
Appeal Decision

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2020

Appeal Ref: APP/G5750/C/18/3215963

Land at 4 Aintree Avenue, East Ham, London E6 1NX

- 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 Miss Safiyyah Bussawon against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 16/01268/ENFC, was issued on 26 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use to two self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as two 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.
 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) (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The ground (c) appeal

2. This ground of appeal is that the matters stated in the notice which give rise to the alleged breach of planning control, did not constitute a breach of planning control.
3. The appellant states that she had been told by the Council's officer that planning permission was not required. Section 55(3)(a) of the Town and Country Planning Act 1990 as amended states that 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. This includes the use of the building as two self-contained flats and therefore the allegation constitutes a breach of planning control, for which planning permission is needed.
4. The appellant has not provided any evidence to substantiate her view that planning permission is not required and that there has not been a breach of planning control. The burden of proof has not been discharged and the appeal on ground (c) therefore fails.

The ground (d) appeal

5. The appeal on ground (d) is that at the date the notice was issued, no enforcement action could be taken in respect of the matters alleged in the notice. This ground of appeal assumes that there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four year period laid down by Section 171B(2) of the Act at the date of issue of the notice. The burden of proof lies with the appellant to make out their case.
6. The appellant needs to demonstrate, on the balance of probabilities, that the change of use to two self-contained flats occurred at least 4 years prior to the date when the enforcement notice was served (26 October 2018), that is on or before 26 October 2014, and was sustained for a full 4 year period.
7. The appellant's case is that the property has been in use as two flats from 5 September 2014. She has lived in the ground floor flat and the first floor flat has been rented out from that date. Tenancy agreements have been provided as evidence and a Council Tax Inspector's report dated 20 August 2014.
8. However, there are various inconsistencies and contradictions within the evidence. The tenancy agreement which purports to cover the six month period from 5 September 2014 is dated 1 June 2017. The appellant states that this was due to poor checking as the same template was used. The same date appears on the tenancy agreement covering a later six month period from 1 June 2017. It seems unlikely that a genuine tenancy agreement would have been misdated in this way, and this undermines its credibility as evidence.
9. The Council Tax Inspector's report of 18 August 2014 states that at the time of the visit, the ground floor was uninhabitable due to refurbishment being carried out, and the appellant was at that time living on the first floor with her family. It refers to the external walls of the extension to the rear of the ground floor as having been built, but with no proper flooring, internal boarding or plastering.
10. The Council issued a Planning Contravention Notice following its visit on 9 September 2016, when the property had been subdivided and was being occupied as two self-contained flats. In response the appellant stated that the property was surveyed by the Woolwich as a three bedroom house in March 2015, it was being renovated from May 2014, the ground floor rear extension was completed in May 2015, and renovations were in progress until June 2015. It seems unlikely therefore that the property was occupied as two self-contained flats in their current form from October 2014. The evidence points towards the probability that the use started at a later date.
11. The Council's statement refers to Council licencing records which state that on 9 January 2017 the property was owner occupied with two lodgers, while it was recorded that on 30 January 2017 Ms Bussawon stated 'there was discussions to split the property into 2 but decided against it...'.
12. The Council's Enforcement Officer visited the property again on 27 February 2017, when some of the kitchen units at first floor had been removed, and the door separating the two flats at ground floor level at the foot of the stairs had been removed. The first floor was vacant and the ground floor was occupied by the owners. This contradicts the appellant's evidence and tenancy agreement which states that the first floor was being rented to tenants at that time.

13. The Council visited again on 18 October 2018 which confirmed that the property had been divided into two self-contained flats, and this led to the enforcement notice being served.
14. The inconsistencies and contradictions within the evidence cast doubt on the appellant's assertion that the property was continuously occupied as two self-contained flats, in their current form, for the required period. The appellant has not provided clear and unambiguous evidence and has not discharged the burden of proof.
15. The appeal on ground (d) therefore fails.

N Thomas

INSPECTOR