
Appeal Decision

Site visit made on 27 July 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2020

Appeal Ref: APP/G5750/C/19/3220238

First Floor, 215-217 Plashet Road, Plaistow, London E13 0QU

- 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. Naunihal Singh Bance against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 7 December 2018.
- The breach of planning control as alleged in the notice is the material change of use to three self-contained flats, by the creation of an additional flat known as '215B'.
- The requirements of the notice are:
 1. Cease the use of the property as more than two self-contained flats.
 2. Remove from the property one of the three kitchens, any internal dividing doorways and internal partitioning that solely facilitates the use as more than two self-contained flats, plus all duplicate doorbells, duplicate signage, and duplicate outside waste bins.
 3. Remove from the property all but two supplies of electricity, gas and water.
 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
- The period for compliance with the requirements is five 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary matter

1. The appellant refers to a builder's invoice for works carried out in support of his case. However, no such evidence has been presented to me.

Ground (d)

2. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the enforcement notice was issued on 7 December 2018, it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (i.e., that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
3. The appellant contends that flats 215a and 217 have existed for in excess of 30 years. The Council does not dispute this. The breach as alleged in the enforcement notice concerns the material change of use of flat 215a into two flats – 215a and 215b. The appellant argues that this material change of use

took place in 2011 and flats 215a and 215b have been occupied since that time.

4. In support of his case, the appellant has provided copies of tenancy agreements for Flat 215b dated 16 February 2014, 23 May 2014, 23 April 2015, 24 February 2017. The Council also refer to tenancy agreements for flat 215b dated 2011, 2012, 2013, 2016 and 2018, although they confirm that there are significant gaps in the occupancy periods. Whilst the details of these agreements are not before me, the appellant does not dispute the Council's assertions regarding these gaps in occupancy. There is no evidence before me of any tenancy agreements for Flat 215a.
5. The tenancy agreements dated 16 February 2014 (Dr and Mr Qazi) and 23 May 2014 (Mr Kumar and Mr Gupta) appear to overlap each other between May 2014 and August 2014, suggesting that Flat 215b may have been occupied as a house in multiple occupation (HMO), which would have represented a material change in the use of the property. Therefore, the period of continuous use of the flat as a single occupancy property would have restarted at the point that it was no longer occupied as an HMO.
6. The appellant has also provided copies of insurance documents dating back to 2011. Under the section 'Property Construction' these documents state 'No. of flats - 3', suggesting that there may have been three flats since 2011. However, there is no evidence of how this information was obtained, for example, did the insurance broker carry out a site investigation or did they rely on the information provided to them by the appellant? Accordingly, I can only attribute this evidence limited weight in support of the appellant's case.
7. The Council confirm that their Licensing records dated 9 May 2013 refer to 215a only and that the measurements stated on the licensing form match the pre-existing plans submitted for a planning application for the retention of the three flats in 2015¹, which indicate Flat 215a as being a three bedroom flat. This suggests that the material change of use of 215a into two flats did not occur until after 9 May 2013, which raises further doubt over the reliability of the insurance documents provided.
8. Furthermore, the Council confirm that their records dated 26 March 2013 show that the property was referred to them by the London Fire Brigade due to a fire in the ground floor shop. The record notes that the 'first floor front has separate access and is being used as an HMO (5 Students)'. The Council argues that Google Streetview, which shows fire damage to the property, confirms that this note relates to Flat 215a and suggests that it was at the time in use as a three bedroom flat, as per Council Licences 13/02405/HOSELE and 14/01497/HOSELE.
9. Overall, the evidence in support of the ground (d) appeal is limited and cannot be considered as precise and unambiguous. There is significant ambiguity over when the material change of use of 215a to two flats took place and whether the flats have been in single occupancy for a continuous period of four years. Therefore, I am not satisfied that, on the balance of probabilities, the material change of use of Flat 215a into two flats (215a and 215b) occurred continuously for a four-year period prior to the date of the notice being issued.

¹ LPA ref 15/02944/COU

10. The ground (d) appeal therefore fails.

Ground (g)

11. The appellant contends that the tenants of the flats are on short term tenancy agreements which run for six months. Therefore, he requires a nine month period to comply with the notice to give the tenants Notice to Quit, or to relocate them, and then carry out the required works to remedy the breach.
12. However, no detailed evidence has been provided regarding when the existing tenancy agreements started. It may be that the tenancy agreements expire during the compliance period, which would therefore likely reduce the time the appellant states would be needed to comply with the requirements of the notice.
13. In summary, from the available evidence I consider that the five month period specified in the notice is reasonable, and I do not see justification for extending it.
14. I therefore conclude that the ground (g) appeal must fail.

Formal Decision

15. For the reasons given above I consider that the appeal should not succeed.

Alexander Walker

INSPECTOR