The Planning Inspectorate

Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/A5270/C/19/3243715
67 Bideford Avenue, Perivale, Middlesex UB6 7PX

- 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 Ishak of 67 (Bideford Avenue) Ltd against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 25 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, material change of use of the first-floor premises to 14 self-contained residential units.
- The requirements of the notice are to:
  i. Cease the use of the property as 14 self-contained residential units;
  ii. Remove the kitchens and drainage connections from each of the 14 self-contained residential units;
  iii. Remove the bathrooms and drainage connections from each of the 14 self-contained residential units;
  iv. Remove the internal partitions that facilitates the subdivision of the property into 14 self-contained units;
  v. 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) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be corrected: by the deletion of the words in the allegation and the substitution of the words 'Without planning permission, a material change of use of part of the first floor of the premises, shown hatched on the attached plan, to 14 self-contained residential units'; and by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Application for Costs

2. An application for costs was made by the Council against the appellant. This application will be the subject of a separate decision.

Procedural Matter

3. It has not been necessary to carry out a site visit as the case turns on legal points and the parties were advised about this on 21 August 2020. They have submitted sufficient information and photographs to understand the nature of

the site and the points in dispute and, as such, a decision can be reached on the papers, without causing injustice to either party.[1]

The Notice

4. The Council explains that only part of the first floor has been converted to 14 self-contained residential units, the front portion being in a separate use. As such, the Council requests that the wording of the alleged breach is corrected to include the words 'part of the first floor (hatched on the attached plan)' with consequential and corresponding corrections to the plan.

5. The appellant has made no comment on this request but he has included a copy of a plan within his submissions that shows the layout of the first floor as described by the Council. I am therefore satisfied that no injustice would be caused by substituting the amended plan as the area of land identified will be smaller. I will therefore vary the notice to substitute the amended plan and to correct the allegation to 'Without planning permission, a material change of use of part of the first floor of the premises, shown hatched on the attached plan, to 14 self-contained residential units'.

Background

6. The appeal has been made in respect of a two storey detached building situated in an industrial area. The ground floor and that part of the first floor overlooking the road are in use as offices and warehouse units. Access to the first floor residential accommodation is via a staircase within the north elevation. The flats are arranged around a central corridor with seven overlooking each side elevation of the building.

The ground (d) appeal

7. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, he needs to show, on the balance of probabilities, that the use of each flat on part of the first floor as a self-contained residential unit began more than four years before the notice was issued and continued for a period of four years thereafter. The notice was issued on 25 November 2019 so the appellant needs to show that the material change of use for each flat began not later than 25 November 2015, which is the relevant date, and continued without material interruption thereafter.

The appellant's case

8. The appellant states that the 14 self-contained residential units were created "during 2013/2014" with communal electrical, gas and water connections. Initially, the accommodation was managed by Coronation Properties until February 2017 when it was passed over to Park Lane Management. The appellant states that the residential use began in November 2014 and he relies on the following documents:

   - a Summary Statement of occupation for each unit.
   - Various tenancy agreements for each unit.

[1] Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit'.

- Statutory Declarations from previous occupants.
- An invoice from electrical Contractors dated 19 December 2013 re works to Flat 5.
- An invoice from electrical Contractors dated 17 February 2014 re works to Flats 1 – 14.
- An invoice from electrical Contractors dated 22 December 2014 re works to Flats 1 – 14.
- An invoice from electrical Contractors dated 15 April 2014 re works to Flats 1 – 14.
- An invoice from electrical Contractors dated 16 June 2015 re works to flat 2.
- An invoice from electrical Contractors dated 27 December 2015 re works to Flat 4.
- Council Tax information relating to Flats 3, 10 and 13. (Note that information relating to a fourth flat is illegible).
- Various bank statements showing payments stated to have been received from tenants.

The Council's case

9. The Council question much of the appellant's evidence and rely on the following documents:
    - Land Registry records;
    - Response to Planning Contravention Notice dated 10 September 2019(PCN);
    - Council Tax records;
    - Valuation Office Agency records;
    - Housing Act 2004 Additional Licence form;
    - Electoral Roll information.

Assessment in relation to each flat

10. To a large extent the appellant relies on the tenancy agreements, the statutory declarations and the Summary of Occupation document to demonstrate when the use of each flat began and that the use has continued for the relevant period. I will refer to the other documents submitted as I deal with each flat.

<u>Flat 1</u>

11. In respect of Flat 1, there are three tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	30 Jan 2015	30 Jan 2018
Tenant 2	7 Dec 2017	8 Dec 2018
Tenant 3	16 Jan 2018	15 Jan 2019

12. The appellant offers no explanation regarding the interpretation of this evidence. Although the first tenancy was for a period of three years, it can only be assumed that the tenant must have moved out before the end of the period as the second tenancy started on the 7 December 2017. As it is not known when the first person moved out, the appellant has not demonstrated a specific period of continuous use for the early part of the occupation.

13. The bank statements show that Tenant 1 paid £4250 into the account of a company called Eighty Limited on the 27 January 2015, 11 November 2015 and the 16 February 2016. However, there is no explanation how, if it all, the appellant is connected to Eighty Limited, whether the payments relate to rent and whether they are paid in relation to Flat 1. If it is rent, then payments ended some time in 2016 which means there is no continuous use between the first tenant and the second tenant.

14. With regard to Eighty Limited, the only connection between the appellant and that company is that they share the same address but that does not necessarily mean that the companies are connected legally. The Council submit a copy of an extract from the Land Registry which shows that '67 (Bideford Avenue) Limited of 44 Bideford Avenue and 67 Bideford Avenue' purchased the appeal site in February 2013. They also submit information from Companies House which shows the three officers of 67 (Bideford Avenue) Limited but none have a correspondence address of 44 Bideford Avenue. The evidence from the bank statements is therefore unclear and is of limited use in establishing four years continuous residential occupation.

15. Tenant 2 appears to have occupied the flat for six weeks but again it is not known if the use continued until the 15 January 2018. In addition, I find there are inconsistencies between Tenant 2 who has the same name and same signature as Tenant 7 in Flat 9. The appellant provides no explanation as to why this tenant signed a tenancy agreement on the 7 December 2017 for Flat 1 as well as signing a tenancy agreement on the 7 December 2017 for Flat 9.

16. Tenant 3 signed their tenancy agreement on the 16 January 2018 and they were issued with a Council Tax bill on the 6 March 2018. The Council tax bill states their full name and was addressed to Flat 1. No payment was made and the Council sent a reminder on the 15 March 2018. There is a handwritten but unsigned note at the top of this letter which states 'Dear Sir/Madam, this is to certify that I am the only person live (sic) at the above address.' It is not clear whether this is Tenant 3's handwriting and whether it has been submitted to indicate that this person was occupying Flat 1 at this point.

17. On the 9 May 2018 Tenant 3 was summoned to appear before Ealing Magistrates Court for non-payment of Council Tax for the period 16 January 2018 - 31 March 2019. There is another handwritten note on the top of this letter which shows 'Paid £225'. Again, it is not clear what this is supposed to

represent or establish but it is more than likely that Tenant 3 occupied the flat for an unspecified period.

18. On the 21 August 2018 a debt collection agency sent two letters to Tenant 3 at Flat 1 seeking to collect the balance of unpaid Council Tax. This is followed by a Removal Notice letter dated the 4 September 2018. The Council suggest that this may indicate that Tenant 3 had vacated the property, which is possible, but in the absence of any explanation from the appellant it is considered no firm conclusions can be reached on these documents. I am of the view though that the appellant has not demonstrated that Tenant 3 continued to occupy the property until the point when the notice was issued.

19. The Council's evidence contradicts the appellant's version of events. In the first instance they have a photograph taken during a Council Tax officer site inspection on the 20 November 2014 (the 2014 photograph) which shows on that date that the area occupied by the flats had not even been built. This raises questions as to whether Tenant 1 could have moved in during January 2015. The appellant makes no comment on what is considered to be a significant piece of evidence but that may be because the photograph was taken before the relevant date. Nevertheless, to my mind this casts substantial doubt on all the appellant's claims for the period 2013 until spring 2015 at the earliest as, even if construction was underway in November 2014, (scaffold poles can be seen in the photograph) the development is unlikely to have been completed before spring, given the difficulty of building during the winter time.

20. The Council also have Council Tax records dating back to June 2017, when a Council Tax officer again visited the site. In respect of Flat 1, records show that Park Lane Management Services Limited (PLMSL) were liable for paying the Council Tax from the 28 June 2017 until the 15 January 2018. The Council submits that this situation often occurs when a property is vacant but I consider that is not always the case as sometimes landlords include Council Tax dues within the rent. However, if this were not the case then this also contradicts the appellant's tenancy agreement records and, in the absence of evidence that Council Tax was included in the rent for this period, it has not been demonstrated that the flat was occupied.

Summary

21. On the basis of the specific evidence in relation to Flat 1, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began. It has also not been demonstrated whether Tenant 1 ever occupied the flat, given the lack of clarity over the bank statements. In addition, it is also not clear whether Tenant 2 ever occupied the flat, given the situation with Flat 9; when each tenant moved out or whether Tenant 3 remained in occupation until the notice was issued.

Flat 2

22. In respect of Flat 2 there are four tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	1 Dec 2014	1 Dec 2017
Tenant 2	11 May 2017	10 May 2018
Tenant 3	9 Jan 2018	8 Jan 2019
Tenant 4	24 Jul 2018	23 Jul 2019

23. Whilst all the tenancy agreements overlap for Flat 2, it is not clear when the residential use began given the Council's 2014 photograph. There is also no information to show when each occupier vacated the flat or whether Tenant 4 was in occupation at the time the notice was issued. The matter of continuous residential occupation is therefore not proven, on the balance of probabilities, based on the tenancy agreements.

24. There is an invoice from the electrician dated the 16 June 2015 which is addressed to Flat 2 regarding the fitting of a new light switch but this in itself does not indicate that the flat was occupied, only that it may have been laid out for residential use. It has been held by the Courts that residential use has to be affirmatively established over the four year period.

25. The Council submit that they have no evidence of Tenant 1 in Flat 2 ever being liable for paying Council Tax. They also list Tenants 2 and 3 and a third individual as living in the flat at the same time and being liable for the tax from the 1 May 2017 until the 8 January 2018. This is not mentioned in the tenancy agreement and this contradicts the information the appellant gives about Tenant 3's period of occupation.

Summary

26. On the basis of the specific evidence in relation to Flat 2, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

<u>Flat 3</u>

27. In respect of Flat 3 there are six tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	1 Nov 2014	1 Nov 2016
Tenant 2	15 Oct 2017	14 Oct 2017(*sic*)
Tenants 3 & 4	1 Feb 2018	31 Jan 2019
Tenant 5	14 Jun 2018	13 Jun 2019
Tenant 6	9 Nov 2018	8 Nov 2019
Tenant 7	28 Jan 2019	27 Jan 2020

28. It is not clear when the residential use began, given the Council's 2014 photograph. The last tenancy agreement is not shown on the Summary of Occupation document but this is probably an oversight by the appellant. There is though, a noticeable gap between Tenants 1 and 2 (over 11 months). It could be that Tenant 1's tenancy agreement was 'rolled over' but there is no information about this from the appellant and Council records have no one of that name as being liable for Council Tax payments. The Council Tax records also show that PLMSL were registered as being liable for payments from the 27 June 2017 until the 14 October 2017, which would, in the absence of any other demonstrable explanation, indicate that the flat was vacant in this period. In addition, there is no information as to when any of the tenants vacated the flat but Council Tax records show that Tenants 3 and 4 were liable for payments from the start of their agreement until 11 June 2018.

29. There is a letter from the Council dated the 11 December 2019 submitted by the appellant concerning a liability order made against Tenants 3 and 4 addressed to these tenants at Flat 3. It concerns the non-payment of Council Tax for the period 1 April 2018 until the 11 June 2018 but the appellant provides no explanation as to what this information purports to show. Even if it is to demonstrate that Tenants 3 & 4 occupied the flat, there is no other evidence to show a period of four years continuous use given the 2014 photograph. Even if the first tenant began living there from when the flat was built, there is an unexplained gap of over 11 months before Tenant 2 moves in during October 2017. This is sufficient in my view to count as a break in any claim for continuous residential occupation.

Summary

30. On the basis of the specific evidence in relation to Flat 3, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

<u>Flat 4</u>

31. In respect of Flat 4 there are three tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	27 Nov 2014	27 Mar 2016
Tenant 2	1 Oct 2016	31 (*sic*) Sept 2017
Tenant 3	1 Jul 2019	1 Jul 2020

32. It is not clear when the residential use began, given the Council's 2014 photograph. Notwithstanding that there is no information as to when each tenant vacated the flat, there are significant gaps between Tenant 1 and 2 (six months) and between Tenant 2 and 3 (one year, nine months), which are sufficient to interrupt the claim for continuous residential use and occupation. The tenancies may have been 'rolled over' but there is no evidence from the appellant to show that this occurred. The other evidence submitted by the

appellant, such as the two emails dated March 2017[2] and the electrician's invoice dated the 27 December 2015, which details 'Fitting new smoke alarm Flat 4' do not assist with demonstrating continuous residential use and occupation as they are not specific.

33. In addition, the Council has no record of Tenants 1 and 3 ever being liable for paying Council Tax but the details for Tenant 2 are corroborated in the Council's records. The Council Tax records show another person was liable for paying the tax from the 1 October 2017 until the 30 June 2019. Furthermore, from the 1 July 2019 it is shown that a 'Z Ishac' was liable for payments. It is assumed this is Zuhair Gourji-Ishac, a director of the appellant company in which case this could mean that the flat was vacant, as suggested by the Council. However, it could also mean that the Council Tax dues were included in the rent for Tenant 3 but given the Council's records show a number of tenants pay their Council Tax directly to the Council, it is likely that this is an interruption in the continuous residential use. Whatever the case may be, there is no explanation from the appellant.

Summary

34. On the basis of the specific evidence in relation to Flat 4, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

Flat 5

35. In respect of Flat 5 there are three tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	15 Nov 2014	15 Nov 2017
Tenant 2	30 Apr 2019	30 Apr 2020
Tenant 1 again	1 Oct 2019	1 Oct 2020

36. It is not clear when the residential use began, given the Council's 2014 photograph. Notwithstanding that there is no information as to when each tenant vacated the flat, there is a significant gap between Tenants 1 and 2 (one year five months). In addition, Tenant 2 is not mentioned on the Summary of Occupation document produced by the appellant; this of course may just be another oversight.

37. The other evidence submitted by the appellant is an electrician's invoice dated the 19 December 2013 referring to 'Rewiring lights in Flat 5' but I find the Council's 2014 photograph, which shows that the flat was not built at that point, contradicts the information given in this document.

38. One of the statutory declarations purports to be from Tenant 1 in which he states he lived in Flat 5 from November 2014. However, notwithstanding the evidence of the Council's photograph, the signature on the declaration does not

[2] 10 March 2017 The Council had written to Tenant 2 re benefits. The address omitted to mention any particular flat; 14 March 2017 Email from Resolution Services saying the property was converted to self-contained flats 'some time ago'.

appear to match those on the tenancy agreements. Without clarification from the appellant, the 2014 photograph casts significant doubt over the commencement of the residential use.

39. There is other evidence from the Council which casts doubt on the appellant's version of events. A Council Tax officer visited the flat on the 28 June 2017 and from their report it can be seen that they found two other individuals occupying the flat at this point. They stated that they had done so for two months. As such, it is their names in the Council Tax records as being liable for the Council Tax payment for the period 1 May 2017 until the 29 April 2019. Thereafter, Tenant 2 is liable for payments from the 30 April 2019 until the 30 September 2019. Tenant 1 only becomes liable on the 1 October 2019. The appellant offers no explanation regarding this information.

Summary

40. On the basis of the specific evidence in relation to Flat 5, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

<u>Flat 6</u>

41. In respect of Flat 6 there are three tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	11 Feb 2015	11 Feb 2017
Tenant 2	11 Aug 2017	11 Aug 2018
Tenant 3	2 Jul 2018	2 Jul 2019

42. The first tenancy agreement is unsigned so it is not clear that Tenant 1 ever occupied the flat. In addition, given the Council's 2014 photograph, I find it is doubtful that the erection of the flat would have been finished by the start date on the tenancy agreement, for the reasons stated earlier.

43. The statutory declaration signed by a person with the same name as Tenant 1 states that they occupied Flat 6 from February 2015 and the declaration is accompanied by a copy of their driving licence. The issue date on the licence is the 3 September 2016 and the address is another property elsewhere in London. This information would seem to suggest that if Tenant 1 did occupy Flat 6, that they had moved on by September 2016.

44. As such, there is either a six month gap or an eleven month gap before Tenant 2 moved in which means there is a significant break in the claim for continuous residential occupation of the flat. The appellant also does not provide any information in terms of the last tenant as to whether their residential use continued until the notice was issued.

45. The summons from the Magistrates Court dated the 31 October 2018 and the letter from the debt collector dated the 15 November 2019, which were both addressed to Tenant 3 at Flat 6, do not overcome the interruption in the residential use in the early part of the occupation.

46. The Council's evidence casts doubt on the appellant's version of events as Tenant 1 has never been liable for the payment of Council Tax at the property. PLMSL were also liable from 25 June 2018 – 1 July 2018 but I consider such a short break in occupation is not significant. This is because a gap of a week is often when a landlord takes the opportunity to decorate or repair a flat before the next tenant moves in. The remaining information in the Council Tax records corroborates the appellant's information about Tenants 2 and 3.

Summary

47. On the basis of the specific evidence in relation to Flat 6, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

Flat 7

48. In respect of Flat 7 there are six tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	24 May 2015	24 May 2017
Tenant 2	1 Jun 2017	1 Jun 2019
Tenant 2 again	7 Jan 2019	6 Jan 2020
Tenant 3	21 Mar 2019	20 Mar 2020
Tenants 4 & 5	15 Jul 2019	15 Jul 2020
Tenants 6 & 7	1 Sep 2019	1 Sep 2021

49. Notwithstanding that there is no information as to when each tenant vacated the flat, there is a short gap between Tenants 1 and 2. This though is just over a week and is not significant for the reasons already given. As such, I consider this short break does not affect the accrual of a continuous period of occupation.

50. With regard to Tenant 2, there is no explanation as to why Tenant 2 signed a second tenancy agreement on the 7 January 2019 when the first agreement did not expire until the 1 June 2019. It may be Tenant 2 is not the same person as 'Tenant 2 again' even though they have the same name. This is because the signatures on each tenancy agreement are very different. There is however no explanation from the appellant.

51. The appellant includes a copy of a Council Tax bill dated the 12 December 2019. This date is after the notice is issued but the letter is addressed to Tenant 2 and it is for the period the 1 April 2019 until the 31 March 2020. This supports the appellant's case that Tenant 2 occupied the flat for a time.

52. The Council has very detailed records of who was liable for paying Council Tax on this flat from the inspection carried out on the 28 June 2017. A different tenant to those listed by the appellant was liable for the period the 28 June 2017 until the 7 March 2018 followed by a new tenant for the next period the 8 March 2018 until the 6 January 2019. Tenant 2 only became liable from the

7 January 2019 and Tenants 1 and 5 have never been liable for paying Council Tax on this flat.

Summary

53. On the basis of the specific evidence in relation to Flat 7, it has not been demonstrated, on the balance of probabilities, that there has been continuous residential occupation over any four year period before the relevant date.

Flat 8

54. In respect of Flat 8 there are two tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	1 Feb 2015	1 Feb 2017
Tenant 2	1 May 2017	31 (*sic*) Apr 2018

55. The first tenancy agreement is dated the 1 February 2015. Given the Council's 2014 photograph, I find it is doubtful that the erection of the flat would have been completed by the start of the tenancy agreement. The appellant provides no information as to when the flat was vacated but if it was at the end of the tenancy agreement, there is a three month gap prior to the start of the second tenancy. This is a significant interruption to the residential use and the appellant provides no information as to whether the second tenancy continued after it expired on the 31 (*sic*) April 2018 to the point when the notice is issued. It may be that the tenancy agreement was 'rolled over' but there is no further information from the appellant.

56. With regard to the Council's evidence, there is no record of Tenant 1 being liable for Council Tax payments but the information about Tenant 2 corroborates the evidence from the tenancy agreement.

Summary

57. On the basis of the specific evidence in relation to Flat 8, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

Flat 9

58. In respect of Flat 9 there are five tenancy agreements as follows:

Occupier	Start date	End date
Tenants 1 & 2	1 Nov 2014	1 Nov 2016
Tenants 3 & 4	19 May 2016	19 May 2018
Tenants 5 & 6	23 Feb 2017	23 Feb 2018
Tenant 7	7 Dec 2017	6 Dec 2018
Tenant 7 again	7 Dec 2018	6 Dec 2020

59. It is not clear when the residential use began given the Council's 2014 photograph. The appellant provides no information as to when Tenants 1 - 6 moved out even if Tenant 7 moved in before the relevant date so as to demonstrate continuous residential use.

60. There also appears to be a discrepancy around Tenant 7 who has the same name and same signature as Tenant 2 in Flat 1. The appellant provides no explanation as to why this tenant signed a tenancy agreement on the 7 December 2017 for Flat 9 as well as signing a tenancy agreement on the 7 December 2017 for Flat 1.

61. With regard to the Council's evidence, there is no record of Tenants 1 - 4 being liable for Council Tax but the records do corroborate Tenants 5 and 6 being liable from the 23 February 2017. Thereafter, PLMSL were liable for paying Council Tax from the 12 December 2017 until the 6 December 2018. As suggested before, this could mean the flat was empty for almost a year or it could be that the Council Tax dues were included in the rent for Tenants 3 and 4. However, given a number of tenants on the first floor pay their Council Tax directly to the Council, this information about PLMSL appears to show that there was also an interruption in the continuous residential use. There is though no explanation from the appellant.

Summary

62. On the basis of the specific evidence in relation to Flat 9, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

<u>Flat 10</u>

63. In respect of Flat 10 there are four tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	15 Nov 2014	15 Nov 2016
Tenant 2	15 Mar 2017	14 Mar 2018
Tenants 3 & 4	1 Feb 2019	1 Feb 2021
Tenant 5	1 Jul 2019	1 Jul 2020

64. One of the statutory declarations purports to be from Tenant 1 in which they state they lived in Flat 10 from November 2014. However, this statement is contradicted by the Council's 2014 photograph. Without clarification from the appellant, the photograph casts significant doubt over the commencement of the residential use. Even if the flat was occupied by Tenant 1, there is a significant gap of four months prior to the occupation by Tenant 2 unless the tenancy agreement was 'rolled over'. If Tenant 2 continued the residential use of the flat until the end of the agreement, then there was another significant gap of over 10 months prior to the occupation by Tenants 3 & 4 unless there was another 'roll over'. However, there is no further information from the appellant on these points.

65. The appellant has also provided a copy of a letter addressed to Tenant 3, dated the 10 December 2019, from Transport for London's parking enforcement agent. It is not clear why the appellant has included this letter as the date falls within Tenant 5's tenancy period.

66. With regard to the Council's evidence, there is no record of Tenant 1 ever being liable for paying Council Tax, and PLMSL were liable for paying Council Tax from the 28 June 2017 until the 21st of January 2019. As I have already concluded on other flats, this would appear to indicate that the flat was vacant and as such, that there was an interruption in the continuous residential use. There is though no explanation from the appellant.

Summary

67. On the basis of the specific evidence in relation to Flat 10, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

Flat 11

68. In respect of Flat 11 there are five tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	14 Feb 2015	14 May 2016
Tenant 2	6 Jul 2017	5 Jul 2018
Tenant 3	5 Jan 2018	4 Jan 2019
Tenant 3 again	5 Jan 2019	4 Jan 2020
Tenant 4	18 May 2019	18 May 2020

69. It is not clear when the residential use began given the Council's 2014 photograph. The appellant provides no information as to when Tenants 2 and 3 moved out of the flat and there is a significant gap of over a year between Tenants 1 and 2. Tenant 1's tenancy agreement may have been 'rolled over' but there is no information from the appellant about this. In addition, the appellant provides no confirmation that the last tenant remained in occupation until the notice was issued.

70. On this evidence alone the appellant has failed to discharge the burden of proof. He does though provide several copies of bank statements; these are difficult to read due to the poor quality of the images but they appear to date from December 2015 to December 2016. The appellant states that they indicate payments received from tenants but the only recognisable name is Tenant 1. There is no indication that the payment is rent, the tenancy agreement began February 2015 but only statements from December 2015 onward are included. In addition, three of the bank statements contain the heading 'Hall Lane Rental' within the screenshot, which would appear to suggest that the payments do not relate to Flat 11.

71. The Council's records show that Tenants 1 and 4 have never been liable for Council Tax at Flat 11. Their records on Tenants 2 and 3 corroborate the appellant's information but the appellant makes no comment about Tenant 1. Given the 2014 photograph, in all likelihood it is considered that Tenant 1 may not have occupied the flat at all.

Summary

72. On the basis of the specific evidence in relation to Flat 11, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

Flat 12

73. In respect of Flat 12 there are four tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	15 Nov 2014	15 Nov 2015
Tenant 2	13 Dec 2016	12 May 2017
Tenant 3	11 Apr 2018	10 Apr 2019
Tenant 3 again	18 May 2019	18 May 2020

74. It is not clear when the residential use began given the Council's 2014 photograph. The appellant provides no information as to when Tenants 1 and 2 moved out of the flat or whether the tenancy agreements were 'rolled over'. The Council's records show that Tenant 1 has never been liable for Council Tax, as such, Tenant 1 may never have occupied the flat. Tenant 2 was liable for Council Tax payments but for a period after the dates in the tenancy agreement (28 June 2017 – 10 April 2018). This could indicate that their tenancy agreement was 'rolled over'. If they moved out at the end of their agreement periods, then there are significant gaps between Tenant 1 and 2 (about a year) and between Tenant 2 and 3 (over a year). The appellant offers no information on this point.

75. It is also not clear whether Tenant 3 is the same as 'Tenant 3 again'. This person has three names and in the third tenancy agreement they are recited in the order of what appears to be surname first followed by a first and second name. On the 4th tenancy agreement, they are recited as first name, second name and surname. It could be concluded that it is the same person given all the names are the same, regardless of the order, but the signatures are very different from each other. The appellant offers no explanation either way and does not confirm whether they occupied the property at the time the notice was issued. The Council records the names in the order of first name, second name and surname and as being liable for Council Tax from 11 April 2018 with no end date which would suggest that they were living in the flat in November 2019.

Summary

76. On the basis of the specific evidence in relation to Flat 12, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

Flat 13

77. In respect of Flat 13 there are three tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	15 Mar 2015	15 Mar 2017
Tenant 2	1 Mar 2018	23 Feb 2019
Tenant 3	5 May 2019	4 May 2021

78. The appellant provides no information as to whether Tenant 1 either vacated the flat before the end of the tenancy agreement, at the end of the agreement or whether they continued living there until Tenant 2 moved in. If they moved out at the end of the tenancy agreement, then there is a significant gap of one year between Tenant 1 and Tenant 2, which is a notable interruption in the accrual of a four year continuous residential use.

79. it is also not known whether Tenant 2 left either before, at the end of the tenancy agreement or whether they continued living there until Tenant 3 moved in. There is though, a copy of a letter dated the 11 December 2019 from the Council to Tenant 2 regarding the non-payment of Council Tax for the period the 1 April 2019 until the 4 May 2019, which suggests they may have continued living there.

80. In respect of Tenant 3 it is not known whether they continued living in the flat until the notice was issued. In addition to the tenancy agreement evidence, the appellant includes copies of letters dated the 9 November 2018 and the 23 January 2019 addressed to Tenant 2 at Flat 13. Although no explanation is provided, they appear to show that Tenant 2 was living in the flat at those times.

81. With regard to the Council's evidence, records show that Tenant 1 was never liable for Council Tax and that a different person to any of the tenants was liable for Council Tax from the 28 June 2017, (when the Council Tax officer visited the site), until the 28 February 2018. The appellant offers no explanation for these discrepancies. Thereafter, the Council's records corroborate the appellant's information.

Summary

82. On the basis of the specific evidence in relation to Flat 13, it has not been demonstrated, on the balance of probabilities, that there has been continuous residential occupation over any four year period before the relevant date.

Flat 14

83. In respect of Flat 14, there are five tenancy agreements as follows:

Occupier	Start date	End date
Tenant 1	18 Nov 2014	18 Nov 2017
Tenant 2	1 Feb 2018	31 Jan 2019
Tenant 3	7 Sep 2018	6 Sep 2019
Tenant 4	17 Oct 2018	17 Oct 2019
Tenant 5	16 May 2019	16 May 2021

84. One of the statutory declarations purports to be from Tenant 1 in which they state they lived in Flat 14 from November 2014. However, this statement is contradicted by the Council's 2014 photograph. Without clarification from the appellant, the photograph casts significant doubt over the commencement of the residential use.

85. The end date on the first tenancy agreement is the 18 November 2017. Notwithstanding that the signatures on the statutory declaration and the tenancy agreement are not well matched, the statutory declaration is accompanied by a photocopy of the tenant's driving licence. This was issued to Tenant 1 on the 23 March 2017 at an address elsewhere in London. It therefore appears that the tenancy ended before November 2017, although there is no explanation from the appellant.

86. There is then a significant gap of at least ten months before Tenant 2 moved in. There is no information from the appellant as to when either the remaining tenants moved out or whether the last tenant remained until the notice was issued.

87. There is though, a Notice of Abandonment from PLMSL addressed to Tenant 3 dated the 17 October 2018. In this document it is stated 'Previous visits have resulted in no contact and numerous letters remain unopened'. From this information it is likely that Tenant 3's occupation was brief, namely a month or less which means on the appellant's own admission that there was another break in the accrual of four years continuous residential use. Lastly, there is a letter dated the 6 February 2019 from the Council addressed to an individual at Flat 14 who is not mentioned anywhere by the appellant. It is not clear why the appellant has included this document.

88. With regards to the Council's evidence, once again Tenant 1 has never been liable for Council Tax and as such, it is considered that this person in all likelihood may not have occupied the flat. In addition, a different person is listed as being liable from the time the Council Tax officer visited the site on the 28 June 2017 until the 31 January 2018. This person is not referred to anywhere in the appellant's evidence.

Summary

89. On the basis of the specific evidence in relation to Flat 14, and given the 2014 photograph, it has not been demonstrated, on the balance of probabilities, when the residential use began, or that it was continuous over any four year period before the relevant date.

Further assessment

90. Some of the appellant's evidence is not specific to the residential occupation of any particular flat such as the electrician's invoices dated the 19 December 2013, 17 February 2014, 15 April 2014 and the 22 December 2014. These refer to 'Fire alarm fault finding', or 'Installing 5 double sockets in Flats 1 – 14' or 'Call out for fault finding (fire alarm)' and state the site address as 'Flat 1-14, 67 Bideford Avenue'. The Electrical Installation Condition Report dated the 6 May 2017 also only appears to show that an electrician inspected the 'Landlord fuse box', that the occupier was 'tenant' and 'domestic'; so there is nothing specific relating to the use of particular flats.

91. The statutory declarations made by three former and one current tenant at the premises all identically affirm that the flats were fully occupied as numerous neighbours were seen living there and there was always lots of post. However, this evidence is also not specific to any particular flat. Although each witness states that they lived in their various flats from November 2014 and February 2015, but for the three tenants who moved on, no date is given when they moved out. Given the discrepancies over the signatures I have already referred to, I therefore find that this evidence cannot be relied upon.

92. Finally, the appellant's bank statements highlight two other individuals. It is not known why as the appellant provides no explanation and these people are not mentioned anywhere else in the appellant's evidence. As such, they do not support the appellant's claims.

93. With regards to the Council's remaining evidence, they submit a copy of a completed application form for an Additional Licence dated the 20 May 2017 in which it is stated by the appellant that in respect of 'Letting's 1 – 13' that these began on the 1 April 2017 and in respect of Flat 14, that occupation began on the 1 January 2017. This contradicts the information given in the Summary of Occupation document and, in turn, the tenancy agreements which seek to show the occupation began in the years before 2017 for all of the flats. There is no explanation from the appellant as to why this document contains these dates.

94. The response to the PCN was incomplete and merely stated 'Continuous use, established use' with no further details, such as dates, in answer to the question why planning permission is not required for the development. However, it was accompanied by four Landlord/Homeowner Gas Safety Records in relation to 'Flat 1/14'. These are dated 2013 (complete date not legible), 29 October 2014, 28 October 2015 and 27 October 2016.

95. Given the Council's 2014 photograph, I attach very little weight to the records from 2013 and 2014 and the remaining records do not relate to the use of specific flats. They are corroborated though, to a certain extent, by a neighbouring third party who writes to support the Council's case in June 2020 and states that for the last *four years* (my emphasis) his working conditions have been very difficult. He states in particular 'For the last 2 years after

converting this industrial premises with beds and each with a bathroom en suite, we had people parking vehicles on our driveway every day (*sic*)'. This would suggest that occupation began at some point from 2016 onwards but there is no specific date and the information is not related to any specific flat. Nevertheless, it is helpful in understanding what has occurred over time.

96. Extracts from the Valuation Office Agency records are also included in the Council's submissions and these show that not just Flat 1 but all the flats were rated as Council Tax Band A at various dates from February 2017 onwards. Such records are not wholly determinative of residential occupation though, but they can assist in understanding what has occurred over time.

97. Finally, the Council submits evidence from the Electoral Roll to counter the appellant's claim that all of the flats were occupied continuously throughout 2018. Only two flats have registered electors (Flats 4 and 12) but that is not to say, in my view, that the other flats were vacant. Rather it appears to be a sign of the times that some residents who are eligible to vote do not exercise their right to vote. I make the same remark in respect of the evidence from the 2019 Electoral Roll.

Overall summary

98. Having regard to the totality of the evidence, I am not persuaded that the residential use for any of the flats began more than four years before the notice was issued and continued without material interruption for a period of four years thereafter. This is because the appellant's evidence is not sufficiently precise and unambiguous for the reasons given. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted but the appellant's own evidence appears to be inconsistent with the Council's evidence. The appeal on ground (d) in respect of Flats 1 - 14 therefore fails.

Conclusion

99. For the reasons given above I consider that the appeal should not succeed.

D Fleming

INSPECTOR

The Planning Inspectorate

Plan

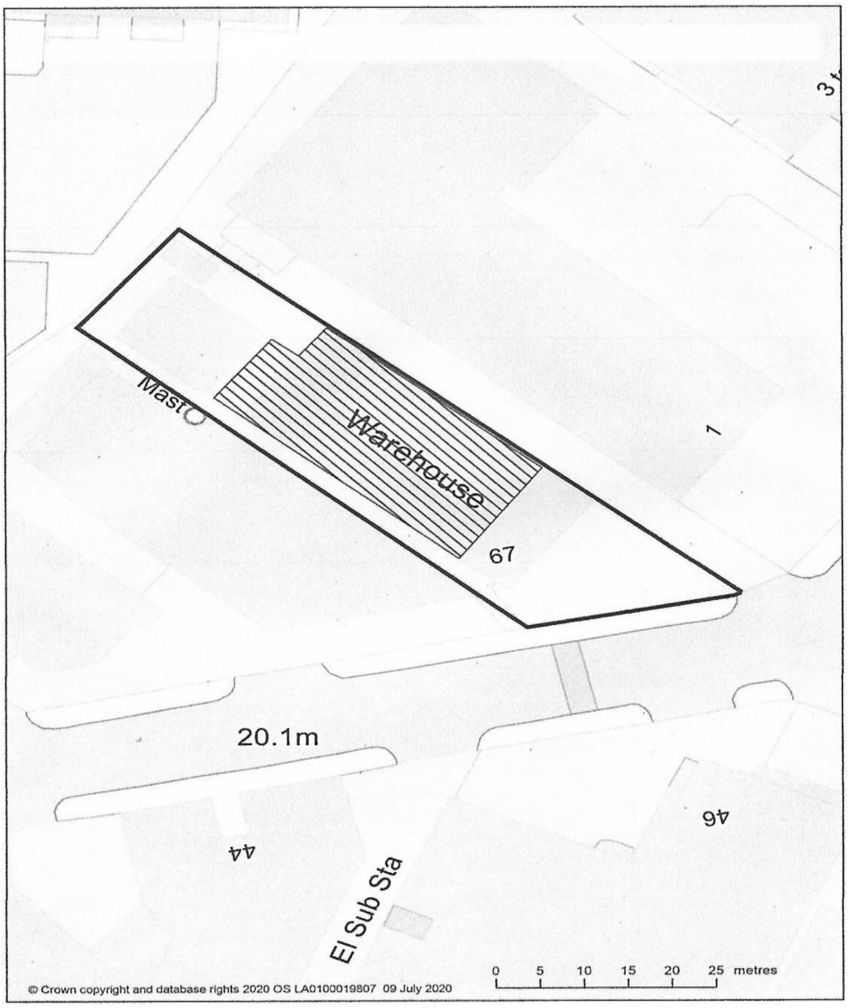
This is the plan referred to in my decision dated:

by D Fleming BA (Hons) MRTPI

Land at: 67 Bideford Avenue, Perivale, Middlesex UB6 7PX

Reference: APP/A5270/C/19/3243715

Scale: not to scale



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