Appeal Decision

Site visit made on 4 November 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2019

Appeal Ref: APP/F5540/C/18/3216643
201 Great West Road, Hounslow, London TW5 0DQ

- 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 Rajesh Bansal against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 19 October 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised conversion of the property into two self-contained flats.
- The requirements of the notice are
  i. Cease the use of the property as two self-contained flats.
  ii. Remove all but one of the kitchens and associated kitchen facilities.
  iii. Remove all but one of the bathrooms and associated bathroom facilities.
  iv. Remove the sub-dividing doors.
  v. Remove all the resultant debris from the land.
- The period for compliance with the requirements is three 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. It is directed that the enforcement notice be varied by the deletion of the words in paragraphs 5.i. and their substitution with the words "Cease the use of the property as self-contained flats". Subject to this variation, 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. He needs to show, on the balance of probabilities, that the development and use of the property as two self-contained residential units, took place 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 19 October 2018 so the appellant needs to show that the use of the property as two self-contained residential units began before the 19 October 2014.

Reasons

The appellant's case

3. The appellant bought the property in December 2014 on a private basis. He was told by the previous owners that the property had been in use as two flats

for over 20 years. The previous owners were elderly and had a child with disabilities. They needed a first floor kitchen so they could easily make full use of the property.

4. This is borne out by the Google Streetview image dated June 2012 which shows a ramp leading up to the front door, which is still there today, and 'No parking' signs on the fence, as access was required for a person with disabilities. Inside the property there are also bannisters attached to both sides of the staircase. The appellant also submits a letter dated the 10 April 2017 from a lady who provided home care support such as cleaning and washing. She stated that she had been to the property in 2009 and that there were two kitchens in the property, one on each floor, and that 'It looked as though the property was split as two flats'. There is also a letter from a builder dated the 17 April 2017 who states he visited the property in 2001 and subsequently thereafter. He confirms that the occupants were elderly and states that they were disabled. He saw that the property had a first floor kitchen and 'It looked as though the property was being used as two flats'.

5. The appellant states he was unable to obtain a letter from the previous owner to confirm the use of the property as the former owner was concerned he would be liable for back-dated Council tax.

The Council's case

6. The Council received a complaint that the property was being used as two flats in November 2016. An officer inspected the property in January 2017 and found that it had been divided into two flats. A Planning Contravention Notice (PCN) was issued in February 2017 and returned completed on the 6 March 2017. The appellant stated in this document that the conversion took place in September 2016. Another site inspection took place on the 13 August 2018 and at this point only the ground floor flat was occupied. Also, Council tax records show that the payments began with effect from the 19 September 2016 for the ground and first floor flats.

Assessment

7. I am required to consider not the availability or suitability of each flat for residential use but whether they were actually put to such use and in this respect the evidence from the appellant is limited. From the material before me it would appear that the appellant is seeking to establish that both flats have been in continuous residential use based on a period of time before the 19 October 2014.

8. The only evidence of continuous use prior to the appellant's purchase are the letters from the carer and the builder. However, they only state two specific dates that they visited and they also only state that the property 'looked' as though it was being used as two flats, not that it was actually being used as two flats. It appears the appellant knew the previous owners going back to 1995 as they made use of his dry-cleaning service and hence, he saw their circumstances. However, there is some discrepancy in his evidence as he states in his letter dated 19 November 2018 that the previous owner was disabled and in his letter to the Council dated 31 March 2017 that it was their teenage child who was disabled. Be that as it may, it is clear that the previous occupier(s) of the property was/were disabled due to the presence of the ramp, the signage and the additional bannister attached to the staircase.

9. However, there is no substantiated evidence that the property was used as two separate self-contained flats as opposed to one household making use of the whole property with two kitchens, due to their personal circumstances. This could also explain why Council tax records only registered it as two flats in 2016.

10. The Council submit that there is also a discrepancy in the appellant's case in that in the response to the PCN he stated the use began in September 2016 whereas in subsequent correspondence, he states the material change of use happened much earlier. I believe this was a misunderstanding by the appellant who explained that the reference to September 2016 was when Council tax payments began. This is confirmed by the Council's Council tax evidence.

11. The appellant did provide the names of two tenants in the PCN and, following his purchase of the property, the Council also saw that both flats were occupied in January 2017. However, during their August 2018 visit, they only found occupation of one flat. Although the appellant purchased the flat after the relevant date, he has not submitted any evidence of his own, such as tenancy agreements, utility bills or rent receipts to show continuous use since December 2014.

12. The Planning Practice Guidance advises that if a local planning authority has no evidence itself or from any 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 alone is sufficiently precise and unambiguous, on the balance of probabilities.

13. From the limited material before me, I conclude 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 property has been in use as two self-contained flats for any continuous period of four years before the issue of the notice. The appeal on ground (d) therefore fails.

Conclusion

14. It is necessary to vary the requirements of the notice so that the first step is only to cease the use of the property as self-contained flats.

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

D Fleming

INSPECTOR