



Appeal Decision

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 October 2020

Appeal Ref: APP/A5270/C/19/3239993
60 Beechwood Avenue, Greenford, UB6 9UD

- 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 Act").
 - The appeal is made by Mrs Anja Multani against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 18 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change in use of the property to 3 self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as 3 self-contained flats.
 2. Remove the kitchen and drainage connections from each of the 3 self-contained flats.
 3. Remove the bathroom and drainage connections from each of the 3 self-contained flats.
 4. Remove all internal partitions, doors and locks that facilitate the use of the property as 3 self-contained flats.
 5. Remove all resultant debris from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal proceeds on the grounds set out in section 174(2)(d), (f) and (g) of the Act.
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Decision

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

Preliminary matters

2. The appeal on ground (d) turns on the history of the use of the property. In this regard the parties' evidence has been submitted fully in writing with supporting appendices, including internal layout plans. As such, I am satisfied the appeal on ground (d), and also on grounds (f) and (g) can be determined without a site visit. I have determined the appeal on that basis.

Appeal site

3. The appeal property is a two-storey semi-detached house split into three flats, comprising two studio flats at ground floor level, and a 2-bedroom maisonette occupying the first floor and habitable loft. The layout is shown on the submitted drawings.

Appeal on ground (d)

4. The appeal on ground (d), by virtue of s171B(2) of the Act, is a claim that the alleged breach of planning control became immune from enforcement action

due to the passage of time, in this case 4 years. The burden of proof, on the balance of probability, is upon the appellant.

5. Her case is that the material change of use took place in 2013 and has actively continued thereafter. Her evidence does not need to be independently corroborated in order to be accepted. 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 her evidence alone is sufficiently precise and unambiguous.

The Council's evidence in summary

6. The Council's evidence is set out in their SOC and 21 Appendices.

The appellant's evidence in summary

7. The appellants evidence is set out in the WEA statement of case (SOC) and appendices submitted on her behalf.
8. Appendix 1, signed by the appellant, and appendices 5, 6, and 7 from current occupiers relate to occupation of the flats. They purport to be statutory declarations. However, there is no authentication in these documents that the person who has provided the witness signature is an independent and properly authorised person in law to hear them. Appendices 12 and 13 also purport to be statutory declarations (heard in India) of tenants said to have occupied two of the flats from 2013 to 2015. However, the notarising witness seal on them has not been apostilled by the relevant Indian authority. I shall therefore treat all of these documents as statements rather than statutory declarations.
9. The appellant contends the flats have been continuously occupied (I refer to occupiers by their initials) as follows -

Ground floor front studio flat:

From April 2013 to April 2015 by GS, and from May 2015 to date by KG.
Copies of tenancy agreements (TA) for GS and KG comprise Appendices 14 and 4 respectively.

Ground floor rear studio flat:

From April 2013 to date by RB. Copies of TAs for RB comprise Appendix 2.

First and second floor flat:

From May 2013 to April 2015 by NS, and from May 2015 to date by SL.
Copies of TAs for NS and SL comprise Appendices 15 and 3 respectively.

10. Appendix 8 is stated to be copies of rent receipts from the tenants between April 2015 and September 2019. Documents stated to be copies of invoices for various refurbishment works to the three flats in April 2014, March 2016 and December 2017 comprise appendices 9, 10 and 11 respectively.

Overall Assessment

11. That the three flats have existed and been occupied continuously for at least a 4 year period, at any time prior to the issue of the enforcement notice, is heavily contradicted by the Council's evidence, as I set out in the following paragraphs.

12. Notes¹ of a Council officer's internal inspection of the property undertaken on 15 September 2017 sets out her observations of the property at that time as comprising two flats. The inspection was undertaken in the presence of other people, including the owner who also confirmed verbally to the officer the subdivision into two flats. This evidence is clearly incompatible with the statements² from current occupiers RB, SL and KG in which they claim that three flats have existed continuously since 2015. It is also incompatible with the TAs submitted by the appellant in respect of the claimed periods of those tenants' occupancies. This alone casts serious doubt on the precision and veracity of the appellant's case.
13. Notwithstanding the above, the Council's Appendices 11, 16 and 18 are copies of TAs supplied to them by the appellant's husband for Council Tax purposes in September 2019. Appendix 11 relates to occupancy of the ground floor rear flat by RB for the period 1 June 2018 to 30 June 2019. Of particular note is that this TA is a wholly different document (in physical format, relevant dates and contractual terms) to the two TAs covering the same period for RB submitted by the appellant in her Appendix 2. Similarly, the TA in Council Appendix 16 for the first and second floor flat is wholly different in format, dates and terms to the version submitted for the same period by the appellant (her Appendix 3). Similarly again, the TA in Council Appendix 18 for the ground floor front flat is a different document to that submitted covering the same period by the appellant (her Appendix 4).
14. Why there should be different and conflicting versions of TAs for the same occupiers for the same periods of time is not explained by the appellant. Moreover, while the appellant has had the opportunity to refute the Council's assertion that the submitted documents are false and fabricated for the purpose of the appeal, she has not done so. On balance I find the appellant's documentary evidence in respect of occupiers' statements and related TAs to be profoundly lacking in credibility. Accordingly, I attach no weight to them.
15. Turning to other documents, the appellant's submitted rent receipts in her Appendix 8 does not appear to be copies of individual rent receipts given to occupiers, but rather takes the form of a continuous single word-processed document. That aside, the amounts said to have been received in rent do not correspond with the amounts of rent stated on the copies of TA's that were submitted separately for Council Tax purposes. This document also lacks any credibility.
16. The appellant's submitted invoice for works undertaken to the flats in 2014 (Appendix 9) details the installation of kitchens by Infuse IT Limited. I find this unusual given that IT companies are not well known for supplying and fitting of kitchens. Additionally, the appellant's Appendices 10 and 11 are said to be copies of invoices for various works carried out in 2016 and 2017.
17. However, given the lack of credibility and weight I have already found in respect of the appellant's evidence thus far, I find this factor in itself leads me to be dubious as to the integrity of these three invoices. That aside, they relate in any event to particular points in time when works were said to have been carried out, and hence they are not evidence of continuous use of the property as three flats. Accordingly, I attach very little weight to them.

¹ Council Appendix 4

² Appellants Appendices 5, 6, 7

18. Overall therefore, the appellant's evidence is very far away indeed from being precise and unambiguous; I find it to be unsupportive of her claim that there has been a continuous use of the property as three flats for a period of 4 years prior to the issue date of the enforcement notice, or indeed for any 4 year period since 2013. Her evidence is also heavily contradicted by the Council's evidence to which I attach substantial weight.
19. For all these reasons I conclude that the appellant has failed to demonstrate, on the balance of probability, that the use as three flats is immune from enforcement action.
20. The appeal on ground (d) therefore fails.

Appeal on ground (f)

21. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. In this regard the notice requires the use as three flats to cease; the removal of the kitchen and bathroom facilities and their drainage connections in each flat; and the removal of internal partitions, doors and locks that facilitated the use as three flats. It is clear therefore that the purpose of the notice is to fully remedy the breach of planning control.
22. Although the appellant states the requirements are excessive she does not state what lesser steps would be sufficient in terms of which particular facilities could be retained. In my view, the kitchens and bathroom facilities in each flat are small and constrained, and not in positions that would easily relate to a layout consistent with the previous lawful use as a single dwellinghouse. Moreover, if the notice required only the use to cease, without also requiring removal of the physical alterations which facilitated conversion of the property into three flats, there would be a risk that the unauthorised use could resume at some point in the future.
23. For these reasons I conclude that the notice requirements go no further than is necessary in order to fully remedy the breach of planning control. Consequently they are not excessive in achieving that purpose.
24. The appeal on ground (f) fails.

Appeal on ground (g)

25. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 3 months. The appellant seeks a period of 6 months to allow for the eviction of tenants and for subsequent completion of the required remedial works.
26. The current tenants were clearly aware of the notice and its requirements since it was issued. There is no evidence before me that any of them have indicated to the appellant that they intend to resist eviction. Moreover, in this regard the Council correctly state that they have powers to extend the compliance period should the need arise.
27. With regard to the physical works to be undertaken, the period of time relates only to works necessary for achieving compliance with the notice requirements;

it does not extend to additional works the appellant may wish to carry out beyond those.

28. For these reasons I find that the 3 month period for compliance does not fall short of what should reasonably be allowed. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR