

Appeal Decision

Site visit made on 11 March 2020

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/U5930/C/19/3222951
319 Hoe Street, London E17 9BD

- The appeal is made by Ajaz Nawaz under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 080755) issued by the Council of the London Borough of Waltham Forest on 21 January 2019.
 - The breach of planning control alleged in the notice is "the conversion of two self-contained residential units to *[sic]* into two (2) x one (1) bedroom self-contained residential units and three studio flats".
 - The requirements of the notice are as follows: -
 - "1. Cease the use of The Premises as two (2) x one (1) bedroom self-contained residential units and three studio flats and revert the Premises back to its previous layout of two self-contained residential units;
 - 2. Remove all means of sub-division from The Premises that facilitates the use of two (2) x one (1) bedroom self-contained residential units and three studio flats, including partition walls and internal door divisions between the ground floor, first floor and second floor;
 - 3. Remove the three (3) of the additional kitchen's *[sic]* within the Premises including all sinks, cookers, washing machines, fridge freezers and other kitchen related accessories, fixtures and fittings;
 - 4. Remove the three (3) of the additional bathrooms within the Premises including all sinks, toilets and showers and any other related accessories, fixtures and fittings;
 - 5. Remove all resulting materials, rubble and general detritus from The Premises following compliance with requirements 1 - 4 resulting from the works."
 - The period for compliance with these requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2)(d).
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Decision

1. It is directed that the enforcement notice be corrected by replacing the words below the heading in paragraph 3 by: -

"Without planning permission, the change of use of the premises from two self-contained residential flats to five self-contained residential flats".
 2. Subject to this direction, the appeal is allowed and the enforcement notice is quashed.
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Reasons for the decision

Introduction

3. The use of the premises changed at some time in the past so that it had one flat on the ground floor and one flat on the first floor. There are now two flats on each of these floors and one flat on the second floor. The flats are all self-contained. The appellant states that only two of them are studio flats, but it is unnecessary for the enforcement notice to state whether any of the flats should be classified as studio flats or otherwise.
4. The breach of planning control has occurred because of the change of use of the premises from two self-contained residential flats to five self-contained residential flats. The description of the breach in the enforcement notice has therefore been corrected.
5. The purpose of the appeal is to demonstrate that when the notice was issued on 21 January 2019 it was too late to take enforcement action in respect of the breach because of the lapse of time. In this instance, enforcement action cannot be taken after the end of the period of four years beginning with the date on which the change of use took place. It is a matter of fact and degree as to when this change took place and it is the appellant's responsibility to provide evidence to establish the date, on the balance of probabilities.
6. The appellant has submitted a copious amount of evidence in support of his appeal and the Council have sought at great length to cast doubt on it. I have studied all this material and have focussed my attention on the main issues, which are whether the change of use to five flats took place before 21 January 2015 and whether there was a time when the Council could not have taken enforcement action against this use.

Summary of the appellant's case

7. The appellant states that no major alterations or works have taken place at the premises for almost a decade. He cannot recall exactly when all the works took place, but he lived in the premises until 2003 and a loft conversion had been completed before he moved out. The ground-floor rear and side extensions were completed in 2006 and the first-floor extension in 2010. The premises were then split into five flats, as they exist today, and have been occupied by tenants continuously since then. He managed the premises himself and has produced tenancy agreements dating back to 2011, five statutory declarations (including his own) and a vast amount of supporting material.

Summary of other appeal representations received

8. Seven communications have been received from tenants or former tenants. They all support elements of the appellant's case. One tenant states that he has occupied Flat C continuously since 2011 and adds that he viewed Flat A before taking Flat C. He confirms that no alterations or building works have taken place to Flat C since he moved in. A former tenant states that he lived in the top-floor loft flat between October 2014 and April 2016 and that during this time "the apartments in the house were occupied".

Summary of the Council's case

9. The Council do not consider that the evidence and supporting material provided are sufficiently precise and unambiguous to demonstrate on the balance of probabilities that the five flats are immune from enforcement action. The Council make the following principle points: -
- There are inconsistencies in the dates provided and discrepancies between them and the Council Tax and Private Rented Property Licence records.
 - The tenancy agreements do not in most instances identify the particular flat being let.
 - Continuous occupation has not been demonstrated.
 - There are no separate utility bills for the flats.
 - Very little weight should be attached to the third-party representations because they are not sworn documents or statutory declarations.
 - The vast majority of the information furnished by the appellant is simply standard ongoing management material. It is not specific to particular flats and does not prove that the five flats have existed as is required for the appeal to succeed.

Assessment of the evidence

10. An appellant's own evidence, supported by copies of tenancy agreements and relevant statutory declarations and other communications, is normally sufficient to achieve success on ground (d) in an appeal of the present type, unless elements of the evidence are less than probable or are contradictory. In the following paragraphs, I have examined the evidence and commented on the principle points made by the Council.
11. The dates the appellant has given in various documents for the carrying out of the works do not always correspond, but there is corroborating evidence. The Valuation Office state that the house was split into ground and first-floor flats in 1998. The Council's Building Control Services recorded the completion of a loft extension in 2001. A Council Tax officer visited in 2005 and recorded that it appeared that the first-floor flat was being split into two. The Building Control Services recorded the completion of a single-storey side and rear extension in 2006. A 2006 email from the appellant refers to four flats. There is a contractor's quotation in 2010 for an additional room. The tenant who has occupied Flat A since 2012 and the tenant who has occupied Flat C since 2011 have each made statutory declarations that no alterations or building works have taken place at their flats during their periods of occupation. The appellant's architect has made a statutory declaration that no works or alterations have been made since she first visited the premises in 2016.
12. The Council Tax records correspond with the existence of two flats from 1999 but do not record the existence of five flats until 2018. It is not unusual to find in appeals of this kind that Council Tax records are incorrect. There can be many reasons why this occurs, including failures by the responsible persons to register premises or supply accurate information. The Private Rented Property

Licence scheme did not come into force until April 2015 and all five flats were licensed in 2017.

13. The tenancy agreements do not, prior to the licensing of the flats in 2017, identify the flats by the letters A to E by which they are now known. Instead, the flat being let is either not identified or is referred to by its floor level. This is not in my experience an unusual occurrence, and the Council's Revenues Department have indicated that it is "nothing out of the ordinary" and happens "all the time" (see letter dated 31 December 2019 to Planning Enforcement).
14. What the tenancy agreements, supported by the appellant's records, statutory declarations and numerous communications, do show is that five separate flats have been let and occupied at the same time since September 2014 at the latest. This material also shows that the occupation of the five flats has been continuous since then apart from the short periods between lettings that normally occur.
15. The appellant has explained that utility bills do not exist for each flat because each letting was 'all inclusive'. This is apparent from information recorded on tenancy agreements and from copies of utility bills supplied by the appellant.
16. Written representations that are not sworn or declared to be statutory declarations are routinely accepted from all parties in ground (d) appeals. In this appeal, the representations received from tenants and former tenants are all written in their own words and describe the flats from their own intimate knowledge. I have no reason to doubt what they have stated.
17. The Council are correct that most of the information furnished by the appellant is standard ongoing management material, which is not specific to a particular flat. In making my assessment of this information, I have identified the documentation that is dated and clearly associated with a particular tenant. I have then cross-referenced it with the period of the tenancy. It all supports the appellant's case and I have found no discrepancies.

Conclusions

18. My assessment has led me to the following conclusions. There are insufficient grounds on which to find as a matter of fact that the appellant's evidence is less than probable or is contradictory in a significant way. It is likely that five flats have existed here since 2010. There is firm evidence of the use of five flats as living accommodation, all at the same time and continuously, from September 2014 to the present day. There was no time from at least September 2014 up to the issue of the enforcement notice on 21 January 2019 that the Council could not have taken enforcement action against this use.
19. As a result of my assessment, I have concluded on the balance of probabilities that when the enforcement notice was issued on 21 January 2019 it was too late to take enforcement action in respect of the breach of planning control because of the lapse of time. The appeal has therefore succeeded on ground (d) and the enforcement notice has been quashed.

D.A.Hainsworth

INSPECTOR