



Appeal Decisions

Site visit made on 12 August 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th October 2020

Appeal A Ref: APP/Z5060/C/3241657

Appeal B: APP/Z5060/C/3241658

Land and premises at 25 New Road, Dagenham RM10 9NH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Jason Moore (Appeal A) and Mr Anthony Beam (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 25 October 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised subdivision to create a self-contained flat located on the ground floor within the property.
- The requirements of the notice are Cease the use of the self-contained flat; Remove all alterations and fixtures enabling the creation of the self-contained flat; Remove all consequent waste material from the premises.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2) (e), (b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

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

Preliminary Matter

1. For the avoidance of doubt it is undisputed by the parties that the unit the subject of this notice is that comprising the rooms denoted as GR06 (Kitchen), GR07 (Lounge with the adjoining en-suite shower room) and GR08 (Bedroom) as shown on drawing no. 00.01.200 attached to the appellants' statement.

The appeals on ground (e)

2. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. The appellants submit that the notice is invalid because the Council has failed to produce a signed delegated report authorising enforcement action. The Council has confirmed that it does not hold a separate report but regards the notice itself as the record of the decision and the reasons for issuing it.
3. Whilst the Council is not required to produce a separate report authorising enforcement action, the issuing of an enforcement notice must be properly authorised. The Council has provided a copy of its scheme of delegation, in force at the time when the enforcement notice was issued. I am satisfied that this demonstrates that the notice was served in accordance with the correct delegated authority. Furthermore, I am satisfied that the reasons expressed on the notice for issuing it demonstrate that the Council was engaged in a

process of conscientiously considering the merits of enforcement action. I am therefore satisfied from the Council's reply to my enquiry that the notice was properly authorised.

4. The appellants have referred to a case known as "Nelsonville". However I have not been provided with any details of this case and have therefore been unable to understand its significance in terms of the current appeals. Consequently the appeals on ground (e) fail.

The appeals on ground (b)

5. The appeals on ground (b) are that the breach of planning control alleged in the enforcement notice has not occurred. In a ground (b) appeal the onus of proof is on the appellant and the standard of proof is the balance of probability.
6. The appellants' case is that the layout of the unit has been in its current form since October 2010 and accordingly it benefits from being regarded as an established use. They also say that the unit is not self-contained because it does not benefit from separate supplies of electricity and gas.
7. However the argument that an alleged use has existed for a certain period of time or that the supply of utility services is shared with other parts of the same property address does not support an argument that the alleged use has not occurred at all and that there is not self-contained living accommodation, in the context of a ground (b) appeal.
8. The ground (b) appeals therefore fail.

The appeals on ground (c)

9. The appeals on ground (c) are that the matter alleged does not constitute a breach of planning control. The appellants' case is that planning permission is not required due to the passage of time. However, again this argument is not relevant to the question of whether there has actually been a breach of planning control.
10. Whilst actually expressed as part of the ground (b) appeals, the appellants further state that the alterations involved only internal works to the property and that as such no development of land was involved. This is actually a ground (c) argument.
11. It is the case that s(55)(2) of the Act states that "The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land— (a) the carrying out for the maintenance, improvement or other alteration of any building of works which— (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building."
12. However s(55)(3)(a) of the Act 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 and of each part of it which is so used." Section 55(1) of the Act states that the making of any material change in the use of any building constitutes development.
13. From my visit it was evident that the unit subject to the notice has a lockable front door which is accessed from a communal hallway. Inside the unit there is a kitchen, equipped with cooking facilities, a living room, a bedroom and

washing and toilet facilities. The works undertaken have therefore resulted in the creation of a separate unit of residential accommodation, providing the facilities for day-to-day living, and which, regardless of how the utility services are supplied, therefore expressly constitutes an act of development.

14. Accordingly the alterations undertaken to the property go beyond what can be regarded as not constituting development. There is no suggestion that the works undertaken constitute permitted development in the context of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The development undertaken would therefore have required planning permission. The ground (c) appeals therefore fail.

The appeals on ground (d)

15. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellants to show, on the balance of probability, that the use of the unit as a dwelling had commenced at least 4 years before the notice was issued, that is by 25 October 2015, and had continued in such use over a four year period. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity.
16. The appellants claim that the unit was created prior to 2010 and that one of the appellants lived in the unit for many years with his ex-wife. However, no evidence, for example rent receipts or statutory declarations have been provided to support this claim or the proposition that the unit has been used continuously as residential accommodation, without any material break in occupation, for the required 4-year period. The appellants' statement refers to attaching a tenancy agreement dating from 2015, however no such document appears to have been included.
17. Accordingly, I am unable to conclude, on the balance of probability, that the change of use is immune from enforcement due to the passage of time. The ground (d) appeals therefore fail.

Conclusion

18. For the reasons given above I consider that the appeals should not succeed.

Formal Decisions

19. The appeals are dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR