



Appeal Decision

Site visit made on 27 October 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 December 2020

Appeal Ref: APP/Z5060/C/20/3255082 195 Morley Road, Barking IG11 7DH

- 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 Aurimas Baura against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 4 June 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, unauthorised change of use, being a subdivision of a single family dwelling into multiple self-contained units of accommodation*.
- The requirements of the notice are:
 - *Cease the use of the ground floor as a self-contained unit.*
 - *Cease the use of the first floor as a self-contained unit.*
 - *Cease the use of the second floor as a self-contained unit.*
 - *Return property to a condition suitable for use as a single family dwelling.*
 - *Remove all alterations and fixtures enabling the conversion to the self-contained units of accommodation, including the first floor kitchen and internal door locks.*
 - *Remove all consequent waste material from the premises.*
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").

Summary Decision: the appeal is dismissed and the enforcement notice upheld with corrections.

Procedural Matters

1. An application for costs was made by the appellant against the Council. That application is the subject of a separate decision letter.
2. The property has had an active planning history since the appellant's purchase of it as a single dwelling house in 2016, including the refusal of permissions for its subdivision into flats. Each of these proposals (respectively for 3 flats and 2 flats) was dismissed on appeal. An enforcement notice alleging the conversion of the property into three independent units of accommodation was issued in 2018 ("the 2018 notice"). No appeal was brought against the 2018 notice, with the result that its validity cannot now be in question¹. The appellant notes that this enforcement notice was materially like the one currently under appeal.
3. Proceedings were subsequently brought in the Magistrates' Court alleging a failure to comply with the 2018 notice. The case was heard in February 2020, prior to the issue of the current notice, and the proceedings were dismissed. No

¹ Section 285(1) of the 1990 Act

reasoning of the Court for its decision has been provided, although transcripts of the evidence (it is not clear whether these are official) have been supplied to me. The relevant date of the alleged offence cited in the Court transcripts (14:59:21 at the appellant's appendices page C20) and referred to in the associated costs order is 20 January 2019.

4. Unlike the present notice, which as drafted includes the requirement to 'return [the] property to a condition suitable for use as a single family dwelling', the 2018 notice did not require the property to be returned to a condition capable of use as a single dwellinghouse, or specifically require the cessation of its use as more than one single dwellinghouse. The first requirement was to 'cease the use as three independent units of accommodation'. There could be more than one way of complying with this requirement, and it is not clear from the documents before me on what basis the Court appears to have decided that compliance with the notice had been achieved. The appellant states that 'the Court was satisfied that the property is in single use' but I cannot discern this from the documents before me.
5. It is clear from the terms of the current notice that the breach now attacked is the use of the property as more than one self-contained dwellinghouse. The slight difference in the allegation from the 2018 notice indicates that the Council, when issuing the present notice, did not consider that there were specifically three units, as in 2018; just that there were more than one. Although the present allegation of "multiple" self-contained units of accommodation is rather less precise than that found in the 2018 notice, the present allegation is sufficiently clear on its face to tell the recipient of the notice fairly what he is alleged to have done wrong.
6. Nonetheless as drafted the present notice requires the cessation of use of each of the separate three floors of the property as a self-contained 'unit'. To improve clarity, I shall correct the requirements of the notice to reflect the breach that is now alleged. The requirements as drafted do not quite tally with the breach as it is now alleged. I shall delete the first four requirements found at paragraph 5 of the notice and replace them simply with a requirement to cease using the property as more than one self-contained dwellinghouse. This is what the appellant contends is the position, and is what the Council in substance seeks to achieve. I am content that no injustice is caused to any party by these corrections.

Main Issues

7. The appeal is made on two grounds, as set out in paragraphs (b) and (c) of section 174(2) of the 1990 Act. Those grounds are, (b) that the matters stated in the notice have not occurred; and (c) that if those matters have occurred, they do not constitute a breach of planning control. The two main issues in the appeal are therefore firstly whether the allegation of "a subdivision of a single family dwelling into multiple self-contained units of accommodation" has occurred as a matter of fact; and secondly whether, if it has occurred, that amounts to a breach of planning control.
8. The appellant also raises a number of other matters, including that the requirements of the notice, by requiring the removal of alterations and internal door locks, are excessive. Although no appeal is expressly brought on ground (f) (that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of

planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach) I shall nonetheless consider it and other matters below.

Reasons

The appeal on ground (b)

9. The appellant on ground (b) contends that the matters alleged in the notice have not occurred. He points out that the Council have not visited the property since July 2019, nearly a year prior to the issue of the present notice, and further contends that at that date the property was in use as a single dwelling house. However even if correct (which I consider below) this does not necessarily mean that the matters alleged in the notice had not occurred as a matter of fact. That those matters – the subdivision of the dwelling house into multiple units – have occurred is evidenced by the matters alleged in the 2018 enforcement notice, which was not appealed. Retrospective planning permission has also been refused, and dismissed on appeal, for the same development.
10. Nonetheless the relevant date for consideration is the date of issuing the notice, and hence I have considered whether the matters alleged in the notice were correct as matters of fact at the time the notice was issued. The appellant relies on the Court documents to say that the property was in single use at the date of the proceedings. However, there is no indication from the Court transcripts that in February 2020 (or in January 2019, the date of the alleged offence) the property was not in use as 'multiple self-contained units' even if it were not in use as the 'three independent units' prohibited by the 2018 enforcement notice.
11. Although the Council had not visited the property since July 2019, it is stated by the appellant that, at the time of the appeal statement, no alterations had been made to the property since the Council's last visit. This is not contested by the Council. I therefore consider that the Council issued the notice when having had the opportunity to become cognisant of the layout and fixtures of the property.
12. In alleging the subdivision into self-contained units, the Council relies upon the separate Council Tax ratings for two flats in the property until August 2020, and on an undated 'Zoopla' listing giving sales particulars of the property. This listing is contested by the appellant but, despite the reference to two kitchens, it clearly describes the property as a terraced house and does not appear to me to add any credence to the Council's allegation.
13. The upper floor contains what appear to be kitchen units (which are shown in the Council's appendix reproducing photographs from the 'Zoopla' listing) although at the time of my visit did not appear to contain cooking facilities. It appears from the Court transcripts that the upper floor lacked cooking facilities, as well as an occupier, at the time of the planning enforcement officer's visit in March 2019 and there is no suggestion that these facilities have been reinstated. A separate shower room contained washing and laundry facilities at my visit.
14. The appellant describes the first floor of the property as comprising a kitchenette and en suite single person bedroom with balcony. This is reflected

in the plan of the property dated August 2020, and the photographs supplied at the appellant's appendices. It is also reflected in the Court transcript of the evidence of the Council's planning enforcement officer as to the state of the property, and its occupation, in March 2019. The entrance door to the first floor part of the property was lockable at the time of my visit. The first floor has clearly afforded the facilities required for day-to-day private domestic existence.

15. From the documentary evidence before me and my own site visit I conclude on the balance of probabilities that at the time the notice was issued the property had been physically subdivided into 'multiple self-contained units'; namely the separate first floor dwelling as distinct from the ground floor or the remainder of the property. As to its use, the appellant contends in his appeal statement that the property is presently in use by members of a single family, but no statement is made as to the use at the date the enforcement notice was issued. I therefore find that the appellant has not discharged the burden of proof upon him to show, in relation to the appeal on ground (b), that the matters alleged in the enforcement notice had not occurred as a matter of fact. Therefore this ground of appeal fails.

The appeal on ground (c)

16. To succeed in his appeal on ground (c) the appellant must demonstrate that the matters alleged in the enforcement notice do not constitute a breach of planning control, whether because planning permission is not required, or because it has been granted, or for some other reason. In this case the appellant accepts that changing the use of property into two (or, it follows, a greater number of) flats requires permission, which reflects the position as set out in s.55(3) of the 1990 Act.
17. A number of points are made by the appellant about the consequences of the prosecution proceedings. However, it is not contended that there is any deemed planning permission for any particular activities on or use of the land arising from the Court's finding of compliance with the requirements of the 2018 notice². Without the Court's reasoning as to the basis of its finding of compliance with the 2018 notice, I am unable to discern that any such permission exists.
18. Therefore as no planning permission exists for the development alleged in the notice, the matters alleged amount to a breach of planning control and the appeal on ground (c) must fail.

Other matters

The 'hidden ground' appeal on ground (f)

19. The appellant makes a number of arguments on ground (c) that amount to saying that the requirements of the notice exceed what is necessary to remedy the breach of planning control. This amounts in effect to an appeal on ground (f). The particular requirement complained of requires the recipient of the notice to 'remove all alterations and fixtures enabling the conversion to the self-contained units of accommodation, including the first floor kitchen and internal door locks'. The appellant points out that locks on internal doors do not require planning permission, and are justified by privacy and security concerns.

² Section 173(11)

He also points out that the installation of two kitchens in a single dwelling does not amount to development requiring planning permission.

20. However the question here is not whether such works would ordinarily require planning permission but whether these steps exceed what is necessary to remedy the breach of planning control. Whether these alterations could have been made to a property in continued use as a single dwelling house is beside the point. Here, it is not disputed that the works of alteration were carried out in order to facilitate the unauthorised change of use, and so it is not excessive for the Council to seek their removal in order to restore the land to its previous condition. The (putative) appeal on ground (f) therefore fails.

Procedure and proportionality

21. The appellant also raises a number of arguments concerning procedural impropriety, equalities impacts and human rights.
22. The first assertion, in general terms, is that the Council is prevented from issuing the current enforcement notice because it is unwarranted duplication, being founded upon the same set of circumstances resulting in the 2018 notice, and in respect of which the Court has already adjudicated in the appellant's favour.
23. The Council is entitled to take enforcement action more than once in respect of the same breach of planning control: section 171B(4), and a decision by a Magistrates' Court on a prosecution does not have the effect of discharging, or indeed any implications for the continuing effect of, an enforcement notice³. In any event the current enforcement notice does not appear to result from precisely the same set of circumstances as the 2018 notice. The alleged offence in January 2019 precedes the Council's site visits in March and July 2019 following which the current enforcement notice, with its reference to 'multiple' rather than 'three' units of accommodation, was issued.
24. However these procedural arguments, as with the issues of communication by the Council and the allegations of the Council's enforcement officer's animus against the appellant, do not raise matters for consideration on the present appeal, which is limited to the grounds set out in section 174(2) of the 1990 Act. As to the Equality Act, the appellant does not advert to any particular effects on any particular protected characteristics. I have had regard to my duties under the Equality Act 2010 but am unable to discern any unfairly discriminatory consequences of the notice. Nor am I able to discern any conflict with the legal principles set out in *Jarmain*⁴, *Swinbank*⁵ or *Mansi*⁶, all cited to me by the appellant. The notice does not take away permitted rights.
25. As to the proportionality of the engagement with the appellant's Human Rights, particularly Article 8 and A1P1, I have considered above the implications of requiring the removal of the first floor kitchen and other alterations and am satisfied that the requirements of the notice, which I have found not to be excessive in order to achieve the purpose of the notice, are not an unjustified or disproportionate interference with the appellant's human rights. Again the

³ Section 181(1)

⁴ *Jarmain v SSETR & Welwyn Hatfield DC* [2000] EWCA Civ 126

⁵ *Swinbank v Secretary of State for the Environment* (1988) 55 P&CR 371

⁶ *Mansi v Elstree Rural DC* (1964) 16 P&CR 154

alleged conduct of the Council prior to the issuing of the notice does not raise questions for my consideration on this appeal.

Conclusion

26. For the above reasons I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

27. It is directed that the enforcement notice be corrected by the deletion of the text of the first four bullet points at paragraph 5 of the notice and their replacement with "Cease the use of the property as more than one self-contained dwellinghouse". Subject to those corrections the appeal is dismissed and the enforcement notice upheld.

Laura Renaudon

INSPECTOR