The Planning Inspectorate

Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2021

Appeal Ref: APP/A2280/C/20/3254762
88 Nelson Road, Gillingham, Kent ME7 4LL

- 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 Dr Toqeer against an enforcement notice issued by The Medway Council.
- The enforcement notice was issued on 19 May 2020.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the change of use and conversion of the property into five self-contained flats.
- The requirements of the notice are:
  (i) Cease the use of the property as five self-contained flats and return the property to its previous layout and use as a single dwelling;
  (ii) Remove all kitchens except for one from the property;
  (iii) Remove all bathrooms except for one from the property;
  (iv) Remove all separate gas and electric meters except for one from the property; and
  (v) Remove all debris and associated materials from the property arising from compliance with steps (ii), (iii) and (iv) above.
- The period for compliance with the requirements is six months for step (i) and seven months for steps (ii) to (v).
- 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.

Summary of Decision: The appeal succeeds in part but otherwise the appeal fails, and the enforcement notice, as varied, is upheld, as set out in the Formal Decision.

Preliminary Matter

1. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.

2. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England November 2020 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'. As there are no other grounds of appeal other than a legal ground, the appeal has therefore been decided without a site visit.

Background

3. The appeal has been made in respect of a mid-terrace, two storey property, with a hard standing at the front and a garden at the rear. The building has been converted into five flats. Flat 1 is in the basement, Flats 2 and 3 are on the ground floor, Flat 4 is on the first floor together with Rooms 5 and 7 (there is no Flat 5) and Flat 6 is within the extended roof area.

4. Rooms 5 and 7 comprise a kitchen and an office as originally the appellant intended to rent the flats to people with "mental health problems and learning difficulties". The plan was they would be taught independence skills in the kitchen and the office would be used for administration. However, the appellant did not go ahead with this plan and proceeded to rent the flats out just as self-contained units.

The ground (d) appeal

5. 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 of the five flats as self-contained residential accommodation began more than four years before the notice was issued and continued, without material interruption, for a period of four years thereafter. The notice was issued on 19 May 2020 so the appellant needs to show that the material change of use began not later than 19 May 2016 and continued without material interruption.

6. The appellant submits an item from Planning Resources Journal concerning the operation of the four year rule under Section 171 of the Town and Country Planning Act 1990 (the Act) but I find this is self-evident. Moreover, the Courts have had much to say about this over the years and have held a change of use to residential could take place as a result of physical works but it is necessary to look at it in the round. The physical state of the premises is very important but it is not decisive. Actual, intended or attempted use is important but also not decisive.

7. In addition, building operations cannot give rise to a material change of use, some actual use is required but physical works can be relevant as to whether there has been a material change of use. Furthermore, a use can only become lawful if it continues throughout the relevant period, to the extent that the Council could have taken enforcement action at any time. If the use ceased during that period, as a matter of fact and degree, the time cannot count towards immunity. A finding needs to be made as to whether any periods of non-occupation were *de minimis*[1] or not.

8. I will now set out the appellant's case and make my assessment having regard to all of these findings.

The appellant's case

9. The appellant has submitted a number of documents as follows:

[1] Too small to be meaningful

- A letter dated 30 Aug 2019 from RedDoor Homes and a follow up email explaining who the flats were rented to and when (Appendix A),
- Inventory and check in reports for each of the five flats dated March 2014 (Appendix B),
- Council Officer report on appellant's lawful development certificate application, made 7 October 2019, seeking to establish the lawfulness of the use as five self-contained flats (Appendix C),
- Letter dated 2 Sept 2019 from paramount Independent Property Services (PIPS) confirming dates and periods for occupations of Flats 1, 2, 3 and 6 (Appendix E),
- Letter dated 30 Aug 2019 from Century Lettings setting out who the flats are rented to and from when (Appendix F),
- Evidence from the Valuation Office Agency showing flats being registered separately for Council Tax from 1 Apr 2014 (Appendix G),
- Affidavits from the appellant and the current tenant of Flat 4, the appellant states use as five flats began 3 Apr 2014 and the tenant states he began his occupancy on 6 Apr 2016 (Appendix H),
- Copies of previous tenancy agreements for all flats (Appendix D),
- Copies of current tenancy agreement for Flats 1, 2, 3 and 6 (Appendix I),
- Bundle of correspondence regarding Flat 2 in relation to Lewisham Council tenancy (Appendix J),
- Email dated 22 Nov 2016 regarding checkout report for Flat 6 (Appendix K),
- Planning Resource article on four year rule for flats dated 5 Jan 2012 (Appendix L),
- Emails from RedDoor Homes regarding Lewisham Council and the payment of utilities (Appendix M),
- Council Officer report from 2012 confirming that the property is not a single dwelling (Appendix N),
- Email exchanges with Lewisham Council regarding RedDoor Homes inventory reports (Appendix O),
- Details of rent receipts for Flats 1, 3, 4 and 6 from initial period of occupancy (Appendix P).

10. The appellant also includes a table setting out the full history of occupancy for each flat from initial to current tenants. This is as follows but having regard to the Data Protection Act 2018, I refer to the earliest named tenant as Tenant 1 and others follow in date order as Tenant 2 etc:

Table 1

	Lewisham Council Tenancy Period	*Next Tenant #2*	*Next Tenant #3*	*Next Tenant #4*
Flat 1	01/04/2014 – 29/02/2016	21/06/2016 – 13/03/2019, Portafina/PIPS	04/10/2019 – present, Tenant 7	
Flat 2	01/04/2014 – 31/07/2017	01/09/2017 – 13/03/2019, PIPS	23/08/2019 – present, Tenant 5	
Flat 3	02/04/2014 – 30/06/2015	30/10/2015 – 02/07/2017, Tenant 1	01/09/2017 – 13/03/2019, PIPS	18/09/2019 – present, Tenant 6
Flat 4	02/04/2014 – 17/03/2016	06/04/2016 – present, Tenant 2		
Flat 6	03/04/2014 – 02/07/2015	30/10/2015 – 29/10/2016, Tenant 3	01/12/2016 – 13/03/2019, PIPS	01/12/2016 (*sic*)* – present, Tenant 4

* This tenancy agreement is actually dated 2 September 2019

Assessment

11. The appellant's affidavit states that during March/April 2014 he carried out building operations to create five self-contained flats and the residential use of each flat began on 3 April 2014. He does not provide any documentary evidence to support his affidavit as to when the building works took place, such as a copy of a building contract. However, the March 2014 Check-in Inventory shows the property laid out as five self-contained flats ready for occupation but not in use at this point. Thereafter, the appellant appointed various estate agents to manage the use and rental of the flats including RedDoor Homes, Portafina, part of Paramount Independent Property Services (PIPS) and Century Lettings Limited.

Flats 1-6 Lewisham Council Tenancy

12. At the start, RedDoor Homes arranged for all five flats to be let to Lewisham Council. As each flat was vacated, new tenants were found by other estate agents either on the open market or were provided by the local authority. The use of each flat began variously between 1-3 April 2014 and ended as set out above in Table 1, column 1.

13. However, there is no evidence provided as to the particular individuals who occupied each flat. All that is known is that Lewisham Council rented the flats to provide housing for people whose immigration status was "no recourse to public funds" and these were typically single women with one child. There is evidence that Lewisham Council paid rent every month from April 2014 until the end of the tenancies for each flat, except for Flat 2. Here there is a gap of 19 months between 30 September 2014 and 1 May 2016 when there is no evidence of rent receipts. In respect of all of the flats, it has not been demonstrated whether the rent was for one person or consecutive people in each flat and whether there were gaps between the turnover of the tenants.

14. The flats were also registered for Council Tax purposes with effect from 1 April 2014 but this does not indicate use by an individual, especially as Lewisham Council paid the Council Tax.

15. With regard to the payment of Council Tax, this is often relied upon to indicate residential use is taking place but in many cases it is not always possible to keep the records up to date where there is a rapid turnover of tenants. Therefore, such records can assist with the four year narrative for Flats 1-6 but there can also be unexplained inconsistencies. For example, in respect of Flat 1, the appellant is recorded in the Council Officer report (Appendix C, sets out details of Council Tax payments, which I will assess in due course for each flat), as paying the Council Tax from 21 December 2015 until 20 June 2016. This, however, was during the period when Lewisham Council were making use of the flat for some of that time. The Council Officer report also shows that Lewisham Council paid Council Tax on Flat 2 from 1 April 2014 until 31 July 2017 yet there was a significant period when it appears no rent was paid. There is no explanation from the appellant for this discrepancy.

16. I find that the individual people housed by Lewisham Council may not be known but it was certainly the Council's intention to make use of the flats as they had a legal duty to house this category of people. It has also been demonstrated that rent was continuously paid between April 2014 until the end of the tenancies for each flat, except in respect of Flat 2, which I will assess in due course. It is considered that the payment of rent is a strong indication that residential use is taking place. I therefore find it was more likely than not that there was continuous residential occupation of Flats 1, 3, 4 and 6 without material interruption, during the Lewisham Council period.

Flat 1

17. After Lewisham Council's tenure came to an end in February 2016 there was then a break in the use of the flat of over three months until the appellant entered into a Company Letting Agreement with PIPS for the period 21 June 2016 until 20 June 2017.

18. I find this is a significant break in the use of the flat before the company letting agreement begins. The appellant submits that this break was reasonable as renovations took place and time was needed to find a new tenant. However, I find that this gap was sufficient to materially interrupt the residential use. The appellant has not demonstrated why it took over three months to decorate and repair the flat, which comprises a compact kitchen, bathroom and one other room, to make it ready for a new tenant. Such works would ordinarily take less time, especially as the appellant has an agent who manages the property. In addition, the tenancy notice period is often used to advertise a flat for new tenants, as evidenced[2] in the PIPS rolling tenancy agreement.

19. A company letting agreement is not the same as an assured shorthold tenancy agreement held by an individual. The former is where the company take on the tenancy of the flat usually for use by company employees. In this case, PIPS installed tenants obtained from the local authority. PIPS paid a rental deposit on 27 June 2016, shown on the RedDoor Homes financial statements, and thereafter the agreement became a rolling tenancy until it ended on 13 March 2019.

[2] Appendix D, PIPS tenancy agreement paragraph 6.3

20. There are no documents to support the fact that it became a rolling tenancy and there is no evidence of rent payments. In addition, no tenant names are provided, yet these would have been known to PIPS and there are no details to show when each person moved in or out of the flat, which I imagine would also have been known to PIPS. Instead, the appellant relies on the Council search of Council Tax records (Appendix C).

21. This shows that after PIPS paid Council Tax for one week in June, tenants made the payments between 28 June 2016 until the 29 August 2018.[3] In between those dates there are payments made by PIPS for individual days with the last entry being "30 August 2018 to date". The Council submit that the Council Tax payments by PIPS indicate that the flat was empty and I note that the appellant does not disagree with this observation.

22. I find that the Council Tax records weigh in favour that certain people known to the Council lived in Flat 1 from 28 June 2016 - 29 August 2018 but the evidence is incomplete. The last entry in the Council's Council Tax list is that PIPS were paying the Council Tax from "30 August 2018 to date". The LDC application, the subject of the Council Officer report in Appendix C, was refused on 29 November 2019. However, the appellant offers no information as to what happened before the rolling tenancy ended in March 2019 and what happened between March 2019 and the arrival of Tenant 7 on 4 October 2019. To my mind there are several months that are unaccounted for by the appellant after August 2018 where it has not been demonstrated that there is a continuing residential use.

Conclusion

23. The residential use of Flat 1 began on 1 April 2014 and I have had regard to my earlier conclusion on the Lewisham Council tenancy. However, on the basis of the specific evidence for Flat 1, it has not been demonstrated, on the balance of probabilities, that the use was continuous over any four year period before the relevant date. The appeal on ground (d) therefore fails in respect of Flat 1.

Flat 2

24. After Lewisham Council's tenure came to an end, there was then a break of one month during which time the appellant paid the Council Tax. PIPS then entered into a company letting agreement for the period 1 September 2017 to 31 August 2018, which then became a rolling tenancy until it ended on 13 March 2019. There is no evidence that PIPS paid a rental deposit.

25. There are also no documents to support the fact that it became a rolling tenancy, no evidence of rent payments and the appellant does not provide the individual names of the tenants supplied by the local authority, in particular, when each person moved into or out of the flat. Instead, reliance is placed on the Council's Council Tax records, which show, after PIPS paid Council Tax for the first four days of September, tenants made payments between 5 September 2017 to 7 December 2017 and 8 December 2017 to 14 May 2018. Thereafter PIPS continued with the payments.

[3] 28 Jun 2016 - 18 Oct 2016, 20 Oct 2016 - 26 Oct 2016, 28 Oct 2016 - 3 Jan 2017, 4 Jan 2017 - 14 May 2017, 15 May 2017 - 5 Feb 2018, 6 Feb 2018 - 29 Aug 2018.

26. The Council submit that the Council Tax payments by PIPS indicate that the flat was empty, however the appellant makes no comment on this point. After the PIPS tenancy ended there is a break in the record of tenancies and the appellant confirms that during April to July renovations took place. Tenant 5 signed their tenancy agreement on 23 August 2019 and they remain in occupation to date.

27. The individual people housed by Lewisham Council may not be known but it was certainly the Council's intention to make use of the flat as they had a legal duty to house this category of people. However, there was an unexplained gap of 19 months when there is no evidence that rent was being paid and, in my view, the payment of rent is a strong indication of residential use. The appellant relies on the Lewisham Council tenancy to support his argument that there has been continuous residential use for four years but the substantial 19 month gap in the rent record is glossed over.

28. Although Council records show that Lewisham Council continued their payment of Council Tax throughout the occupancy, these payments may have been "automatic" payments regardless of whether the flat was occupied or vacant. I am drawn to this possibility as the exchange of emails (between RedDoor Homes and Lewisham Council, Appendix M) during winter 2017 appear to indicate that Lewisham Council were automatically paying utility bills for the whole building when they only made use of 1 flat.

29. The more than four month gap when the flat was renovated appears to be excessive given the size of the flat. The appellant offers no explanation as to what works were carried out and why they took over four months. I find this break in use to be significant and not *de minimis*.

30. With regard to the period 1 September 2017 to 13 March 2019, no tenant names are provided yet these would have been known to PIPS. Whilst PIPS state in a letter that their tenancy ran for this period, there is no evidence of rent receipts. The Council Tax records weigh in favour that certain people known to the Council lived in Flat 2 from 5 September 2017 – 14 May 2018 but the evidence is incomplete.

31. The last entry in the Council's Council Tax list is that PIPS were paying the Council Tax from "15 May 2018 to date". As the LDC application was refused on 29 November 2019, the appellant offers no information as to what happened before the rolling tenancy ended in March 2019 and what happened between that date and the arrival of Tenant 5 on 23 August 2019.

Conclusion

32. The residential use of Flat 2 began on 1 April 2014. However, on the basis of the specific evidence for Flat 2, it has not been demonstrated, on the balance of probabilities, that the use was continuous over any four year period before the relevant date. The appeal on ground (d) therefore fails in respect of Flat 2.

Flat 3

33. After Lewisham Council's tenure came to an end, the flat was vacant for four months until Tenant 1 began their tenancy on 30 October 2015, which was an assured shorthold tenancy for six months. There are no documents to support the fact that this agreement became a rolling tenancy and there is no evidence that rent was paid throughout this period. However, Council Tax records

indicate that payments were made by a tenant for the period 30 October 2015 to 19 September 2017. I therefore find it is more likely than not that Tenant 1 resided at Flat 3 during this period.

34. Notwithstanding that he continued to pay his Council Tax into September, the appellant states that PIPS entered into a company letting agreement on 1 September 2017, which continued until 13 March 2019. As before, PIPS installed tenants supplied by the local authority and the agreement became a rolling tenancy until March 2019.

35. However, there are no documents to support the fact that it became a rolling tenancy, there is no evidence of rent payments and the appellant does not provide the names of local authority tenants, in particular when each person moved in or out of the flat. Instead he relies on the Council Tax records, which in this instance show that a tenant paid Council Tax from 20 September 2017 to 15 October 2018. Thereafter PIPS is recorded as making the payments "from 16 October 2018 to date".

36. The Council submit that the Council Tax payments by PIPS indicate that the flat was empty however the appellant offers no explanation. What is clear is that there is a five month gap between the end of the PIPS' tenancy and the start of Tenant 6's tenancy on 18 September 2019, which continues to the present.

37. I find that there is a significant break in the use of the flat of four months before Tenant 1 moved in. The appellant states the property was renovated but provides no schedule of works and does not explain why they took four months to renovate a studio flat. With regard to the PIPS period, again no tenant names are provided and there is no evidence of continuous rent receipts.

38. The last entry in the Council's Council Tax list is that PIPS were paying the Council Tax from "16 October 2018 to date". As the LDC application was refused on 29 November 2019, the appellant offers no information as to what happened before the rolling tenancy ended in March 2019 and what happened between that date and the arrival of Tenant 6 some five months later.

Conclusion

39. The residential use of Flat 3 began on 2 April 2014 and I have had regard to my earlier conclusion on the Lewisham Council tenancy. However, on the basis of the specific evidence for Flat 3, it has not been demonstrated, on the balance of probabilities, that the use was continuous over any four year period before the relevant date. The appeal on ground (d) therefore fails in respect of Flat 3.

Flat 4

40. After Lewisham Council's tenure came to an end, Tenant 3 began their tenancy on 6 April 2016, which is an assured shorthold tenancy for six months. There are no documents to support the fact that this became a rolling tenancy but there is an affidavit from the tenant dated 19 June 2020. He states that he moved in on 6 April 2016 and that he has occupied the flat continuously since that time. The signature on the affidavit matches that on the tenancy agreement. There is also a letter from Century Residential Sales and Letting who confirm that he moved in on 6 April 2016.

41. The Council Tax records show that Lewisham Council paid Council Tax until 10 March 2016, thereafter the appellant paid the Council Tax until 5 April 2016 and then a tenant is shown as making payments “to date”. As the Council report containing this data was written around autumn 2019 there is no evidence from the appellant that Tenant 3 has continued with these payments since that date. In addition, at the time of the Council Officer’s site visit during August 2019, the flat appeared to be empty, though there is no further evidence from the Council on this point.

Conclusion

42. The residential use of Flat 4 began on 2 April 2014. There is inconsistency between the RedDoor Homes letter dated August 2019 (Appendix A) and other evidence (Appendices P and M) concerning the end of Lewisham Council's tenancy and the start of Tenant 3's occupation. The RedDoor Homes letter states that Lewisham Council ended their tenancy on 30 June 2015 but this is inconsistent with the rent receipt information, which shows it ended in April 2016. It is also inconsistent with the Council tax records which show that Lewisham Council paid Council Tax until 10 March 2016. The Council refer to the vacation of the property being a couple of weeks earlier than April 2016. This is because the appellant paid the Council Tax between 11 March 2016 until 5 April 2016 but if there was a break in the residential occupation, then it is a matter of weeks rather than months and I find that this is *de minimis*. Thereafter the property has been continuously occupied since 6 April 2016 by Tenant 3.

43. Having regard to the totality of the evidence, it is concluded, on the balance of probabilities, that the use of Flat 4 as a self-contained residential unit took place more than four years before the issue of the notice. There is no evidence to contradict the appellant’s evidence and the proving of facts is precise and unambiguous, on the balance of probabilities. The appeal on ground (d) therefore succeeds in respect of Flat 4.

Flat 6

44. Lewisham Council's tenure came to an end in July 2015, which was their last rent payment but they ceased paying Council Tax in May 2015. There was then a break in the use of the flat for several months. The appellant paid the Council Tax from 1 June 2015 until 29 October 2015 before Tenant 2 signed a 12 month assured shorthold tenancy agreement on 30 October 2015. It would therefore appear that there was a break in the residential occupancy of at least four months, from either the beginning of July or June 2015 until Tenant 2 signed their agreement.

45. PIPS signed a company letting's agreement on 1 December 2016 and in their letter dated 2 September 2019 it is stated that this continued until 13 March 2019. PIPS, as was their practice with their other flats, installed a local authority tenant. There are no documents to support the fact that it became a rolling tenancy, no evidence of rent payments and the appellant does not provide the individual names of local authority tenants, in particular when each person moved into or out of the flat. The Council Tax records show that for the first month of the company letting agreement a tenant paid the Council Tax, PIPS then paid it for four days before a tenant is recorded as paying it for a fortnight in January 2017. However, after 17 January 2017 until 20 October 2017 there is no record of anyone paying Council Tax at the property.

46. After the company letting agreement came to an end on 13 March 2019, the flat was renovated between April and July 2019 and Tenant 4 signed an assured shorthold tenancy agreement for a 12 month period on 2 September 2019. It would appear therefore that there was another break in the residential occupancy of the flat of at least five months.

47. However, I find there are two significant breaks (of at least four months and five months) in the residential occupation of the flat, notwithstanding the appellant's arguments that the length of each break was reasonable. These arguments are the same as made previously in connection with the other flats. For the same reasons I gave before, it is my view that the gaps were sufficient to materially interrupt the residential use.

Conclusion

48. The residential use of Flat 6 began on 3 April 2014 and I have had regard to my earlier conclusion on the Lewisham Council tenancy. However, on the basis of the specific evidence for Flat 6, it has not been demonstrated, on the balance of probabilities, that the use was continuous over any four year period before the relevant date. The appeal on ground (d) therefore fails in respect of Flat 6.

The ground (f) appeal

49. The appeal on ground (f) relates to Flats 1, 2, 3 and 6, having regard to my findings on the ground (d) appeal, and the appeal is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Act and they are to remedy the breach of planning control (S173(4)(a)) or to remedy injury to amenity (S173(4)(b)). In this case the Council require the unauthorised residential use to cease and the facilities integral to that use to be removed. The purpose of the notice is therefore to remedy a breach of planning control.

50. The appellant submits that the requirements of the notice go too far as the lawful use of the property is not a single dwelling house but a Class C2 Care home[4]. It is unreasonable to require the removal of all of the kitchens, bathrooms and meters, except for one of each, as the appellant intends to resume the former Class C2 use.

51. Regardless of whether a Class C2 use is lawful or not, a notice cannot require the revival of a former use, whether that is a single dwelling house, as specified by the Council, or a Class C2 Care home.

52. A notice directed at a material change of use though may require the removal of works integral to and which facilitated the material change of use. It is for the appellant to demonstrate that the works did not facilitate the material change of use if he wishes to keep them. That is not the case here. The appellant submits that various works should be kept for future uses, not that they were an integral part of a previous use.

53. The photos in the Inventory (Appendix B) appear to show that all the fittings such as cookers, kitchen cupboards and bathrooms were all new and, in the absence of any evidence to the contrary, it is my view that they are integral to the material change of use. Therefore, in order to remedy the breach of

[4] Town and Country Planning (Use Classes) Order 1987, Class C2 Residential Institutions

planning control, it is reasonable to require their removal. The appeal on ground (f) therefore fails. However, it is necessary to direct that the requirements of the notice are varied as they are currently too prescriptive.

The ground (g) appeal

54. This ground of appeal also only relates to Flats 1,2, 3 and 6, having regard to my findings on the ground (d) appeal. The ground (g) appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the time necessary to carry out those requirements.

55. The appellant requests that the six month period to cease the use and the seven month period to carry out the building works be extended to a year. This is because of the ongoing coronavirus situation, national lockdowns and the difficulty of finding alternative accommodation in such circumstances. The Council considers the given periods remain reasonable, even given the current circumstances, on the basis that the appellant and the tenants have known about the notice since May 2020. It was open to them to begin to make contingency plans from that date.

56. The appellant and the tenants have known for some time that there is an existing enforcement notice in place. However, following the submission of the appeal, the appellant is entitled to assume he might be successful and is therefore not expected to make contingency plans, unless the appeal is only on ground (g).

57. Ordinarily, six and seven months would be a reasonable period to comply with the terms of this notice but the Government recognises that these are not ordinary times. From 29 August 2020 landlords are not able to start possession proceedings unless they have given their tenant six months' notice. This is the situation until 31 March 2021 when these requirements will be reviewed.

58. In the circumstances, I find nine months would be a more reasonable period. This would reflect the new obligations on landlords and allow time for the appellant to make arrangements with builders to carry out the works. The appeal on ground (g) therefore succeeds and I shall direct that the notice is varied accordingly.

Overall Conclusion

59. For the reasons given above I conclude that the appeal should succeed in part on ground (d) as it relates to Flat 4, 88 Nelson Road. The appeal on ground (d) fails in relation to Flats 1, 2, 3 and 6, 88 Nelson Road. I shall therefore uphold the enforcement notice, with variations to reduce its scope so that it only relates to Flats 1, 2, 3 and 6.

Formal Decision

60. It is directed that the enforcement notice be varied:

- by the deletion of the requirements set out in paragraph 5 of the notice and the substitution of the words:

"(i) Cease the residential use of the basement, ground and extended roof area of the property as self-contained flats;

(ii) Remove all fixtures and fittings from the basement, ground and extended roof area of the property that enable the self-contained residential use to take place; and

(iii) Remove all debris and associated materials from the property arising from these requirements.";

- by the deletion of paragraphs 6(a) and (b) in the notice and their substitution with the words "nine months".

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

D Fleming

INSPECTOR