

Appeal Decision

Site visit made on 9 November 2016

by John Whalley

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

Decision date: 15 November 2016

Appeal ref: APP/T5150/C/16/3146417

Flats 1 - 4, 331 North Circular Road, London NW10 0HY

- The appeal was made by Mr Jitendra Vekaria under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Brent Council.
- The notice was issued on 2 February 2016.
- The breach of planning control alleged in the notice was: Without planning permission, the material change of use of the premises from a single dwellinghouse to four flats.
- The requirements of the notice are to:
 - Step 1 Cease the use of the premises as self-contained units of accommodation and its occupation by more than one household.
 - Step 2 Remove all kitchens except one and all bathrooms except two and remove all other fixtures and fittings including partition walls associated with the unauthorised use from the premises.
- The period for compliance with the requirements is three months.
- The appeal was made on grounds (a), (c) and (d).

Summary of Decision: The enforcement notice is upheld. Planning permission is not granted on the application deemed to have been made

Appeal property

1. The appeal property, No. 331 North Circular Road, London, is 2 storey semi-detached house with accommodation in the roof space at second floor level. The house was divided into 4 separate units of accommodation. There was a 2 bedroom flat with sole access to the side and rear garden on the ground floor, two 1 bedroom flats of the first floor and a one room studio in the second floor roof space.

Procedural matter

2. The statement made on behalf of the Appellant under the heading "Ground C" appeal was a ground (d) case. It was not said there had not been a breach of planning control. It is assumed that reference to ground (c) was a slip and that the only legal ground of appeal made was ground (d) – that the change of use of No. 331 to 4 flats had become immune from enforcement action by the passage of time. I therefore deal with the appeal on grounds (a) and (d) only.

Definitions

3. A dwelling is defined, (in line with the 2001 Census definition), as a self-contained unit of accommodation. Self-containment is where all the rooms, (including kitchen, bathroom and toilet), in a household's accommodation are behind a single door which only that household can use. A flat is difficult to define. There are many types. However, the Building Regulations 2000, (SI 2000 No. 2531), give the following definition: '*A flat is a separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which it is divided horizontally.*'. Flats have to be contained within a dwelling with at least two storeys, (*Definitions of general housing terms Department for Communities and Local Government: 14 November 2012*). On that basis, the units at No. 331 are flats, being self-contained units of accommodation.

The appeal on ground (d)

4. For the appeal on ground (d) to succeed, it has to be shown that the material change of use of No. 331 to use as 4 self-contained flats took place more than 4 years before the enforcement notice was issued on 2 February 2016, (s.171B(2) of the Act), and that the use as 4 flats has been carried out continuously for the requisite period, to the extent that the Council could have taken enforcement action at any time in that period. The Court of Appeal decision in the case of *Thurrock BC v SSETR & Holding (CoA 27.2.02)* is authority for that position.
5. The burden of proof in an enforcement appeal on a legal ground such as this lies with the Appellant. The case of *Nelsovil v MHLG [1962] 1 WLR 404* is the relevant authority. The standard is the balance of probabilities, (*Thrassyvoulou v SSE No 1 [1984] JPL a732*).
6. The Council said the submitted statutory declaration did not appear to be correct. They said the Appellant claimed the premises had already been converted into flats before his purchase of the property. Yet a Zoopla advertisement on their website of May 2011 stated that the accommodation comprised: Ground floor - entrance hall, 2 reception rooms, kitchen, shower room/WC; First floor - 3 bedrooms, bathroom, WC; Second floor - 2 bedrooms.
7. The Council pointed to the Appellant's statement that said the property was last used as a family dwelling in 2011 and that it was converted upon purchase into 4 dwellings. That seemed to be contradicted by Mr Vekaria's Statutory Declaration that said he had not carried out any conversions at the property during his ownership since 2011. The Council suggested that the statutory declaration has been completed to deliberately mislead the Council as to the history of the site.
8. The Council said that further irregularities were raised by the electrical installation report. The Declaration date was marked as 02/01/2012. Part D of the form however stated: "This inspection and testing detailed in this report and accompanying schedules have been carried out in accordance with BS7671:2008 (IET Wiring Regulations) as amended to July 2015. Also, at the bottom of each page of this document it stated: "Copyright © Amtech Group Ltd 2013.". That also indicated that the document could have not been produced in 2012.
9. The Council said that the Valuation Office Agency rated premises based on what the applicants requesting the rating tell them. That included information such as dates the flats were first occupied. The Effective date was marked as March

2012 whilst the letter was dated July 2012. No evidence was supplied to confirm whether the Valuation Office carried out any inspections. It was questioned why the flats were not registered for Council tax until May 2012, within the 4 year immunity period.

10. In my view, there is also a problem with demonstrating continuity of occupation during the 4 year period. In the case of *Swale BC v FSS & Lee [2005] EWCA Civ 1568*, [2006] JPL 886, the issue of continuous residential use for the 4 year period was discussed. It was held there is a difference between an established dwellinghouse when an occupier does not have to be continuously or even regularly present in order for it to remain in use as a dwellinghouse and where there is no established use; at the start of the material period the use has to be "affirmatively established" over the 4 year period. Where it is not claimed here that the separate residential uses were affirmatively established by the start of the 4 year period, it is necessary to see whether there were any periods of non-occupation during the 4 year period and whether they were insignificant or not.
11. That means, as in *Swale*, it is necessary here to consider whether there was any period during the 4 years of the breach when the flats were not physically occupied or shown to have been occupied, even though perhaps available for occupation, when the Council could not have taken enforcement action against their unlawful use, (*Thurrock*). The use could only become lawful if it continued throughout the requisite period, to the extent that if the use ceased during that period, during which no enforcement action could have been taken by the local planning authority, the time could not count towards immunity.
12. The Appellant, Mr Vekaria, submitted an extensive array of tenancy agreements. What was lacking, however, was a comprehensive, comprehensible and corroborated list showing tenants' continuous occupation history for each separate flat over the requisite 4 year period. As the Council said, evidence such as Council tax bills, utility bills and electoral register information might have been expected.
13. As with an application for a certificate of lawfulness under s.191(1)(a) of the Act, an appeal on ground (d) must be supported with credible evidence of a continuous unlawful use for 4 years that had resulted in the use having become lawful. In my view, the evidence put forward in this appeal failed that test.
14. The appeal on ground (d) fails.

The appeal on ground (a)

15. The appeal on ground (a) asks that planning permission be granted to retain the use of No. 331 as 4 flats or individual residential units.
16. The Appellant said the historic conversion of No. 331 into 4 flats with shared amenity helped to provide a mix of housing to meet the needs of small and large households. The ground floor flat provided accommodation for a small family. The 2 one-bedroom flats on the first floor were suitable for couples. The second floor studio was appropriate for a single person.
17. The Council pointed out that Core Strategy policy CP21 required at least one 3 bedroom flat be provided within conversions to meet the need for family housing. The policy resisted the loss of family sized accommodation.

18. Whilst there is a clear demand for small units of residential accommodation, there is a local policy objection to the further loss of family homes. Also, that demand for small units should not mean that standards are to be set aside, especially where as here, the floor areas of all the flats fall well short of the London standards.
19. The London Plan space standards set a floor area for flats. None of 4 flats at No. 331 are near to meeting that standard:

Flat	Measured on plan	London Plan space standard
Flat 1 – Ground floor 2 bedrooms, kitchen/living room, bathroom	42m ²	61m ²
Flat 2 – First floor 1 bedroom, kitchen/living room, bathroom	24m ²	50m ²
Flat 3 – First floor 1 bedroom, kitchen/living room, bathroom	18m ²	50m ²
Flat 4 – Second floor Studio, bathroom	21m ²	37m ²

20. As well as not providing adequate floor areas, the layout of the rooms at No. 331 is not ideal, with a living /kitchen room located above a bedroom, a bedroom above a living/kitchen room, part of a staircase above a bedroom and a bedroom above a bathroom and w/c. That makes it more difficult to avoid noise and bothersome disturbance to other occupiers. Soundproofing can be helpful, but the concentration of so many separate households into this former family home make it unlikely that acceptable levels of amenity can be provided. The harmful effect on the living conditions of occupants of the flats through noise and disturbance adds to the compelling reasons to conclude that the appeal on ground (a) should not succeed.

FORMAL DECISION

21. The enforcement notice is upheld. Planning permission is not granted on the application deemed to have been made for the change of use of the dwelling at No. 331 North Circular Road, London NW10 0HY to 4 self-contained units of residential accommodation.

John Whalley

INSPECTOR