



Appeal Decision

Site visit made on 2 July 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 9 August 2019

Appeal Ref: APP/N5090/C/18/3211758

24 Briarfield Avenue, London N3 2LH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Satish Raja against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 24 August 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the sub-division of the property into two self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as self-contained units of residential accommodation;
 2. Permanently remove all but one set of kitchen facilities (units, sinks, cookers, and food preparation areas) from the property;
 3. Restore the property to the state in which it was prior to the breach by removing any partition walls or entrance that create self-containment.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Formal Decision

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

The appeal on ground (d)

2. In 'legal' grounds of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
3. For the avoidance of doubt, the planning merits are not before me. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of the case. Hence, matters such as the suitability of the development in this location and the effect on nearby occupiers in terms of parking demand are not relevant since these would concern the planning merits.

4. The allegation concerns a material change of use of the premises into two self-contained units of accommodation. Although not expressed in those terms, it is the use of the premises that constitutes the alleged breach as opposed to the works that resulted in the sub-division. Therefore, the main issue in this case is whether the appellant has shown, on the balance of probability, that there was a material change of use of the property to two self-contained flats on or before 24 August 2014 and that this use continued for four years after the date of change without any significant interruption.
5. The information supplied by the appellant is very limited. There is an unsigned letter dated 5 July 2015 from Mr R Thakkar who states his family have been living at the premises since 10 April 2014. The letter describes how Mr Thakkar occupied the first floor of the property while his parents lived in the ground floor unit, which had been altered to accommodate facilities at that level. It is explained, at that date, the ground and first floor units were self-contained. Each unit was subject to a separate agreement with the landlord, and the occupants had their own telephone landlines. It seems that utility bills were not metered separately but costs were divided.
6. I am also supplied with one page of an incomplete Tenancy Agreement between the appellant and Mr and Mrs Chandrakant, which covers the period 18 February 2014 to 17 January 2015. I understand that these individuals are Mr Thakkar's parents. However, this agreement relates to the whole of the property, as opposed to the ground floor flat. There is no evidence of a separate agreement for the first floor.
7. There is also a letter from the appellant to the Barnet Homes, dated 10 June 2014, which sets out the internal works undertaken to create two units of accommodation. It is stated these were completed on 21 March 2014. The letter continues that the occupants of the ground floor units were Mr C and Mrs P Thakkar but the upper floor was for another tenant's use. The letter suggests the upper floor was unoccupied at that time.
8. Finally, the appellant explains that Council officers visited the property on 7 December 2017 and found it to meet the standards required for residency. However, this is not relevant to the main issue in this case, as set out above.
9. None of this evidence shows how the two self-contained flats were used and occupied for a continuous period of four years. Moreover, the evidence supplied by the Council contradicts the appellant's version of events. In particular, a letter from the Council's planning enforcement team, dated 7 February 2018, details that a site visit took place on 7 December 2017. At that date the officer found no evidence of the property being converted into flats.
10. Overall, the appellant's evidence is imprecise and ambiguous. Furthermore, the Council has provided its own contradictory evidence.

Conclusion

11. I conclude that the totality of the evidence presented does not show, on the balance of probabilities, when the material change of use occurred and how the property has been used as two self-contained flats for a continuous period of at least four years.
12. For the reasons given above I consider that the appeal should not succeed.

Debbie Moore

Inspector