The Planning Inspectorate

Appeal Decision

Site visit made on 22 October 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2019

Appeal Ref: APP/Z5060/C/18/3213692
32 Park Avenue, Barking IG11 8QU

- 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 A Choudhury against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 20 September 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised conversion of the property into five independent units of accommodation.
- The requirements of the notice are to:
  - Cease the use of the property as five independent units of residential accommodation;
  - Remove all alterations and fixtures enabling the conversion to five independent units of residential accommodation; and
  - Remove all consequent waste material from the land.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (d)

2. The ground of appeal is that at the time the enforcement notice was issued, it was too late to take action. Section 171B(2) of the Act says where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. That being the case, it is for the Appellant to show that the change of use to 5 flats occurred by at least 20 September 2014 and continued thereafter without material change.

The evidence

3. The Appellant says the conversion to five flats took place in 2013 and that all units have been rented out since then with maximum vacant periods of two weeks between tenancies for refurbishment.

4. In support of the conversion works, two invoices have been submitted. That relating to the ground floor is dated 27 November 2013 and itemises the installation of 3 bathrooms, 3 kitchens and 3 electricity metres. That for the first floor is dated 7 August 2013 and itemises the installation of 2 bathrooms,

2 kitchens and 2 electricity metres. This supports the Appellant's statement that the five flats were created in 2013 and also corresponds to the layout that I saw on my visit of three flats on the ground floor and two on the first floor.

5. Further invoices for flooring follow: dated 2 September 2013 for the first floor and 28 December 2013 for the ground floor. Invoices for furniture and white goods are also provided dated 2 September 2013 for the first floor and 10 January 2014 for two of the flats on the ground floor.

6. Electrical Installation Reports dated 17 December 2013 for the ground floor flats and Electrical Installation Certificates dated 12 September 2013 for the first floor flats have been provided. There are then two agreements with a letting agent. That relating to the two flats on the first floor commenced on 10 October 2013 and that for the three flats on the ground floor commenced on 3 January 2014. Rent invoice statements for 2013 and 2014 show income was collected by the letting agent every month from 31 October 2013 through to June 2014 but the figure quoted is a total rather than specifying individual flats.

7. Tenancy Agreements show the two first floor flats were let at the end of September and at the end of December 2013 whilst two of the ground floor flats were let in January 2014 and the other let in June 2014. Records of monthly checks of all flats carried out by the letting agent, commencing around the time they were first let and ending between March and July 2015 have been provided. As each comprises a full sheet, it is unclear whether the company ceased dealing with the flats in 2015 or simply whether a single sheet from a more extensive record has been provided.

8. Some tenancy agreements have been submitted for the flats but they do not demonstrate any continuity of occupation for any one particular flat but what they do show is that from 30 September 2013 to 20 September 2018 (a period of just under five years to the date of issue of the notice) there was a tenancy agreement in place for at least one of the flats and in general for more than one. Other documents submitted include water bills addressed to the tenant of one of the first floor flats spanning the period from 30 September 2013 to 31 March 2015. Gas safety records (required annually for flats rented out) have been provided for two of the flats for the years 2013 to 2018, but missing year 2016 for one flat and year 2015 for the other.

9. The Council brings no evidence of its own to show that the property has not been used as five flats for more than 4 years. It simply points to gaps in tenancy agreements suggesting that the use has not been continuous for four years and that no further evidence has been provided to indicate the change of use occurred more than four years prior to the issue of the notice.

Assessment

10. The documentation from the Appellant comprising invoices for the conversion works, flooring and furniture; and the two agreements with the letting agent provide strong evidence to support the contention that the property was converted to five flats at the end of 2013. Tenancy agreements show that the two first floor flats were let before the end of that year with two on the ground floor let at the beginning of January 2014 with the third let in June. That the alleged change of use occurred more than four years before the issue of the notice has been amply demonstrated.

11. The Appellant's evidence is that the flats have all been rented out since the conversion with only two-week periods of vacancy between lets for refurbishment. The tenancy agreements do not, however, cover the entire period for each flat. Nonetheless, they do demonstrate that from September 2013 to the end of 2018 at least one flat (and generally more than one) was the subject of an on-going agreement. Furthermore, some residents have clearly stayed beyond the set term in their agreement. For example, this is shown by the 2019 Council Tax bills for Mr K Richards whose tenancy agreement ran only to December 2016 and for Mr Ruzas whose tenancy agreement ran until only June 2017. Further support for ongoing use is provided by yearly gas safety records for two of the flats albeit with a year missing for each, rent invoice statements for 2013 and 2014 and monthly checks by the letting agent 2013 to 2015.

12. Taking together all the evidence submitted and the picture it paints, it seems to me highly likely that the use of the property as five flats has continued since the end of 2013/beginning of 2014 such that the Council could have taken action at any time. Whilst there may have been short periods of vacancy between lets, it is most unlikely that all the flats would have been vacant together and for any length of time such that it could have been argued that the use had ceased. Indeed, the evidence points to flat 3 on the ground floor having been occupied almost continuously since January 2014.

13. Neither occupation, nor physical state alone is determinative of use, but both are relevant and, in this case, the physical layout as five flats (four apparently furnished) would have been plain to see throughout the period with all the facilities present necessary for day to day living. Had the Council visited the property at any time during the relevant period, there would have been no time when the Council would not have been able to take enforcement action against the use such that it could not count towards the rolling period of four years giving rise to immunity.

14. There is nothing of substance to cast doubt on the Appellant's version of events. With the evidence available and applying the test of the "balance of probability", I conclude that it is more likely than not that the property has been in use as five flats for a period in excess of four years prior to the date of issue of the notice.

15. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice is quashed. In these circumstances the appeal under grounds (f) and (g) do not need to be considered.

B M Campbell

Inspector