Appeal Decision

Site visit made on 9 March 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Appeal Ref: APP/T5150/C/19/3220591
335 Church Lane, London NW9 8JD

- 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 Majid Karami against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 11 December 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a single dwellinghouse to self-contained flats.
- The requirements of the notice are:
  Step 1 Cease the unauthorised use of the premises as self-contained flats.
  Step 2 Remove all kitchens, except ONE, and all bathrooms, except TWO, from the premises.
  Step 3 Remove all partitions, doors, facilities, fixtures, fittings and equipment that facilitate the unauthorised use of the premises.
  Step 4 Remove all items, waste materials and debris from the premises, which are associated with carried out compliance Steps 1 to 3.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of '6' months in relation to the time period for compliance at Schedule 5 and the substitution of '9' months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Procedural Matters

2. The appellant asserts within a brief statement of facts that there are only six individuals in the property what [sic] falls under permitted development. The appellant doesn't dispute that the property has been converted to flats or that it was previously a residential dwelling. S55(3)(a) specifically provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse, which includes a flat, involves a material change of use of the building as a whole and each sub-divided flat. Given the above, I have considered the appeal under ground (d). The appellant has ticked ground (d) on the appeal form and the evidence submitted relates to the use of the property as flats. I have therefore considered the appeal on this basis.

3. Although the appellant has not appealed under ground (g), since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. S176(1)(b) of the Act gives an Inspector appointed by the Secretary

of State wide powers to vary the terms of an enforcement notice, provided it does not cause injustice. In light of this, the views of the appellant and Council were sought to establish whether the compliance period should remain unchanged or a different compliance period should be specified. I have taken these views into account in reaching my decision.

Ground (d)

4. An appeal on ground (d) is made on the basis that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Case law has established that it is for the appellant to make their case on the balance of probabilities.

5. There is no dispute that the site is being used as flats. Section 171B(2) of the Town and Country Planning Act 1990 (as amended) sets out that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Consequently, the main issue is whether the use began more than four years before the date of the issue of the enforcement notice.

6. The Council advise that it received complaints in May 2018 that the property was being converted into flats. The appellant's case is that the property was established in its current format around 2013. The appellant has provided building certificates, dated 12 June 2018, for 'the refurbishment to existing flats including upgrade to sound insulation and fire protection'. He asserts that an officer of the Council visited the site on 31 May 2018 and commented on the quality of the work, not raising any concerns. However, the Council assert that the description provided is inaccurate and Brent Building Control also have an unauthorised works record for the "unauthorised house conversion" dated 11 June 2019. In any event planning and Building Control are separate legal regimes.

7. The Council advise that the enforcement team has been involved with, and has visited the property on numerous occasions, since 2014. The Council says that until 2018, the property was an extended semi-detached house in need of updating. An enforcement notice was issued on 22 December 2014 after an outbuilding in the rear garden was converted into a dwellinghouse. This resulted in enforcement officers visiting the site until the notice was complied with in 2017. Each visit to inspect the outbuilding required access via the main house. The Council has provided a delegated report, dated 1 December 2014, which identifies the premises as a mid-terraced dwelling. This conflicts with the appellant's assertion that the property was established in its current format around 2013.

8. On-line property details list the premises as a freehold semi-detached house with 5 bedrooms, 3 bathrooms and 2 reception rooms. The appellant asserts that the previous owner was advised by his agent to sell the house as a 5 bedroom house. However, this assertion is unsupported by any documentary or other corroboratory evidence.

9. The property was purchased on 16 March 2018 for £625,000, which the Council assert would be considered the market value for an extended 4-5 bedroom semi-detached property in this location. The Council has identified asking prices for a number of properties in the area ranging from 600,000 to 650,000. The

appellant asserts that if the property was sold as a house it would not have fetched more than £570,000, the only way it achieved £625,000 was as it was 6 units which were unmodernised.

10. However the appellant has provided no substantive evidence to counter the Council's evidence. Furthermore, whilst some of the properties identified by the Council are smaller than the appeal property, given that the asking prices are similar to the price paid for the appeal property in 2018, such similar asking prices point towards the property being sold as a house since I would expect smaller properties in the same area to fetch less, taking into account market fluctuations over time.

11. The Council states that only one Council Tax record exists for 335 Church Lane, which identifies that the property is in Council Tax Band E and which the appellant has been liable for since March 2018. This points towards the property having been a single dwellinghouse at the point of sale. The appellant does not dispute the Council Tax Banding and has not provided me with Council tax bills for the relevant period.

12. The Council has provided a Google Streetview image of the site in 2017 and a similar Google Streetview image in 2019. In the latter image an intercom entry system and boiler flues can be seen, whilst in the 2017 they are not present. Photographs taken by Council officers in May 2018 also show new electricity connections, meters and mains wiring. The appellant asserts that he put a boiler in to each flat instead of electric heating to make it more comfortable for tenants. It is not disputed that the property underwent renovations, which could reasonably include matters such as rewiring.

13. The evidence overwhelmingly points towards the property being converted to flats in the last four years. The appellant has provided very little in the way of documentary evidence to counter the evidence submitted by the Council or to support his own claims that the property was converted around 2013. The appellant asserts that there is a need for this type of accommodation in the area, however, since there is no ground (a) appeal I am unable to consider planning merits.

14. Given the above, it has not been demonstrated with sufficient precision and lack of ambiguity that, on the balance of probabilities, at the date when the enforcement notice was issued, no enforcement action could be taken. Accordingly, the appeal fails.

Ground (g)

15. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. Since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. The appellant has requested that the compliance period should be increased to at least a 12 month period, if not longer. He has raised concern regarding his ability to comply with the compliance period due to legislative changes affecting the eviction of tenants; the effect of the pandemic on tenants ability to find new accommodation and difficulties in securing a builder to carry out the works.

16. The Council advise that, in light of the pandemic, it considers it reasonable that an extra 3 months be added on to the existing compliance period. The Council

has further advised that if it transpires that further time is needed because it (the pandemic) carries on longer than 3 months, the Council can decide to use its own powers to extend the compliance period further.

17. I agree that, given the current situation, a period of six months is unlikely to be sufficient to enable the occupants to find suitable alternative occupation, remove their possessions and for the works to the building to be completed. However, as yet it is unclear as to how long this situation will persist. In light of this and given the Council's ability to extend the compliance period further, I consider extending the compliance period for 3 months is reasonable. I shall therefore vary the terms of the enforcement notice accordingly.

Conclusion

18. For the reasons given above I conclude that a reasonable period for compliance would be nine months. I am varying the notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

M Savage

INSPECTOR