The Planning Inspectorate

Appeal Decision

Site visit made on 27 September 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 20 October 2016

Appeal Ref: APP/N5090/C/16/3153732
56 Hendale Road, London NW4 4LS

- 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 Tsemah Moshe against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 9 June 2016.
- The breach of planning control as alleged in the notice is without planning permission, the sub-division of the property to form six self-contained flats within the last four years.
- The requirements of the notice are 1. Cease the use as six self-contained flats. 2. Permanently remove all but one set of kitchen facilities (units, sinks, cookers and food preparation areas) from the property. 3. Permanently remove toilet and washing facilities (shower, bathtub and sink) from all but one room per floor of the property.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is varied: by the deletion of 'six' in Step 1 in part 5 of the notice and the deletion of Step 3. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (d)

2. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. He needs to show, on the balance of probabilities, that the use of each studio as a self-contained, residential unit took place more than four years before the notice was issued and that it has continued, without material interruption, since that date. The relevant date in this context is 9 June 2012.

The appellant's case

3. The appellant's submission is that the conversion has been carried out for a period in excess of four years and the use has now become established. To support this statement he includes a copy of a letter dated 29 May 2012 from the Council's Planning Enforcement Officer (PEO) and copies of two Council tax demands. The former describes the layout of the property at that time as progressing towards the establishment of a six bedroom house in multiple occupation (HMO) with a kitchen. The Council tax demands state Council tax payments for the periods 18 February 2012 to 31 March 2012 and 1 April 2012

to 31 March 2013 are exempt due to major work taking place. He also includes existing floor plans of the property dated 1 July 2016. These show that units 1 to 5 had en-suite bathrooms and that there was a shared kitchen on the ground floor.

The Council's case

4. A PEO first visited the property on 2 April 2012 following the receipt of a complaint that the house had been subdivided into self-contained units. He found that building works were taking place and that rooms for en-suite bathrooms had been created but not fitted. He re-visited the property on 21 May 2012 and saw a shared kitchen and all rooms with en-suites. However, there was exposed pipework in each room, which he photographed, so he wrote to the owner (the 29 May 2012 letter) and asked him to clarify his intention with regard to the pipework. On 12 June 2012 the PEO saw that all the pipework had been boxed in. More photographs were taken and the case was closed.

5. The PEO visited the site again on 27 July 2012 after receiving another complaint that self-contained units had been formed. He saw that kitchens had now been added to each of the rooms. The appellant was asked to remove these but there was no response from him. Subsequently, Council tax records indicated that payments for self-contained flats began 9 November 2012. A Planning Contravention Notice (PCN) was served on 4 March 2016 to determine the current state of the property but no response was received.

6. Essentially the Council's case is that the appellant is unable to demonstrate four years continuous use of each unit from 9 June 2012. This is because Council records show that the self-containment was not completed until at least 27 July 2012 and the occupation of each unit probably did not occur until November 2012 when Council tax payments began.

Assessment

7. The appellant's evidence contradicts what he claims, that the use of the property as self-contained units began more than four years ago. This is because the Council tax demands suggest that building work continued until the end of March 2013 and the Council's May letter confirms that the layout of the property was as a HMO on 21 May 2012. Furthermore the 'existing plans' do not reflect the layout of the property as I saw it during the site visit as units 1 to 6 were self-contained. No evidence has been put forward to demonstrate that there has been a continuous use as self-contained units at any point after 21 May 2012.

8. The Council's evidence though shows that at some point between 12 June 2012 and 27 July 2012 the units became self-contained. This is significant as it is after the relevant date of 9 June 2012. As such, I consider that the appellant has failed to demonstrate any four year period of immunity, on the balance of probability. The Council suggest that the appellant sought to conceal his activities. However in order to succeed in this respect they would need to demonstrate that the appellant had acted in such a way as to positively deceive the Council in order to undermine the planning process. On the evidence I do consider that he did as the Council saw that the boxed-in pipes had been replaced with kitchens by 27 July 2012 and that Council tax payments began November 2012 but a PCN was not served until March 2016.

9. The Planning Practice Guidance advises[1] that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probability.

10. As I have found the appellant's limited evidence is contradictory he has not satisfied the requirement to submit evidence that is sufficiently precise and unambiguous, on the balance of probability. Consequently he has not discharged the onus of proof that all of the units have been used for any continuous period of four years before the issue of the notice. The appeal on ground (d) therefore fails.

Overall Conclusion

11. It is necessary to vary the requirements of the notice by deleting 'six' from Step 1. This is because it is not necessary to specify the number of flats, rather that it is the use as flats that should cease. Also, it is necessary to delete Step 3 as the Council accepted that the property was lawfully laid out as a HMO (en-suite bathrooms with one shared kitchen) in its 29 May 2012 letter. To do so otherwise would be excessive.[2]

12. For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice with variations.

D Fleming

INSPECTOR

[1] Reference ID: 17c-006-20140306
[2] Bowring v SSCLG & Waltham Forest [2015] EWHC 1027 (Admin)