nd floors and two self-contained 1-bedroom flats on the 3rd floor.
7. Alternatively, he claims that the premises are used as a hostel with all the units rented out to homeless people.

Appeals made on legal grounds only

8. Where an appeal is made on legal grounds only, the decision depends entirely on factual evidence about the history and planning status of the building, structure or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant and are not therefore an issue for me to consider.
9. The burden of proof regarding decisive matters of fact rests on the appellant. He has asserted that the matters alleged in the notice have not occurred as a matter of fact. He must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).

Planning history

10. No. 522a Barking Road is a four-storey terraced property, the ground floor of which is used as a Metropolitan Police Safer Neighbourhood Unit. The upper floors are in residential use.
11. There is a lengthy history of planning applications at this address, beginning in 1954 with a grant of planning permission for the erection of shops, offices and living accommodation.
12. In 2003 planning permissions were granted firstly, for the change of use of offices on the 1st and 2nd floors of the building to two 2-bedroomed flats; and secondly, for the erection of a new mansard roof to accommodate one 2-bedroomed flat (on the 3rd floor).
13. On 6 July 2005 a temporary planning permission for ten years was granted for the change of use of the 1st, 2nd and 3rd floors from three 2-bedroomed flats into a "house on multiple occupation for women's special needs". That permission was set to expire on 5 July 2015, at which point the use of the three upper floors would revert to the lawful use as three self-contained flats.

Evidence relating to the use of the 1st, 2nd and 3rd floors as six self-contained flats

14. On 19 August 2013 a Council Tax and Benefits Officer responsible for inspections of properties visited the premises and found that the 1st, 2nd and 3rd floors had been converted into six self-contained flats.
15. The record of the officer's visit of 19 August 2013 sets down the names of the tenant of each of flat and their periods of occupation. The record states that letting agents (Finefare) were managing the flats on behalf of the landlord and that the tenants were placed at the property by the Council of the London Borough of Redbridge.

16. On 10 March 2014 the Council served a Planning Contravention Notice [PCN], the response to which was made by Jack Rahamim and Uriel Cohen¹, the “freeholders of the property”.
17. The PCN response was accompanied by Assured Shorthold Tenancy Agreements [ASTs] for Flat Nos. 1, 2, 3, 4, 5 and 6, each for a term of 12 months. The ASTs indicated that the property had been used as six self-contained flats since June and July 2013. The flats have been banded separately for Council Tax purposes since June 2013.
18. On 5 August 2014 the officer revisited the premises and found that the use as six self-contained flats was continuing. His record of that visit, complete with a sketched floor plan of the 2nd floor, is set out in an internal email dated 15 August 2015.
19. The record is relatively detailed. For example, it notes the presence of an intercom outside the building with buzzers marked 1 to 6; it notes the configuration of the floors; the name of the occupant of one of the 2nd floor flats that the officer visited; the layout of the flat and alterations to internal walls; and the types of locks (Yale and mortice) used on the internal doors.
20. The record notes that:

"Discovered that where there had been two doors from the landing for each of the two flats (3 & 4), there was now only the one, which would have been the original entrance to Flat 3. Entrance to Flat 4 had been boarded & plastered over. A wall beyond the landing doorway that once divided flats 3 & 4 has also been taken out. However the accommodation for each of the two 'former' flats remains as it was when the wall and 2nd door were in place. I believe that two internal doors may also have been installed since last year to separate two bed-sitting rooms and two kitchens at either end of the building from the communal hallway in the middle. The only rooms accessed directly off this communal hallway are two bathrooms (one each belonging to the two lots of separate tenants that will occupy this floor). The two internal doors each had Yale locks. The two bathrooms also had external locks. SIMONE [the tenant of Flat 4] and her key worker confirmed that she only has a set of keys for allocated bathroom and living accommodation. Access to Flat 3 (via a master key held by the key worker) confirmed that this particular flat was unoccupied."

21. The record continues:

"I and the key worker were not sure why, exactly, the wall and door into flat 4 were removed and why both the kitchens remain as the work that has been done doesn't appear to have served any real purpose given that tenants living on this floor still have exclusive use of their own bath-room, kitchen and bed-sitting room."

The meaning of 'house in multiple occupation'

22. A house in multiple occupation [HMO] is a property rented out by at least 3 people who are not from one 'household' (for example a family) but share facilities like the bathroom and kitchen.
23. Section 254 of the Housing Act 2004 provides the definition of an HMO for the purposes of applications and appeals made under the Planning Acts. It states that a building or part of a building is an HMO if it meets the conditions set out in the subsections that follow.
24. Section 254(1) contains five tests for HMOs. Of particular relevance to this appeal are (a), "the standard test"; (b), "the self-contained flat² test"; and (c), "the converted building³ test"⁴.

¹ The official copy of the Land Registry Title EGL478160 (dated 15 January 2014) identified Jacob Hai Rahamim and Uriel Cohen as the freeholders of 522 Barking Road, Plaistow, since 12 March 2013.

² Section 254(8) explains that in this section "self-contained flat" means a separate set of premises (whether or not on the same floor) that (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

Section 254(2) - the standard test

25. A building or part of a building meets "the standard test" if it meets all five conditions set out in paragraphs (a) to (f). Part of the test is met by condition (a) if the building or part of it "consists of one or more units of living accommodation not consisting of a self-contained flat or flats". Another part of the test is met by condition (f) if "two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities"⁵.

Section 254(3) - the self-contained flat test

26. A part of a building meets "the self-contained flat test" if, among other things, "*two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities*".

Section 254(4) - the converted building test

27. A building or part of a building meets "the converted building test" if, among other things, "*it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats)*".

Licensing of HMOs

28. A landlord must have a licence if renting out a large HMO. The Housing Act 2004 prescribes a compulsory licensing scheme that applies to all HMOs that fall into the following categories: (a) houses with three or more storeys, including basements and HMOs with shops underneath; (b) houses where there is material sharing of an amenity, such as a bathroom, kitchen or toilet facilities; and (c) houses that have five or more occupants.
29. Every HMO that fulfils all three criteria requires a licence from the Council and there is an unlimited fine for renting out an unlicensed HMO.
30. There is no evidence that a licence has been sought or granted for the use of the 1st and 2nd floors of this building as an HMO.

The meaning of 'hostel'

31. The legal definition of a 'hostel' is found in the Housing Benefit Regulations 2006⁶, Article 2(1). This explains that a hostel is a building:
- (a) in which there is provided for persons generally or for a class of persons, domestic accommodation, otherwise than in separate and self-contained premises, and either board or facilities for the preparation of food adequate to the needs of those persons, or both; and
 - b) which is (i) managed or owned by a registered housing association; or (ii) operated other than on a commercial basis and in respect of which funds are provided wholly or in part by a government department or agency or a local authority; or (iii) managed by a voluntary organisation or charity and provides care, support or supervision with a view to assisting those persons to be rehabilitated or resettled within the community; and
 - (c) which is not (i) a care home; (ii) an independent hospital; or (iii) an Abbeyfield Home.

³ Section 254(8) explains that in this section "converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed.

⁴ Section 254(1) also contains paragraphs (d), that an "HMO declaration" is in force in respect of it (under section 255) and (e), that the building is a converted block to which section 257 applies.

⁵ Section 254(8) explains that in this section "basic amenities" means "(a) a toilet, (b) personal washing facilities, or (c) cooking facilities".

⁶ SI 2006 No. 213

Reasons and conclusions on the ground (b) appeal

32. I have had regard to the representations made of behalf of the appellant, but I must attach greater weight to my own observations at the site and to the records of the site inspections carried out by the Council's officer in August 2013 and August 2014.
33. The body of evidence indicates that the present use of the appeal building fails to meet the tests set out in section 254 of the Housing Act 2004 for an HMO.
34. Despite the minor alterations to the partitioning of the 1st and 2nd floors that were carried out between August 2013 and August 2014, the upper floors of the building appear to consist entirely of self-contained flats.
35. The building does not contain one or more units of living accommodation that are not flats. Each self-contained flat provides all three basic amenities for the exclusive use of its occupants. None of the self-contained flats is lacking in one or more basic amenities and none of the households who occupy the living accommodation share basic amenities.
36. Similarly, as the accommodation provided for residents is in separate and self-contained premises, it does not meet the legal definition of a hostel.
37. For these reasons I find that the existing use of the appeal building is neither an HMO nor a hostel, as asserted by the appellant. The breach of planning control alleged in the enforcement has occurred as a matter of fact and accordingly, the appeal on ground (b) must fail.

The appeal on ground (g)

38. An appeal on ground (g) is that the period for compliance with the requirements of the notice is too short.
39. The appellant's case is that nine months, rather than five months, would be needed to enable the Council to find alternative emergency accommodation for homeless persons, and for the premises to be vacated and the required works to be carried out.
40. No specific evidence, as opposed to assertion, has been put forward to indicate that a longer period than 5 months would be needed to cease the unauthorised use and carry out the works. Accordingly, the appeal on ground (g) fails.

Conclusions

41. I have taken account of my observations at the site and all the matters raised in the written representations. For the reasons given I shall dismiss the appeal and uphold the enforcement notice.

George Mapson

INSPECTOR