



Appeal Decisions

Site visit made on 21 January 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th February 2020

Appeal A: APP/Z5060/C/19/3225958

Appeal B: APP/Z5060/C/19/3225959

Land and Premises referred to as '15a Forest Mews 99 Sparsholt Road Barking IG11 7YG' and / or 'Flat 19 74 Kennedy Road Barking IG11 7YG'

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Ms Karisma Patel, Forest Gate Properties Ltd (Appeal A) and Wanstead Investments Ltd (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 7 March 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised change of use of an outbuilding to a one-bedroom dwelling.
- The requirements of the notice are Cease the use of the unauthorised self-contained residential unit; Remove all alterations and fixtures enabling the conversion to a self-contained residential unit; Remove all consequent waste material from the land.
- The period for compliance with the requirements is 3 months.
- The appeals are made on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.

The appeals on ground (d)

1. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellants to show, on the balance of probability, that the use of the appeal site as a dwelling had commenced at least 4 years before the notice was issued, that is by 7 March 2015, and had continued in such use over a four-year period. It must be shown that there has not been any significant interruption in the use in order to demonstrate the necessary continuity.
2. The appellants have provided various documents in support of the appeal, including tenancy agreements, surveying, service charge and insurance records and Google Street View imagery. Several statutory declarations have also been provided, including from individuals connected to the ownership and management of the property.
3. From the three tenancy agreements provided it would appear that the appeal site has been let as a residential unit to different tenants, approximately between 15 January 2015 and 2 February 2018.

4. According to the statutory declaration of the director of Forest Gate Properties Ltd, the current property owner, the property was acquired by Forest Gate Properties in January 2018 and was subject to some minor refurbishment work, once vacant possession had been secured. The property was then let to the current occupants.
5. However, I have not been provided with any details or contractual agreements relating to the tenancy of the property throughout the period from 3 February 2018 until the time when the enforcement notice was issued, that is 7 March 2019. Furthermore, I have been provided with no details of the nature of the refurbishment works undertaken, and am not persuaded from the information before me that these works were not sufficiently extensive and enduring to constitute a material break in the occupation of the unit.
6. Turning to the various representations made in support of the appeal, an email from a representative of Taylor Chartered Surveyors (TCS)¹ states that the appeal property has been occupied as a residential dwelling since at least September 2013, and that the dwelling appeared to be occupied at every inspection. It is unclear from this communication how regularly the building was inspected and furthermore, the statement that the dwelling 'appeared' to be occupied is somewhat vague.
7. In terms of sworn evidence, the former director of Wanstead Investments Ltd states that to the best of his knowledge, information and belief the appeal property has been arranged and used as a residential dwelling continuously since at least 2012; the same statement is made by the director of Forest Gate Properties Ltd, who also recalls that, during regular visits to a neighbouring property, that No 19 was occupied for residential purposes. To the best of their information, knowledge and belief, a previous owner of the property recalls continuous residential use since at least 2011 and the owner of a neighbouring property recalls such use since at least 2013.
8. However, where occupation of the unit has been recalled, generally no detail has been provided as to how the conclusion was reached that the unit was occupied. Whilst the neighbouring occupier, referred to above, recalls during visits that there would often be someone entering or exiting the building, this information is imprecise in terms of time and the identity of those concerned.
9. Furthermore, none of the aforementioned statements, including the email from TCS, or any of the other information submitted in support of the appeal, specifically state or confirm that the property has been occupied continuously, and was therefore in active residential use, without any material interruption, during a four-year period since the breach of planning control occurred.
10. Notably, aside from the very limited information about occupation of the unit in the period after February 2018, as referred to above, no tenancy agreement related information prior to 2015 has been provided, nor any sworn statements from present or previous occupiers of the unit. Furthermore, the service charge record information provided for the property suggests that there may have been gaps in charging, and therefore occupation, in the respective years ending 31 August 2011 – 2014². No evidence of regular rent receipts from

¹ A company who would appear to be responsible for the servicing of various properties on the estate. Email dated 5 April 2019.

² Taylor Chartered Surveyors statement dated 11 July 2018

tenants has been provided. The presence of a satellite dish on the building would not indicate continuous occupation.

11. Accordingly, even if the property was first used as a residential unit more than four years before the notice was issued, I am unable to conclude, on the balance of probability, that the change of use is immune from enforcement due to the passage of time. The ground (d) appeals therefore fail.

Conclusion

12. For the reasons given above I conclude that the appeals should not succeed.

Formal Decisions

13. The appeals are dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR