



Appeal Decision

Site visit made on 1 October 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/Y5420/C/18/3216743

Land at 217 West Green Road, Tottenham, London N15 5EA

- 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 Mashiullah Hafezjee against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 15 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use to six self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as self-contained flats.
 2. Remove from the property all but one of the kitchens (a kitchen includes cooking appliances, sinks, kitchen worktops and cupboards).
 3. Remove from the property all but one supply of electricity, gas and water.
 4. Remove from the property all but one of the doorbells.
 5. Remove from the property any internal dividing doorways and partitions facilitating the use of the property as self-contained flats.
 6. Remove from the land all debris arising from compliance with the above steps.
 - The period for compliance with the requirements is six (6) 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.
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Decision

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

Appeal on ground (d)

2. In relation to a breach of planning control consisting of a material change of use of any building to use as a single dwellinghouse, including the subdivision of dwellinghouses into flats, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach (s171B (2)).
3. The main issue is whether the material change of use took place before the 15 October 2014 with the use as six self-contained flats continuing for at least four years thereafter. The onus is on the appellant to prove his case on the balance of probability.
4. In summary, the appellant maintains that the flats were occupied from the 28 August 2014. His evidence relies on a collection of invoices and bank statements which detail works and payment for works undertaken to the property during June, July and August 2014. In addition, copies of tenancy

agreements dating from August and September 2014 have been provided for each of the six flats.

5. Dealing first with the invoices/bank statements. The invoices are for works undertaken to the property's central heating system and for the refurbishment and repair to its roof and chimney stacks. Whilst all of these works took place before 15 October 2014, none of the invoices relate specifically to an individual flat and I agree with the Council that the works specified in the invoices could easily have been undertaken in relation to the maintenance and refurbishment of the property as a single dwellinghouse. On the other hand, the Council has provided a copy of an Electrical Installation Certificate¹, which is dated 31 July 2015, and is for works described as a new installation for a flat conversion. Those electrical works related specifically to Flats 1-6, 217 West Green Road but took place after the relevant date of 15 October 2014.
6. Copies of the tenancy agreements for each flat have been provided by the appellant. However, I note that for the letting period commencing during August and September 2014 for each flat, the agreements have been signed, but there is not a date for those signatures. In contrast, all the other agreements which had terms commencing after the 15 October 2014 have been dated when signed. Doubt is further cast on the accuracy of those initial agreements, as the property's managing agents 'Amak' advises that the property was occupied by a Przemek Dumitru from the 10 October 2014². This is not a name which appears on any of the tenancy agreements for that time and there is therefore some ambiguity in detail of the tenancy agreements provided.
7. Furthermore, the Council has provided details from their Council Tax data base which records that the property was empty and unoccupied between the period 10 December 2014 and 10 March 2015. The data base also records that the property was split into six flats with effect from 11 March 2015³. An extract from the Council Tax valuation list⁴ similarly confirms that Flats Nos.1-6 were placed in Band A with effect from 11 March 2015.
8. The local planning authority has produced evidence to contradict and make the appellant's version of events less than probable. Consequently, the circumstances of this case are such that I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to conclude on the balance of probability that the use in question is immune from enforcement action.
9. I conclude that the use has not become lawful due to the passage of time. The appeal on ground (d) does not succeed.

Human Rights

10. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights, and I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified, the action is in accordance

¹ EXHIBIT AF7, Statement of Case, London Borough of Haringey

² EXHIBIT AF10, Statement of Case, London Borough of Haringey

³ EXHIBIT AF9, Statement of Case, London Borough of Haringey

⁴ EXHIBIT AF8, Statement of Case, London Borough of Haringey

with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Conclusion

11. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeal should not succeed, and I shall uphold the enforcement notice.

Elizabeth Pleasant

INSPECTOR