The Planning Inspectorate

Appeal Decision

Site visit made on 29 October 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2019

Appeal Ref: APP/G5750/C/18/3209140
11 Terrace Road, Plaistow, London E13 0LP

- 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 Shiraj Ali against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 9 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the ground floor rear of the property to create a self-contained unit of residential accommodation.
- The requirements of the notice are:
  a. Cease the use of the ground floor rear of the property (as shown edged in blue on the plan attached to the notice) as a self-contained unit of residential accommodation.
  b. Remove from the property all fixtures and fittings that solely facilitate the use of the ground floor of the property (as shown edged in blue on the plan attached to the notice) as a self-contained unit of residential accommodation including (but not limited to) the kitchen, bathroom, internal partitioning and doorways.
  c. Remove from the site all debris arising from compliance with Steps a and b.
- 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. The appeal is dismissed and the enforcement notice is upheld.

The ground (d) appeal

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. As such, he needs to show, on the balance of probabilities, that the use of the ground floor rear of No 11 Terrace Road as a self-contained flat began more than four years before the notice was issued and continued, without material interruption, for a period of four years thereafter. The notice was issued on the 9 August 2018 so the appellant needs to show that the material change of use began not later than the 9 August 2014 and continued without material interruption so as to become established.

The appellant's case

3. No 11 Terrace Road currently comprises a ground floor shop, a flat to the rear of the shop the subject of this notice and a flat at first floor level. The appellant acquired the property in 2004. He has provided various documents to support his case that the ground floor flat has actually been in residential

use since before 2014. The first is a portion of a tenancy agreement for the period the 1 February 2007 to 31 July 2007, which is signed by two individuals. The appellant states in an email to the Council Tax Department, dated the 4 July 2013, that the tenants left on the 11 July 2007.

4. An email dated the 13 March 2013 from the Council Tax Department to the appellant states that there are three outstanding periods of Council Tax liability for the appeal site dated the:

- 19 May 2007 – 19 January 2008;
- 27 July 2008 - 1 Aug 2010; and
- 1 April 2012- 31 March 2013.

Against each of these periods the email appears to show that a 10% reduction has been granted as the property was unoccupied between lets. The email also refers to a named tenant who seems to have begun his occupation on the 2 August 2010, though there is no tenancy agreement which confirms this.

5. There is also a copy of a Council Tax bill dated the 14 March 2008 which refers to “Flat, ground floor rear, studio”. The sum outstanding includes arrears for previous years but those years are not specified.

6. In addition, the appellant submits, in response to the Council's information that the flat was removed from the Valuation Office Agency (VOA) valuation list on the 1 August 2010, that this shows the flat was in residential use prior to 2010. Otherwise there was no need to remove the flat from the list for Council Tax purposes. Also, at the site visit, he pointed out that there were two electricity meters in the hallway which provides access to both flats.

The Council's case

7. There are a number of documents held by the Council which deal with the use of the ground floor flat. Within Council Tax records there are copies of tenancy agreements dated the

- 12 July 2009 - 11 January 2010;
- 12 January 2010 - 31 July 2010; and
- 19 September 2015 - 18 September 2016.

The Council Tax Department were also informed by the VOA when the flat was removed from the valuation list and no longer liable for Council Tax and when the flat was reinstated on the VOA list on the 19 September 2015. This prompted a site visit on the 15 October 2015 by a Council Tax officer who saw that the flat was in residential use. In addition, a Planning Contravention Notice (PCN) was issued on the 4 January 2016. In answer to the question “State the current use of the property”, the appellant has written “Part used as retail shop and part as office for shop”. In answer to subsequent questions within the PCN, he states that the flat has been part of the shop since 2004.

Assessment

8. The appellant’s case is that a residential use was established over a four year period prior to the 9 Aug 2014. From his limited documentary evidence, this four year period appears to have begun on the 1 February 2007. The appellant

though, provides no information about the use of the space when he purchased the property in 2004 or how it was used between 2004 and 2007. He also does not state whether he created the flat or whether it was already fitted out as a flat when he bought it.

9. After the 2007 tenants ceased their residential use on the 11 July 2007, there are no other tenancy agreements submitted by the appellant to support his case that the residential use continued. Although he states that the Council Tax bill is 'enough to check the Council's record that the property was occupied by residential tenants', the burden of proof rests with the appellant, not the Council. Emails between the appellant and the Council Tax Department and one Council Tax bill, dated the 14 March 2008, are not evidence of continuous residential use over a four year period. This is because the 13 March 2013 email appears to show that reductions were given by the Council on the Council Tax liabilities as the flat was unoccupied at various periods between the 19 May 2007 and the 31 March 2013. The appellant provides no information about these apparent vacant periods, such as the property was being decorated for a week between lets.

10. Whilst the Council have copies of tenancy agreements to cover the period the 12 July 2009 to the 31 of July 2010, there is no evidence from the appellant, such as bank statements to show the receipt of rent or utility bills, which would support a continuous residential use after the 11 July 2007 for the requisite period.

11. The evidence from the VOA that the flat was no longer a dwelling for Council Tax purposes as of the 1 August 2010 does not necessarily demonstrate that there was a residential use or that it ceased. This is because it is not clear whether officers from the VOA, or even Council Tax officers, visited the site to establish that firstly there was a residential use and that secondly, it had ceased prior to de-listing.

12. The appellant's case is not clear on this point as the 13 March 2013 email from the Council Tax Department to the appellant refers to a named tenant in occupation on the 2 August 2010 and there is a request for a copy of that person's tenancy agreement. It does not appear to have been sent to the Council and it is also not included with the appellant's appeal.

13. Although the flat was seen in residential use in October 2015 and October 2016, a neighbour thought it was unoccupied in August 2017. In any event, this does not demonstrate that there was a continuous residential use and, if it had occurred, that it was interrupted.

14. In conclusion, I consider there is no four year period of continuous residential use that can be established for the flat either from February 2007, from August 2014 or over any other four year period, on the balance of probabilities. The evidence shows that there has been some residential use but there are significant gaps in occupation such as the 2011 period. This substantial period alone is sufficient to interrupt the continuous period of occupancy claimed by the appellant. Furthermore, the presence of an electricity meter is not evidence of continuous use, whereas electricity bills would be. In the four years immediately prior to the issue of the notice, notwithstanding the de-listing by the VOA, there is only the one tenancy agreement, beginning in 2015, which supports a residential use. Even if the 2015 tenancy agreement had been 'rolled over', there is no information from the appellant about this,

such as continuing rent receipts by the same tenant. Moreover, he fails to explain the inconsistencies between his evidence and the answers he gave to the PCN within which it is stated that there are penalties for knowingly or recklessly making false or misleading statements.

15. The Planning Practice Guidance advises 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 is sufficiently precise and unambiguous, on the balance of probabilities.

16. From all the material before me I therefore find that the appellant has not satisfied the requirement to submit evidence that is sufficiently precise and unambiguous, on the balance of probabilities. Consequently, he has not discharged the onus of proof that the residential use of the rear ground floor as a self-contained flat has been continuous for any period of four years before the issue of the notice. The ground (d) appeal therefore fails.

Conclusion

17. For the reasons given above I conclude that the appeal should not succeed.

D Fleming

INSPECTOR