The Planning Inspectorate

Appeal Decision

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/R5510/C/19/3225629
Land at 4 Russet Close, Uxbridge UB10 0ST

- 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 Malkit Purewal against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 7 March 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of a single family dwellinghouse into (4) separate self-contained residential units.
- The requirements of the notice are (i) Cease the use of the property as more than one dwellinghouse; (ii) Remove all but one kitchen from the dwellinghouse to include oven, hob, extractor unit, sink, worksurfaces and kitchen style cupboards, hot and cold water supply and foul waste drainage pipework; (iii) Remove all the internal partitions and lockable doors used to divide the dwellinghouse into four separate self-contained residential units to allow free internal passage to all areas; (iv) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the works listed in (ii) and (iii) above.
- The period for compliance with the requirements is Three (3) months after this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matter

1. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.

The appeal on ground (d)

2. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in relation to the alleged change of use. In order to succeed on this ground it would be necessary for the appellant to show, on the balance of probability, that the use of the property as four separate self-contained residential units 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.

3. The appellant has submitted a number of statutory declarations in support of the appeal. These include declarations from contractors, responsible for undertaking the conversion work, and from the property owners, stating that all works to convert the property to four self-contained flats were completed by the end of September 2013.

4. Given that any person who lies about the information contained in a statutory declaration could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I am inclined to attach significant weight to these statements. It is also evident that a formal Building Control completion certificate, in relation to the conversion of the garage, was secured on 7 February 2014.

5. However, even if the various flats were converted and made ready for residential use by the time stated in the declarations, it would still be necessary to demonstrate that the units have been in continuous use.

6. Evidence has been provided including lease agreements between the landlord and the letting agency and subsequent tenancy agreements between the letting agency and individual tenants, relating to the respective flats. Significantly, these records do appear to show continuous tenancy agreements being in place for each of the flats over a four-year period, between at least February 2014 and February 2018. Indeed for flats A, C and D the agreements extend beyond this time.

7. To my mind, the continuity of these tenancy records weighs strongly in favour of the continuous occupation of the flats. In addition various statutory declarations, including those provided by the property owners, refer to all four flats having been used as self-contained units for more than 4 years. Any 4-year period of continuous use, prior to the application date, would be sufficient to accrue lawfulness.

8. Information provided by the appellant to the Council's Revenue Division in May 2018, serves to corroborate the name of one of the tenants (Flat A). The Council has set out that the failure to identify the names of the tenants of the other flats, as part of this exercise, such that they correspond with those given on the tenancy agreements, serves to undermine the appellant's case.

9. However, the Flat B tenancy appears to have expired in February 2018. This would therefore have been consistent with the Council recording, at the time, that that property was occupied by a new male tenant. Furthermore, the appellant's explanation, that the names given of the occupiers of Flats C and D were the partners of the registered tenants there, is also a plausible one. I do not therefore consider that this undermines the veracity of the tenancy agreements provided.

10. The Council has set out that it has no record of Council tax payments being made in relation to the flats until May 2018. It also refers to the property being registered as a single dwelling on the Valuation Office Agency's records. However, a lack of registration as flats, including for Council tax purposes, does not equate to the flats not existing and being in use.

11. I have also had regard to the fact that the Council refused a lawful development certificate (LDC) with regard to the proposed use of the property as a House in Multiple Occupation (HMO)[1]. However, there is insufficient evidence for me to concur, on the balance of probability, with the Council's assertion that this strongly suggests that the property was unlawfully used as an HMO following the conversion of the garage, and that it continued as such into the four-year immunity period. The conversion of the property and its subsequent use as four flats is not inconsistent with the refusal of an LDC for a different use, even if this was around the same time that the flats were completed, in accordance with evidence in some of the statutory declarations.

12. Therefore, when taking account of the above considerations, I conclude, on the balance of probability, that the property was converted to 4 separate self-contained residential units and subsequently continued in this use over the requisite 4-year immunity period. The development is therefore immune from enforcement due to the passage of time.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

Formal Decision

14. The appeal is allowed, and the enforcement notice is quashed.

Roy Merrett

INSPECTOR

[1] Ref 30042/APP/2013/2301 – refused 1 October 2013