
Appeal Decision

Site visit made on 18 April 2017

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 26 April 2017

Appeal Ref: APP/U5930/C/3159785

25 Hartley Road, Leytonstone, London E11 3BL

- 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 Mrs Vimal Nath Ohrie against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice, numbered 062894, was issued on 24 August 2016.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the unauthorised operational development/building works to convert the property from a single dwelling house into two self-contained flats.
 2. The unauthorised use of a single family dwelling as two self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as two self-contained flats and cease the use of each flat as a separate dwelling.
 2. Remove all means of sub-division from the property and containment works, including partition walls and internal door divisions between the two self-contained flats.
 3. Remove all additional gas meters from the property so only one remains.
 4. Remove all additional electricity meters from the property so only one remains.
 5. Remove all additional boilers from the property so that one remains.
 6. Restore the property to its previous internal configuration and layout before the unauthorised work took place.
 7. Remove all additional kitchens, sinks, cookers washing machines, fridges, freezers and other kitchen related accessories, fixtures and fittings from the dwelling so that one remains in their original location.
 8. Remove all additional showers and toilets, sinks and associated fittings and fixtures from the property so that one remains in their original location.
 9. Remove all resulting materials, rubble and general detritus from the site following compliance with requirements 1 – 8 resulting from the works.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision

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

Ground (b) – *that the breach has not occurred as a matter of fact*

2. For ground (b) to succeed, the Appellant must show, on the balance of probabilities, that the allegation has not occurred within the four years

preceding the issue of the enforcement notice. The critical date defining the four year period before the issue of the notice is 24 August 2012.

3. The Appellant maintains that the conversion took place on or around September 2009, within the time limit of a planning permission¹ for conversion of the property to two self-contained flats, issued on appeal on 26 January 2005. In support, there is an invoice from Royal Estate Agent and Builders dated 30 September 2009.
4. Also produced are separate tenancy agreements for ground floor and first floor flats at 25 Hartly (sic) Road, dated on the front cover 10 October 2009, each covering a term of six months for a rent of £850 per calendar month. There are a number of inconsistencies within these documents. These include, for the ground floor flat, (tenant Mr Mike Bishop), the absence of some of the printed text together with a manuscript signed date of 10 October 2010, rather than 2009, on the last page. For the first floor flat, (tenant Mr William Jacobus), the last page, where the dated signatures of the parties normally appear, is missing altogether. Copies of receipts for rents paid have not been submitted.
5. Next is a management agreement with Stone Manor, running from 29 October 2010 to 28 October 2012 for 25 A,B 25 Hartly (sic) Road. It is clumsily drawn up with a number of spelling mistakes. It records an approximate rent required of £1450, monthly payment frequency, and payment arrangements by bank transfer. Three monthly Stone Manor payment sheets are included, all issued in 2011, and all for £1450 less 4% management charge leaving a balance of £1392. However, the payment sheets simply refer to 25 Hartley Road and do not identify separate flats. Two bank account statements have been submitted, one for July and the other for September 2011, each showing receipt of £1392 against Heartley (sic) Rd.
6. Given the rent level, falling significantly short of the combined rents which appear to have been charged to Mr Bishop and Mr Jacobus, it appears likely that Stone Manor's involvement was with the whole house as a single residential unit, rather than the house subdivided into flats. Moreover, the email trail from Stone Manor, logging police involvement in events associated with use of the property as a cannabis factory in November 2011, refers to 25 Hartley Road, rather than a particular flat, refers to the Tenant (in the singular), and refers to 'entering the House' and having 'not finished in the House'.
7. A tenancy agreement with Mrs Karanali, for the first floor, 25 Hartly (sic) Road, with a heading dated 28 December 2011, covering a term of one year, for a rent of £850 per calendar month has been produced. However, it is not signed, dated or witnessed. Also submitted is an assured shorthold tenancy agreement covering the same period, for a rent of £1650 per calendar month. It simply refers to the property at 25 Hartley Road, as does the section 21(1)(b) notice requiring possession served on the same tenant, Mrs Iryna Kristek, at the termination date of the agreement.
8. It seems very likely, given the level of rent and the lack of reference to flat accommodation, that Mrs Kristek's agreement is for the whole house. This would mean that the agreement with Mrs Karanali did not apply.

¹ APP/U5930/A/04/1153811

9. The Council's evidence shows that, apart from Mr Mike Bishop, the payers in the council tax records do not match the names on the tenancy agreements. Also, that the property is recorded as a single house until 6 May 2016, when the ground floor and first floor flats are recorded separately. Moreover, the date of registration of the flats for council tax purposes on 6 May 2016 correlates with the neighbours' representations identifying builders' activity in February, March and April 2016.
10. The Council's evidence also points to the Appellant's application for a private rented property licence dated 15 June 2015, clearly made out for a single undivided house, and a second application dated 14 September 2016, clearly made out for a first floor flat at 25 Hartley Road. In addition, advertisement listings on Zoopla in 2010 and 2011, after the date when the Appellant claims the property was converted and, for the 2011 listing, beyond the time during which the 2005 planning permission could have been implemented, describe the property as a three bedroom house. However, on 26 April 2016, a two bedroom ground floor flat at the address is listed on Zoopla.
11. In response, the Appellant acknowledges failure to comply with the formalities of registering the property as two flats for council tax purposes until 2016, even though she says the conversion had taken place in 2009. The Appellant also states that she was badly advised regarding completion of the application for private rented property licence, and submitted a fresh application when this became apparent. She explains that the Zoopla listing of the property as a house arose mainly because of her failure to comply with the licence requirements – she believed, in these circumstances, it would be an offence to list the property as two separate flats.
12. I find that the Appellant has failed to show, on the balance of probabilities, that the allegation has not occurred within the four year period running up to the issue of the notice. The Appellant's evidence is limited, patchy and far from precise and unambiguous. The explanations offered for inconsistencies and contradictions stretch plausibility.
13. In my view, the breach has occurred as a matter of fact and the appeal fails on ground (b).

Ground (c) – *that there has not been a breach of planning control*

14. The Appellant's position under this ground is that, had the conversion to two self-contained flats taken place and the flats been occupied within the last four years, this would not comprise a material change of use (MCU). The Appellant maintains that the Council has failed to provide sufficient evidence in support of its contention that a MCU has taken place.
15. However, for ground (c) to succeed, the Appellant must show, on the balance of probabilities, that the MCU has not taken place. Little or no evidence to support this position has been provided.
16. In any event, section 55(3) of the Town and Country Planning Act 1990 as amended states the following: For the avoidance of doubt it is hereby declared that for the purposes of this section – (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building and of each part of it which is

so used. In this context, a self-contained flat is taken to be a dwellinghouse, an interpretation supported by the courts.

17. I find that the alleged breach of planning control has taken place and the appeal therefore fails on ground (c).

Ground (d) – *that it was too late to take enforcement action*

18. For success under ground (d) the Appellant must show, on the balance of probabilities, that the alleged operational development had taken place more than four years before the issue of the enforcement notice. Also, that the MCU began and was continuously carried out for a four year period before the issue of the notice, such that the Council would have been in a position to enforce against it during that time.
19. Little or no evidence of continuous occupation, such as successive tenancy agreements, rent payment records, council tax records, utility bills, and so on, has been supplied. Moreover, under ground (b), I concluded that the alleged operational development, together with the MCU to two self-contained flats, had occurred within the last four years before the issue of the notice. I find, therefore, that it was not too late to take enforcement action. The appeal fails on ground (d)

Alan Novitzky

Inspector