



Appeal Decision

Site visit made on 27 July 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2020

Appeal Ref: APP/G5750/C/19/3236719

Land at 4 Dunbar Road, Forest Gate, London E7 9NQ

- 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 Mohammed Qasim Khan against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 9 August 2019.
- The breach of planning control as alleged in the notice is the material change of use to two self-contained flats.
- The requirements of the notice are:
 1. Cease the use of the property as self-contained flats.
 2. Remove from the property one of the two kitchens, any internal dividing doorways and internal partitioning that solely facilitates the use as self-contained flats, plus all duplicate doorbells, duplicate signage, and duplicate outside waste bins.
 3. Remove from the property all but one supply 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), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

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

Application for costs

1. An application for costs was made by the Council of the London Borough of Newham against Mr Mohammed Qasim Khan. This application is the subject of a separate Decision.

Ground (d)

2. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate that at the time the enforcement notice was issued on 9 August 2019, it was too late to take enforcement action against the two self-contained flats. The relevant test of the evidence is 'on the balance of probabilities' (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 has provided a copy of a Landlord Home/Owner Gas Safety Record, dated 6 January 2015, which he claims was for the installation of the

gas boiler on the first floor. Despite the record not referring to any works regarding the installation of a boiler, it clearly refers to a boiler at 'First Floor Flat, 4 Dunbar Road'. However, there is no evidence to indicate whether or not the first-floor flat has been occupied continuously over a four-year period. Whilst a boiler may well have been installed in the flat in 2015, this does not necessarily equate with the flat being occupied. Furthermore, there is no evidence submitted at all regarding the ground floor flat.

4. The Council's evidence includes an application submitted to the Council for the renaming and numbering of the appeal site to two self-contained units, which was received on 15 March 2019. Prior to this, the Council confirm that no planning applications were submitted for the subdivision of the dwelling.
5. Moreover, the Council refer to an application made to the Council's Licensing Department on 9 March 2019, which stated that the property was arranged as a single household consisting of a total of five bed spaces on the first floor. A subsequent site visit carried out by the Licensing Department found that it was being occupied as a single-family residence as per the application. Whilst details of the application are not before me, the appellant does not dispute the Council's claims.
6. In addition, an email from the Council's Housing Department confirms that an inspection of the property carried out on 28 January 2016 confirmed that it was at the time in use as a house in multiple occupation (HMO). Even if the property was occupied as two self-contained flats on 6 January 2015, when the boiler was installed, the subsequent use of the property as an HMO would likely have been a material change of use that would have interrupted the requisite four year period.
7. Overall, the evidence in support of the ground (d) appeal is very limited and cannot be considered as precise and unambiguous. It fails to demonstrate that, on the balance of probabilities, the material change of use of the dwelling to two self-contained flats has occurred continuously for a four-year period prior to the date of the notice being issued.
8. The ground (d) appeal therefore fails.

Ground (f)

9. For the appeal to succeed on this ground, I need to be satisfied that that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
10. The appellant argues that should the notice be upheld, he will only remove the door separating the two flats and he should not be made to remove anything else, including the two kitchens and the meters.
11. However, the items identified in the requirements of the notice clearly facilitate the use of the building as two self-contained residential units. Therefore, I do not consider that their removal would be excessive in order to remedy the breach of planning control, ie. the use of the building as two self-contained residential units.
12. I therefore conclude that the ground (f) appeal must fail.

Ground (g)

13. This ground of appeal is that the period for compliance is unreasonably short.
14. The time for compliance with the requirements of the enforcement notice is five months. The appellant argues that he requires a period of twelve months as he would need six months to get a court decision to evict the tenants, three months to evict them and a further three months to carry out the necessary works.
15. However, no detailed evidence has been provided about the terms under which tenants are occupying the property, or when rent periods 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 required to comply with the requirements of the notice.
16. Furthermore, as the Council states, they have the power to vary the period of compliance under section 173A (1)(b) of the Town and Country Planning Act 1990.
17. In summary, from the available evidence I consider that the five month period of compliance specified in the notice is reasonable, and I do not see justification for extending it.
18. I therefore conclude that the ground (g) appeal must fail.

Formal Decision

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

Alexander Walker

INSPECTOR