The Planning Inspectorate

Appeal Decision

Site visit made on 7 January 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2020

Appeal Ref: APP/T5150/C/18/3215452
76 A-F London Road, Wembley HA9 7HG

- 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 V Sarkari against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 26 September 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to six self-contained flats. ("the unauthorised change of use")
- The requirements of the notice are:
    1. Cease the unauthorised use as six self-contained flats.
    2. Remove all partitions, fixtures and fittings, including additional kitchens that facilitate the unauthorised use.
    3. Permanently remove from the site all waste, materials and debris arising from the compliance with the above steps.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

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

Reasons

The appeal on ground (d)

2. It is the appellant's position that the breach of planning control alleged in the notice is immune from enforcement action under section 171B of the above Act, as it has existed for in excess of 4 years. At the time of my site visit the building was laid out as six self-contained flats. These are referred to in the documents provided as Flats A, B, C, D, E and F. However, none of the flats were identified in this way on site with door signage.

3. The appellant has provided documents they consider show how long these flats have existed. The documents include gas safety records, utility bills and tenancy agreements. However, these documents do not identify where all flats are within the building. A separate floor plan provided is dated 17 January 2019. Whilst this plan reflects the layout of the flats I saw on site, it does not demonstrate this layout had existed for 4 years at the time when the enforcement notice was issued.

4. Council Tax records for the premises were updated on 12 November 2003 with a change from a single dwelling to five flats. Valuation Office Agency records

indicate that Flat F only existed with effect from 1 October 2015. This is within 4 years of when the enforcement notice was issued, indicating that the breach of planning control stated in the enforcement notice (six flats) is not immune.

5. The floor plan provided indicates Flat F is at ground floor level between Flats A and B. There is no evidence the creation of Flat F was facilitated by way of an extension to the building. Therefore, logically, the space occupied by Flat F was 'donated' from another flat within the building, presumably Flat A or B, shown on the 2019 floor plan. That being the case, the space leftover in the 'donor' flat also created a new, smaller flat i.e. a new planning unit within the building.

6. The tenancy agreements and gas safety records provided for Flat F date back to April 2004 and June 2005 respectively. However, these records do not identify where in the building Flat F is or how many other flats existed in the building at the time these records were created. A boiler service invoice referred to by the Council from 2013 refers to Flats A-F but indicates there were only five boilers at the property at that time. In addition, flat locations and numbers/letters on doors within a building can be changed. Consequently, based on the documents provided, I am not satisfied there is clear and unambiguous evidence that the six flats I viewed on site had all existed in the building for more than 4 years at the time when the enforcement notice was issued.

7. An analysis of the rents charged for flats in the building shows significant fluctuations in rental levels. No explanation for this has been provided by the appellant. The Council considers this indicates that the layout of the property has changed. There is no evidence to dispute this contention.

8. Tenancy agreements provided for Flat F, including those for Mr B. Kaneria and Mr K. Patel, contain a clause which states: *"The tenant is not responsible for performing his obligation (under the Local Government Finance Act 1992 or regulations made there under) to pay Council Tax (or any similar levy)."* It is the person living in a property who is responsible for paying Council Tax and no explanation has been provided as to why tenancy agreements for this flat were worded in this way.

9. If the tenant attempted to pay Council Tax, it is more likely the use of the building as six flats would have been discovered by the Council. So it is the Council's position that the inclusion of this Council Tax clause is evidence of a deliberate attempt to conceal the breach of planning control. I am satisfied that the inclusion of this clause in tenancy agreements is evidence of the deliberate concealment of the breach of planning control. Therefore, as is set out in the Planning Practice Guidance[1], the time-limit set out in section 171B noted above does not prevent enforcement action being taken.

10. I am not satisfied that monitoring by the Council means the Council is not entitled to allege concealment by the appellant, as is suggested by the appellant. Nor am I satisfied that the provision of tenancy agreements disproves concealment because tenancy agreements are not documents the Council would generally have access to unless housing benefit applications were made. But in this case, such applications were not made for Flat F until 2016 meaning the Council could not have used tenancy agreements to identify

[1] Enforcement and post permission matters, paragraph: 004 Reference ID: 17b-004-20180222

the breach of planning control until that time. Considering all of the above points, the appeal on ground (d) fails.

The appeal on ground (f)

11. The purpose of the enforcement notice is to remedy the breach of planning control. This is explicitly stated in Schedule 4 of the notice. The appellant considers that, if Flat F is not found to be immune from enforcement action on ground (d), that it can be 'merged' into another flat. I am not satisfied that 'merging' Flat F with another is specific for the purposes of section 173(3) of the above Act.

12. In the absence of clear and unambiguous information about the condition of the building before the breach of planning control took place, there are no lesser steps that have been suggested which would achieve the purpose of the notice. As such, the appeal on ground (f) fails.

Other Matters

13. It is the appellant's view that it is highly probable that the Council's enforcement notice in practice only relates to Flat F rather than all six flats. But there is no appeal before me on ground (b) i.e. that the breach of planning control alleged (six flats) has not occurred. Moreover, six flats is what I have seen on site, and, there are no Lawful Development Certificates before me for any of the flats, to support the appellant's position that flats which are lawful exist within the building.

14. Whilst documents have been provided relating to flats identified by six different letters of the alphabet, these documents are not accompanied by anything which assures me of their authenticity, such as, for example, statutory declarations or anything that assures me they relate to six different dwellings and so I give them limited weight in my decision.

15. My attention has been drawn to planning merits of the development but as there is no ground (a) appeal before me these are not relevant to the issues in this decision.

Conclusion

16. For the reasons given above the appeal does not succeed.

L Perkins

INSPECTOR