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# Appeal Decision

Site visit made on 13 October 2020

**by M Madge DipTP, MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17<sup>th</sup> November 2020**

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**Appeal Ref: APP/A5270/C/20/3249404**

**First Floor 44A - 44B Bideford Avenue, Perivale, Ealing UB6 7PP**

- 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 Faiz Gorgi Ishak against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The enforcement notice, numbered 20EN0093(1), was issued on 12 February 2020.
  - The breach of planning control as alleged in the notice is without planning permission: the material change of use of the first floor to 7 self-contained residential units.
  - The requirements of the notice are:
    - A. Cease the use of the first floor as 7 self-contained residential units;
    - B. Remove the kitchens and drainage connections from each of the 7 self-contained residential units;
    - C. Remove the bathrooms and drainage connections from each of the rooms in the self-contained residential units;
    - D. Remove the internal partitions and fixtures and fittings that facilitate the unauthorised material change of use of the first floor; and
    - E. Remove all resultant debris.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. It is directed that the enforcement notice is corrected by:

The deletion of the number "7" in paragraph 3. THE BREACH OF PLANNING CONTROL ALLEGED.

The deletion of the number "7" from requirements A and B in paragraph 5. WHAT YOU ARE REQUIRED TO DO.

Subject to the corrections, the appeal is dismissed, and the enforcement notice is upheld.

## Preliminary matter

2. Third party representations have been made, which raise material planning matters. As there is no ground (a) appeal, the planning merits are not before me for consideration.

## The notice

3. The allegation, at paragraph 3, and requirements A and B, at paragraph 5, should not specify the number of self-contained residential units and I shall correct the notice accordingly. These corrections put the notice in order and do

not widen the allegation of the breach. I am satisfied that no injustice would be caused to the appellant or the council by these corrections.

### **Ground (d)**

4. The appeal is that at the date the enforcement notice was issued it was too late to take enforcement action against the breach of planning control due to the passage of time. The relevant date for the purposes of assessing immunity of the alleged breach of planning control is 4 years prior to the issue of the enforcement notice, which is 12 February 2016.
5. In pursuing an appeal on ground (d) the burden of proof is on the appellant. The appellant should demonstrate, on the balance of probability, that the change of use had taken place on or before the material date and that it was continuous, without material interruption, for at least a 4 years period after the date of change.
6. The appellant claims in their letter, dated 20 March 2020, that the breach occurred in September/October 2014. Reference is made to documentary proof and this includes of numerous tenancy and council tax documents, email correspondence between the appellant, their architect, the Council and The Valuation Office, and 3 statutory declarations.
7. The format and content of the tenancy agreements differ considerably, even where documents claim to have been entered into at a similar date. The tenancy agreements dated from mid/late 2016 refer to "Flat" numbers. Whereas those dated from September/October 2014 state that they are for "Room" 1 to 7. The statutory declarations relating to units 3, 4 and 5, while providing details of when occupation commenced, provide no details of when the premises were vacated or any details of substance relating to the witness's time of occupation. Correspondence between the appellant and the Council during early 2016 suggests the need for a house in multiple occupation ("HMO") licence and it refers to it not being necessary for the appellant to provide cooking facilities in the rooms before making such an application. The council tax documentation confirms that the units were registered on 25 August 2016.
8. The Council has provided evidence to show that, in respect of the HMO licence application, it was claimed that the units had been occupied for residential purposes since May 2012. Evidence is also provided to show that the first floor was not constructed until 2014. Site notes of various inspections made by Council officers during 2014 and early 2016, along with photographs, show that the units were claimed and seen to be in commercial use as offices at that time. A planning application submission in 2016, which included the regularisation of the erection of the first floor, also confirms the use to be offices.
9. In particular, the Council's evidence<sup>1</sup> shows that unit 1 is occupied by "The Granite Guy Ltd" as an office. I saw that this unit is still occupied by that business. The tenancy agreements however claim that Room 1/Flat 1 has been occupied by various tenants since 1 September 2014. Furthermore, tenancy agreements, council tax billing information and third-party certification documents do not provide confirmation of residential occupation.

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<sup>1</sup> Council's Site visit notes from 19 April 2016

10. The claim that the residential accommodation was in use as a HMO in 2012 is clearly untrue as the first floor had not been constructed at that time. The appellant's evidence is therefore far from precise and unambiguous in respect of the use of each flat and the floor as a whole. In addition, the Council's evidence of site visits and the planning application, on which it should be entitled to rely, casts considerable doubt on the claim that the use had commenced before the relevant date.
11. Overall, I find it less than probable that the use as self-contained residential units commenced around September/October 2014. It is more probable that the use commenced on or around 25 August 2016. However, even if I were to conclude that the use had occurred on or around 25 August 2016, this does not amount to 4 years of uninterrupted use.
12. For the reasons given above, I conclude on the balance of probability that the breach of planning control is not immune from enforcement action and the appeal on ground (d) fails.

*M Madge*

INSPECTOR