
Appeal Decision

Site visits made on 14 January 2020 and 28 January 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal Ref: APP/U5360/C/18/3217530

Lower Ground Floor and Upper Ground Floor at 152 Stoke Newington Road, Hackney, London N16 7XA

- 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 Act).
- The appeal is made by Mr Kazim Has against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 2 November 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use to nine self-contained flats (use class C3).
- The requirements of the notice are:
 1. Cease the use of the lower ground floor level as residential accommodation;
 2. Cease the use of the upper ground floor level as residential accommodation;
 3. Remove all internal partitions, doors, facilities, kitchen and bathroom fixtures and fittings that facilitate the unauthorised use of the lower ground and upper grounds floors as self-contained flats;
 4. Make good all damage to the Property resulting from the removal of the unauthorised works
 5. Remove from the Property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
- The period for compliance with the requirements is six 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Application for costs

1. An application for costs was made by the London Borough of Hackney against Mr Kazim Has. This application is the subject of a separate Decision.

Preliminary Matters

2. The appeal was made under grounds (a), that planning permission should be granted for what is alleged in the notice, and (c), that there has not been a breach of planning control. However, the appellant's case is that 'the building was at all times used as residential premises since 2005' and 'the residential use of the premises complained of have been place for over four years'. These cases more directly relate to ground (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. A letter was sent to the appellant dated 5 February 2019 suggesting that the facts related to ground (d). I note that the ground (a) appeal lapsed as the required fee was not paid. No evidence has been provided to suggest that there has not been a

breach of planning control, so the appeal fails on ground (c). Taking all of these factors into account, I will determine the appeal under ground (d).

3. I attended the site on 14 January 2020 and 28 January 2020 to carry out my visit. As no-one attended on behalf of the appellant on either occasion, I was unable to see inside the building. I was only able, therefore, to view the site from the road. Taking account of the evidence presented, I will proceed with the appeal on this basis.

The Appeal on Ground (d)

4. The development alleged relates to the change of use of the building to nine flats. As these flats each comprise a single dwellinghouse, that results in a change of use that would become lawful after a period of four years, as set out in Section 171B of the Act. The appellant suggests that the parts of the building subject of the enforcement notice have been in residential use since 2005.
5. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it.
6. In this case, the only evidence provided comprises the assertions of the appellant in the appeal form and set out above. No supporting evidence has been provided to support those assertions and, given that I have been unable to access the building, it is not clear how the flats are laid out nor what facilities have been provided. Evidence has not been submitted by the Council to directly contradict the appellant's assertions. Nevertheless, the appellant's evidence is neither precise, nor unambiguous.
7. For these reasons, I am not able to conclude whether or not the flats have been in use for over four years prior to issue of the notice. My decision has to be taken on the balance of probability. On that basis, at the date when the notice was issued I consider that it was possible for the Council to take enforcement action in respect of the breach of planning control.
8. For these reasons, I conclude that the appeal under ground (d) should fail.

Formal Decision

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

AJ Steen

INSPECTOR