Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2020

Appeal Ref: APP/A5270/C/20/3248283
Land at 120 Uxbridge Road, London W7 3SU

- 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 Pinchas Weinberger against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 22 January 2020.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the basement to two self-contained flats.
- The requirements of the notice are:
  1. Cease the use of the basement as two self-contained flats,
  2. Remove the kitchen and drainage connections from one of the self-contained flats,
  3. Remove the shower, toilet and drainage connections from one of the self-contained flats,
  4. Remove all internal doors, partitions and locks that facilitate the use of the basement as two self-contained flats, and
  5. Remove all resultant debris.
- The period for compliance with the requirements is three 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.

Decision

1. It is directed that the enforcement notice be varied by:

   - Inserting the wording "cap off all associated water and" after the word "and" in steps 2 and 3 of paragraph 5.

   - Deleting the wording "three months" from paragraph 5 and substituting them with "six months".

2. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

3. In response to the travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a physical site visit. This is because I am satisfied that a decision can be reached based on the representations and supporting information submitted by the main parties as a matter of course as part of the appeal process.

Appeal on ground (d)

4. In relation to a breach of planning control consisting of a material change of use of any building to use as a single dwelling house, including the subdivision of dwellinghouse into flats, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach (s171B (2)).

5. The main issue is whether the material change of use took place before the 22 January 2016, with the use as two basement flats continuing without significant interruption for at least four years thereafter. The onus is on the appellant to prove his case on the balance of probability.

6. 120 Uxbridge Road is a three-storey property with a basement. The ground floor is in commercial use, with the first and second floors converted into nine residential flats. There are a further two residential flats in the basement.

7. In summary, the appellant maintains that there have been two flats in existence in the basement since 1993 and that they have been continually occupied since at least 2015. His evidence relies on copies of assured shorthold tenancy agreements (ASTA), statutory declarations and rent statements. In addition, copies of the Council Tax Band details (VOA) have been provided for the property.

8. Dealing first with the Council Tax banding. The records provided by the appellant only show that there was a basement flat in existence in 1993 and 2006. It does not identify two separate flats, and nor does it provide any evidence as to whether or not those flats were occupied. On the other hand, the Council Tax database records provided by the Council show that Basement Flat 1 has been listed since April 2006 and Basement Flat 1A came onto the list from 7 November 2018 and was referred to the VOA in 2020. In addition, Council records show that Flat 1 has been liable for paying Council Tax since February 2008 and Flat 1A since November 2018. Taking into account all of this information, it seems to me that the Council Tax records and VOA only demonstrate that there has been one flat liable for Council Tax within the basement since February 2008 and one since November 2018.

9. Copies of ASTA for each flat have been provided by the appellant. In relation at Basement Flat 1, an ASTA commenced on January 2015 and a Statutory Declaration has been provided by the holder of the ASTA stating that they occupied the flat between January 2015 and January 2018 and paid their rent in cash. There is no rent statement relating to this flat or any evidence of receipt of rent payments. An ASTA commencing 19 March 2018 and a further one commencing the 2 December 2018 for Flat 1 have been provided, together with Statements of Account from initially Tilecroft Ltd and then Watermint Property Group which shows receipt of payments in relation to Flat 1 from March 2018 through to October 2020.

10. In relation to Basement Flat 1A, an ASTA commenced on 12 November 2015 and a Statutory Declaration has been provided by the holder of the ASTA stating that they occupied the flat until February 2018 and paid their rent in cash. Again, there is no evidence of receipt of rent. Further copies of an ASTA commencing on 8 March 2018 and 7 November 2018 have also been provided, together with a Statement of Account for Flat 1A from Watermint Property Group which shows payments in relation for Flat 1A dating from 7 December 2018.

11. Evidence provided by the Council in the form of a Building Control Application in 1995, Land Registry entry for 2007, Council Tax Inspection Report, 2010 and a record of a visit from a Housing Officer, 2010 all refer to a single basement flat. Furthermore, the Electoral Register search records provided by the Council from 2012 through to 2017 show only ten separate flats in existence at 120 Uxbridge Road. This evidence as a whole casts doubt on the veracity of the appellant's argument that there have been two flats in existence in the basement since 1993.

12. I recognise that the appellant has provided Statutory Declarations and an ASTA to demonstrate occupation of Basement Flat 1 between January 2015 and January 2018 and Flat 1A between November 2015 and February 2018. However, no corroborating documents, such as rent receipts, utility bills or records of Council Tax bills/payments have been provided. In addition, there are breaks in the tenancy of Flat 1 between January and March 2018 and September 2018 and November 2018 for Flat 1A. It also appears that the occupier of Flat 1 had a duplicate ASTA for the period of 2 December 2018 to 19 March 2019 and neither of those agreements were dated by the tenant when signed. No explanation for the breaks in tenancy or duplicate agreements has been provided. It is only from November 2018 that there is clear and undisputed evidence in the form of evidence of Council Tax records and rent receipts which would demonstrate continuous occupancy for both Basement Flat 1 and Flat 1A.

13. The local planning authority have produced evidence to contradict and make the appellant's version of events less than probable. Consequently, the circumstances of this case are such that I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to conclude, on the balance of probability, that the use in question is immune from enforcement action.

14. I conclude that the use has not become lawful due to the passage of time. The appeal on ground (d) does not succeed.

Appeal on ground (f)

15. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.

16. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.

17. The appellant considers that the requirement to remove the drainage connection is excessive as this involves major drainage works of digging out of the pipes. Closing off these connections would be more suitable.

18. In response, the Council accept that the requirement to completely remove the drainage connections to the kitchen, shower and toilet in one of the self-contained flats would be excessive. The Council has suggested that the requirements could be varied to simply require all the water and drainage connections to be capped off as suggested by the appellant. From the evidence before me, I see no reason to disagree, and I shall vary the notice accordingly.

I am satisfied that this variation would not result in any injustice to the appellant.

19. The appeal on ground (f) succeeds and I shall vary the notice before upholding it.

Appeal on ground (g)

20. The issue is whether the compliance period of three months is reasonable. The appellant considers that given the current COVID-19 pandemic, eviction of tenants is not possible and that a period of at least 12 months is more reasonable given that there will undoubtedly be delays in court proceedings.

21. However, it is noted that the ASTA have a two-month notice period within them. In the circumstances, the case for extending the compliance period to 12 months is weak. However, it seems to me that a period of three months is a relatively short period of time for the flat to be vacated and alternative accommodation for the occupier to be secured. The conclusion that I have come to is that a period of six months strikes the right balance and is sufficient time for the flat to be vacated and the works specified in the notice to be undertaken. To that extent the appeal on ground (g) succeeds.

Human Rights

22. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified and taking into account the variation to the notice to increase the time for compliance, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Overall Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with variations.

Elizabeth Pleasant

INSPECTOR