
Appeal Decision

Site visit made on 16 March 2020

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 20 April 2020

Appeal Ref : APP/U5930/C/19/3226610

Land at 17 Alexandra Road, London, E10 5QQ

- 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 Michalakos Leonidas against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The notice was issued on 15 March 2019.
- The breach of planning control as alleged in the notice is without planning permission 1. the material change of use of the land from use as two self-contained residential flats (Use Class C3) to use as six self-contained residential flats (Use Class C3); 2. the associated building works to convert the land from two self-contained residential flats into six self-contained residential flats.
- The requirements of the notice are 1. cease the use of the land as six self-contained residential flats at basement, ground and 1st floor levels, 2. remove all means of sub-division from the land and containment works, including partition walls and internal door divisions that facilitate the use of the land as six self-contained flats, 3. remove all additional energy meters from the land that facilitate the use of the land as six self-contained flats so that no more than two remain, 4. remove all additional boilers from the land that facilitate the use of the land as six self-contained flats so that no more than two remain, 5. remove all additional kitchens, sinks, cookers, washing machines, fridge freezers and other kitchen related accessories, fixtures and fittings from the land that facilitate the use of the land as six self-contained flats so that only one remains at ground floor level and one remains at 1st floor level, 6. remove all additional showers and toilets, sinks and associated fittings and fixtures from the land that facilitate the use of the land as six self-contained flats so that only one remains at ground floor level and one remains at 1st floor level, and 7. remove all resulting materials, rubble and general detritus from the land following compliance with requirements 1-6 resulting from the works.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. There is no ground (a) appeal and deemed application before me and therefore the planning merits of the development are not within my remit to consider.

Ground (c) appeal

2. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of

development includes the making of any material change in the use of any buildings or other land. The onus of proof in this appeal rests firmly upon the Appellant and the test of evidence is the balance of probabilities.

3. The appeal site is a mid-terraced building located in a primarily residential area. The Appellant's argument is that the use of the site as six self-contained flats is lawful by virtue of the passage of time. But this is more pertinent to a ground (d) appeal and I shall deal with it accordingly. He makes no other argument relevant to this ground of appeal but I shall nevertheless address whether there has been a breach of planning control.
4. The use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. The site does not have planning permission for use as six self-contained flats. It does not benefit from permitted development rights for such a use. On the evidence before me I have no reason other than to conclude that the matters alleged constitute a breach of planning control.
5. For the reasons given above this ground of appeal does not succeed.

Ground (d) appeal

6. This ground of appeal is that, at the date when the notice was issued, it was too late to take action. Section 171B(2) of the 1990 Act (as amended) provides that where there has been a breach of planning control consisting in the change of use of any building (or part of a building) to use as a single dwellinghouse no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The notice was issued 15 March 2019 and therefore the relevant date in this case is 15 March 2015. For this ground of appeal to succeed the Appellant must demonstrate on the balance of probabilities that the site has been used continuously as six self-contained flats for the relevant four year period.
7. The Appellant's claim is that the appeal site was subdivided into 6 residential flats in 2013 with each being occupied by tenants in 2014. His evidence consists of tenancy agreements for each of the 6 flats, a statutory declaration and floor plans. It is not necessary for the Appellant's evidence to be independently corroborated in order to be relied upon but it must be sufficiently precise and unambiguous in demonstrating a continuous use for the relevant period. The statutory declaration of the managing agent asserting that the property has been laid out as six flats since September 2013 is not accompanied by any evidence and lacks detail. For example, it refers to a break in occupation of flat 6 due to damp but without any dates during which occupation was not continuous. There is no direct evidence before me from any occupier as to actual occupation. The tenancy agreements before me are each for a 12 month term commencing in 2014 but the signatures of the parties are not witnessed and dated. The Appellant says in his submissions that further statutory declarations are being gathered but I must determine this appeal on the evidence before me.
8. The Council's evidence casts serious doubt upon the Appellant's version of events. The Council produces correspondence from an agent stating that works to the property to split it into six flats were completed in September 2015. They also submit private rented property licence applications in respect of

some of the flats. Each of these applications states the date upon which each flat was respectively created and some of these dates are outside the relevant period. Council tax records show payment for flats 1-6 began on 9 October 2015. Electrical certification, although not conclusive, is also consistent with installation in October 2015.

9. On balance I find that the Appellant has not demonstrated that it is too late to take action. His evidence is not sufficiently precise and unambiguous to discharge the burden of proof that rests with him in this appeal. He does not provide sufficient evidence to counter the Council's evidence which casts serious doubt on his claims.
10. From the evidence before me , I find, on the balance of probabilities, that the use of the appeal site as six flats has not continued for the relevant four year period before the issue of the notice. It was therefore not too late to take enforcement action.
11. For the reasons given, the appeal on ground (d) does not succeed.

Formal Decision

12. The appeal is dismissed.

S. Prail

Inspector