



Appeal Decision

Site visit made on 9 June 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2020

Appeal Ref: APP/H5390/C/19/3242205
58 Boscombe Road, London W12 9HU

- 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 Bernard Margulies of BMR London Limited against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice was issued on 28 October 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the change of use of the basement from retail (use class A1) to a single one bedroom self-contained residential flat (use class C3).
 - The requirements of the notice are:
 - a. Cease the use of the basement level as a self-contained residential flat (use class C3)
 - b. Remove the kitchen, including cookers, washing machines, fridges, sink unit, cupboard and kitchen associated paraphernalia
 - c. Remove the bathroom, including toilet, washing basin, and showers/baths
 - d. Remove the bed and all other furniture and items which facilitates the use as a self-contained flat.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. On the appeal form only ground (a) is pleaded. However, the grounds of appeal indicate that the property has been occupied as a dwelling for a continuous period of 4 years. Supporting evidence to that effect has been provided and the appellant subsequently confirmed the appeal is made under ground (a) and ground (d). This was reflected in the start letter for the appeal sent to both main parties.

Reasons

The appeal on ground (d)

3. Under section 171B(2) of the above Act, where there has been a breach of planning control consisting in the change of use of any building¹ to use as a

¹ Under section 336 "building" includes any part of a building.

single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

4. With this appeal, the appellant has provided a tenancy agreement dated 1 March 2014 and a statutory declaration dated 11 November 2019 from a tenant. The tenancy agreement indicates the property was occupied by the tenant as a dwelling for 4 years from 1 March 2014. The statutory declaration indicates the tenant occupied the property from 1 March 2014 continuously until 1 October 2018, ie a period exceeding 4 years.
5. The above information is uncontested by the Council and there is no evidence to contradict or otherwise make the appellant's version of events less than probable. I am satisfied the appellant's evidence noted above is sufficiently precise and unambiguous and that at the date the notice was issued no enforcement action could be taken against the breach of planning control. As such, based on the evidence before me, the appeal development in this case is immune from enforcement action under section 171B(2) of the above Act.
6. I am aware of interest in the appeal development from third parties. The information submitted includes third party comments that the basement has not been in continuous use as a residential unit for a period of four years, and, that prior to the current occupant the property was used as a base for motorcycle couriers. However, there is no evidence to substantiate these claims and so they do not change my overall conclusion in this case.

Conclusion

7. For the reasons given above I conclude that the appeal succeeds on ground (d). Accordingly the enforcement notice is quashed. In these circumstances the appeal under ground (a) set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

L Perkins

INSPECTOR