



Appeal Decision

Site visit made on 15 October 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/U5930/C/18/3219415

Land at 2 Davies Lane, Leytonstone, London E11 3DR

- 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 Norris Oscanian against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice was issued on 20 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission:
 - 1) The conversion of the entire ground floor of a single dwelling house (C3 Use Class) into 4 x 1 bedroom self-contained residential flats
 - 2) The conversion of part of the first floor of a single dwelling house (C3 Use Class) into a 1 x 1 bedroom self-contained residential flat
 - 3) The conversion of part of the first floor and all of the second floor from a single dwelling house (C3 Use Class) into a House of Multiple Occupation
 - The requirements of the notice are:
 - a) Cease the use of:
 - i) The ground floor as 4 self-contained flats;
 - ii) The first floor as 1 self-contained flat;
 - iii) The first floor and second floor as a house of multiple occupation.
 - b) Convert the property back to a single dwelling house by:
 - i) Removing FIVE kitchens, including cookers, fridges, sink units, cupboards, fittings and fixtures and kitchen associated paraphernalia so only one remains.
 - ii) Remove FIVE bathrooms including toilet, washing basins, showers/baths, fittings and fixtures and all bathroom units so only one remains.
 - iii) Remove all internal partitions & divisions that facilitate the use of the property as FIVE self-contained flats and a house of multiple occupation.

Remove from the premises all resultant debris and paraphernalia as a result of the above requirements b) i, ii & iii.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that:

- The enforcement notice be corrected by deleting the wording in paragraph 3 and substituting it with "Without planning permission, the material change in the use of the property from a single dwelling house (Use Class C3) to 5 x 1 bedroom self-contained residential flats and a House in Multiple Occupation, through the conversion of the entire

ground floor into 4 x 1 bedroom self-contained flats and the conversion of the first and second floor into a 1 x 1 bedroom self-contained flat and a House in Multiple Occupation."

- The enforcement notice be corrected by deleting the wording at paragraph 4. I. and substituting it with "The unauthorised conversions to self-contained flats have not been in existence for more than four years on a continual basis and the House in Multiple Occupation has not been in existence for more than ten years on a continual basis."
 - The enforcement notice be corrected by deleting the wording of the requirements at paragraph 5 a) and substituting it with "Cease the use of the property as self-contained flats and a House in Multiple Occupation."
 - The enforcement notice be corrected at paragraph 5 b) by deleting the wording "Convert the property back to a single dwelling house by:" and replacing it with the word "Remove:" and deleting the first word in each of the following steps, namely steps (i), (ii) and (iii).
2. Subject to the corrections above, the appeal is dismissed and the enforcement notice upheld.

The Enforcement Notice

3. It is clear from the notice that the alleged breach of planning control relates to a single change of use of the property and not to one or more changes of use (or conversion, as referred to by the local planning authority). In the interests of clarity my decision will correct the alleged breach of planning control by deleting the wording in paragraph 3 and substituting it with "Without planning permission, the material change in the use of the property from a single dwelling house (Use Class C3) to 5 x 1 bedroom self-contained residential flats and a House in Multiple Occupation, through the conversion of the entire ground floor into 4 x 1 bedroom self-contained flats and the conversion of the first and second floor into a 1 x 1 bedroom self-contained flat and a House in Multiple Occupation."
4. In the interests of consistency, it is also necessary to correct the requirements of the notice. My decision will correct the notice by deleting the wording of the requirements at paragraph 5 a) and substituting with "Cease the use of the property as self-contained flats and a House in Multiple Occupation." I am satisfied that these corrections do not alter the nature or substance of the alleged breach or the requirements of the notice, and would not therefore cause any injustice to either the local planning authority or the appellant.
5. Paragraph 4.I. of the notice states that the unauthorised conversions have not been in existence for more than four years on a continual basis. However, whilst the relevant period for a breach of planning control consisting of a change of use of any building to a use as a single dwellinghouse, including the subdivision of the dwellinghouse into flats, to become immune from enforcement action is four years, the relevant time period for a change of use to a House in Multiple Occupation is ten years. My decision will therefore correct the notice by deleting the wording in paragraph 4.I. and substituting it with "The unauthorised conversions to self-contained flats have not been in existence for more than four years on a continual basis and the House in

Multiple Occupation has not been in existence for more than ten years on a continual basis.” Taking into account the grounds of appeal and evidence before me, I am satisfied that this correction would not result in any injustice to either the local planning authority or the appellant.

Appeal on ground (b)

6. The main issue is whether the change of use of the property from a single dwelling house to 5 x 1 bedroom self-contained flats and a House in Multiple Occupation (HMO) has occurred as a matter of fact. The appellant accepts that the ground floor has been converted to three self-contained flats. However, he maintains that the conservatory at the rear of the property is used in conjunction with the first and second floor accommodation as their family home. Furthermore, the room within the first-floor rear outrigger is used by his son and is integral to the family home. The appellant’s description of the use of his property is not however in the form of a statutory declaration or sworn affidavit.
7. It is therefore common ground that 3 x 1 bedroom flats exist within the ground floor of the property. The alleged fourth ground floor flat is situated at the rear of the premises within the conservatory extension. It has its own entrance through a side gate, and at the time of my visit it was laid out with a fully fitted kitchen, including sink, cooker and fridge/freezer and had its own toilet and shower room. The space within the conservatory also had a bed settee and a desk/office space. The accommodation clearly has all the facilities required for day-to-day private domestic existence and is physically separate from the first and second floor of the building.
8. The first and second floor of the property has a separate access from the front of the property via the front hallway. Whilst the accommodation within the first-floor rear outrigger shares its entrance with the remainder of the first and second floor accommodation, it is self-contained and there is a lock on its entrance door. At the time of my visit the accommodation included a bed, separate toilet and a shower, kitchen cupboards/sink, fridge, microwave and extractor hood. It therefore provides all the facilities that a person would require for day-to-day private domestic existence and whilst it may well be occupied by the appellant’s son, it is still a self-contained flat and dwelling.
9. The remainder of the accommodation at first floor level includes a bathroom, fully fitted kitchen/dining area and three other rooms. At the time of my visit the room off the kitchen had a double bed in it, TV and wardrobe, whilst the small box room was empty, save a small wardrobe and shelving unit. The second-floor attic room was being used primarily for storage and drying washing, with some children’s toys and music equipment. However, I am aware that what I observed on my site visit may not be exactly the conditions existing when the notice was issued, about a year ago in November 2018.
10. The Council’s Statement of Case advises that in 2011 they were satisfied that the property was in use as a single dwelling and that there was no evidence of use as an HMO. However, further inspections by the Council’s Environmental Health Enforcement Officer in December 2017 found it in use as four self-contained flats at ground floor with the first and second floor of the property in use as a self-contained flat within a 2-storey HMO (Appendix 4). Photographs provided in Appendix 3 of the Council’s Statement of Case show that within the attic room there was a bed, chest of drawers, TV and table and chair. In

addition, email correspondence provided by the Council (Appendix 5), includes a reference to a conversation with the appellant during the inspection in December 2017. At that time, the appellant advised that he would be moving back into the house so it wouldn't be operated as an HMO.

11. Furthermore, I noted on my site visit that each of the three 'bedrooms' within the alleged HMO had a lock on the door, including the door off the landing which provides access to the second-floor attic room. It is unusual for all the individual bedrooms within a family home to have locks on their doors.
12. In summary, the ground floor conservatory and the first and second floor of the property may well have been occupied by the appellant at some time. However, in the absence of any positive evidence from the appellant, the contrary evidence provided by the Council and my observations on site, as set out above, makes the appellant's version of events less than probable.
13. In conclusion, I am satisfied that the change of use of the property from a single dwelling house to 5 x 1 bedroom self-contained flats and a HMO has occurred as a matter of fact at 2 Davies Lane. The appeal on ground (b) must therefore fail.

Appeal on ground (d)

14. In relation to a breach of planning control consisting of a change of use of any building to a use as a single dwellinghouse, including the subdivision of the dwellinghouse 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)). However, in relation to any other breach of planning control, including use as an HMO, the relevant time limit is ten years (s171B (3)).
15. The main issues are whether the material change of use to five self-contained flats took place before the 20 November 2014 continuing for at least four years thereafter, and whether the material change of use to an HMO took place on or before 20 November 2008 continuing for at least 10 years thereafter. The onus is on the appellant to prove his case on the balance of probability.
16. In summary, the appellant maintains that the use as an HMO, the first floor self-contained flat and Flat D within the ground floor conservatory has not taken place. No evidence has been provided in relation to those aspects of the material change of use. In respect of the occupation of the remaining three ground floor flats, evidence in the form of a collection of estimates, receipts and invoices for works relating to the property, for example, for new bathroom fittings, have been provided, together with lodger agreements and tenant's witness statements.
17. Dealing first with the invoices/receipts/estimates. The receipts relate to a significant number of purchases for building materials, fixtures and fittings. In addition, invoices for installation/gas services and a gas safety certificate for a new boiler have been provided. However, none of these invoices or receipts relate specifically to a particular flat, nor do they provide any evidence of when the three flats were formed and first occupied. The works specified could easily have been undertaken in relation to the maintenance and refurbishment of the property as a single dwelling house or indeed in some cases to another property. I note there is an estimate for works in 2003 from an Andy Murphy to carry out some partitioning and to create two independent mini kitchens.

However, despite the significant number of receipts and invoices provided, there is no invoice that would confirm that the works quoted for were carried out, nor evidence of any payment for them. Overall the receipts/invoices and estimates are not sufficiently precise to conclude what works were undertaken to the property or when.

18. Several copies of lodging agreements have been provided. Except for one of the agreements for Flat "C", dated 25 June 2016, none of the agreements relate to a specific room or flat. In addition, these agreements only demonstrate that a six month tenancy was taken out and the date that the tenancy commenced. There are no records to confirm the length of the tenancy in the form of rent books, receipts or bank statements. Taken on their own, the agreements do not provide evidence of continuous occupation by the tenants. In addition, no agreements have been provided for the current occupiers of Flat A and C.
19. Witness Statements (WS) have also been provided. These are in the form of a standard proforma which has been signed by the current occupiers of all three flats and also by seven previous tenants. The WS details who lives/lived at the property, during which time period, and in which flat. The WS therefore provide additional support to the lodger agreements as they state the length of occupancy of each of the tenants and note which flat they occupied. However, in the absence of any other supporting evidence, for example rent books or receipts/bank statements, I agree with the Council that the weight that can be given to the WS is limited, particularly as they are not in the form of sworn affidavits or statutory declarations. Furthermore, in the case of each individual flat, there is not a WS and a lodger agreement for all of the occupiers that would help to demonstrate continuous occupation over the required four year period.
20. I appreciate that the appellant volunteered, on his own initiative, the presence of the flats when he submitted an application for a Private Rented Property Licence. However, that was in 2015, which is after the relevant date of 20 November 2014.
21. 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.
22. I conclude that the use of the property as five self-contained flats and a HMO has not become lawful due to the passage of time. The appeal on ground (d) does not succeed.

Appeal on ground (f)

23. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
24. Section 173 of the Town and Country Planning Act, 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second is to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.

25. The appellant maintains that three of the ground floor flats are lawful and therefore these should remain. He is willing to remove the first-floor kitchen in the rear outrigger and that within the conservatory, although he would prefer the latter to remain.
26. However, in view of my conclusions on grounds (b) and (d) the breach can only be remedied by the cessation of the unauthorised use and removal of the works that facilitated that use. In this case that requires the removal of all of the facilities that enable each of the units to be utilised as a self-contained flat/HMO.
27. I have not been provided with any substantive evidence to demonstrate that any of the facilities required to be removed were in the property prior to the breach of planning control. Therefore, there are no lesser steps that would achieve the statutory purpose behind the notice and the appeal on ground (f) must fail.
28. However, the requirements of the notice include a requirement to convert the property back to a single dwelling house. This positive requirement is excessive and a requirement simply to cease the unauthorised use is sufficient. I shall correct the notice to that effect.

Appeal on ground (g)

29. The issue is whether the compliance period of six months is reasonable. The appellant considers that the time period is too short in the event that the tenants will not vacate the units and he is forced to undertake legal proceedings.
30. However, it is noted that the tenancy agreements have a two week notice agreement within them. In the circumstances, the case for extending the compliance period to nine months is weak. Six months is sufficient time for the flats to be vacated and works undertaken to remove the facilities within them. I conclude that the appeal under ground (g) must therefore fail.

Human Rights

31. 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 the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified in the reasons for issuing the notice, the action pursues the legitimate aim regulating land use in the public interest and is necessary and proportionate to the situation.

Conclusion

32. 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 with corrections.

Elizabeth Pleasant

INSPECTOR