The Planning Inspectorate

Appeal Decision

Site visit made on 18 March 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 09 April 2021

Appeal Ref: APP/W5780/C/20/3247173
5a Jubilee Market, St Barnabas Road, Woodford Green IG8 7BZ

- 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 by Stephen Hayes against an enforcement notice issued by the Council of the London Borough of Redbridge.
- The enforcement notice, ref. E0703/19, was issued on 30 January 2020.
- The breach of planning control alleged in the notice is the material change of use of the property from Class A1 (retail) to residential (C3).
- The requirements of the notice are to:
  (i) Cease the use of the property as a residential unit (C3)
  (ii) Remove all fixtures and fittings that facilitate the use as a residential (C3) unit.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for a full award of costs has been made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal was originally lodged on ground (a) – that planning permission should be granted for the matters enforced against. However, within the time limit for making an appeal the appellant's agent requested a change, which was agreed by the Inspectorate. The appeal is now proceeding on ground (d) only.

Background matters

4. The appeal property stands on the eastern side of St Barnabas Road close to its junction with Snakes Lane to the north. It is at the southern end of a short parade of retail/commercial premises - from which it is separated by the access to a garage parking and service court – and is adjacent to the semi-detached house at no. 2 St Barnabas Road, again separated by an access way.

5. The building itself is single-storey and at the end of the row of garages in the garage court. At the front of the building is a low wall with a gate around a small yard leading to the front door. It was formerly used as a carpet sales shop and a garage, but now comprises a single room on the road frontage with

the entrance door, kitchen fixtures along one wall, and a solid fuel stove with an external flue. This room is extremely sparsely furnished, with little more than a sofa. Behind this room the space has been converted to provide a shower room with WC and wash-handbasin as well as a washing machine. Adjacent to this is a bedroom with a mattress on a mezzanine accessed by ladder. Behind these rooms again is the separate garage, which is used to store the appellant's belongings, including his martial arts equipment.

6. A planning application made in November 2016 for change of use of the premises to residential (Use Class C3) with associated alterations to the elevations and roof, installation of a flue, installation of decking and boundary treatment[1]. The application was refused and a s.78 appeal against that decision was dismissed[2], mainly on the grounds of the harmful appearance of the external flue, and the poor living conditions arising from restricted internal floor space and lack of outlook.

7. A further planning application was made in 2018. This was for the change of use to a C3 dwelling by means of alterations to the roof and internal configuration[3]. An appeal against non-determination was dismissed in 2019[4]. This was mainly on the grounds of harm to the character and appearance of the area arising from the proposed raised roof, and from the external flue, and harm to living conditions in terms of the inadequacy of external amenity space, lack of privacy for occupants. It was considered that the loss of the A1 use would not cause harm.

The appeal on ground (d)

8. This ground is that the development enforced against is immune from enforcement action as a result of the passage of time. In a case such as this, entailing the change of use of a building to use as a single dwellinghouse, under s.171B(2) of the Act continuous occupation must be demonstrated for a 4-year period before the date of issue of the enforcement notice – that is, at least since 30 January 2016.

9. In a ground (d) appeal the burden of proof is on the appellant to show that this is the case on the balance of probabilities. The courts have found that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the case.

10. The appellant submits that the date of first use as a dwellinghouse was demonstrated in the 2018 appeal decision. That decision records - at paragraph 4 - that the appellant moved into the former carpet shop in 'about 2012' and commenced its conversion into a one-bedroom dwelling. Paragraph 9 then states that the premises had been occupied since 2012. I do not regard this as conclusive, since the start of conversion is not equivalent to the start of occupation, and 'occupation since 2012' does not indicate that occupation was continuous from that time.

[1] Decision notice ref. 5455/16, dated 1 September 2017.
[2] Appeal decision ref. APP/W5780/W/17/3185724, dated 7 February 2018.
[3] Application ref. 1953/18, dated 8 May 2018.
[4] Appeal decision ref. APP/W5780/W/18/3217162, dated 11 July 2019.

11. Furthermore, the appellant has not put forward the extent or content of evidence submitted in that appeal. There is no other documentary evidence before me as to the Inspector's reasons for reaching that conclusion, which may well have been based on a statement made by the appellant but not otherwise supported. I note in particular that the 2016 planning application says that the works and use started on 7 July 2012.

12. It is highly probable that evidence before an Inspector in a s.78 case would be of significantly different nature from that in a s.174 case on legal grounds. I note that in the 2019 appeal decision, about a year and a half later, the Inspector made no reference to the building already being in residential use or refer to the matter that any conversion works has been done.

13. I have seen several Statutory Declarations, one from the appellant himself, and others from people well-known to the appellant since at least 2012. Mr Hayes maintains that he acquired the premises in 2011, converted to a dwelling, and occupied it as his home since then.

14. Of the latter declarations, two include statements that they received martial arts instruction from Mr Hayes, and/or visited him in connection with motor maintenance at the appeal premises from December 2012, and a third that she had been informed by Mr Hayes that he had moved to the premises in December 2012. A letter from Mr Hayes' ex-wife says he moved out of his previous home in December 2012, and to the best of her knowledge has lived at the appeal premises since then. However, none of these attest to actual residential occupation, or that there was continuous occupation for any particular period.

15. Various records are put forward all addressed to 5a Jubilee Market. Of these, there are Council Tax accounts for the premises covering the period from August 2017 to March 2020, a bank statement for part of January 2013, a vehicle registration certificate and insurance policy schedule. None of these are earlier than 2013 and do not conclusively demonstrate continuous occupation since 2012 as is claimed. Nor do they show any continuous occupation period of 4 years before January 2020. Evidence of a British Gas plan renewal from March 2015, although sent to no. 5a Jubilee Market, relates to a business account for nos. 1-3 St Barnabas Road – properties on the opposite side of the road. Furthermore, although I accept that the building was residentially occupied at the time of the Inspector's visit in January 2018, that is a record of what he saw at that point in time and does not provide evidence of continuity or start date of the use.

16. A number of somewhat indistinct monochrome photographs of the property put in by Mr Hayes purport to be for various times in 2013, 2014 and 2015. However, the dates have been printed onto the reproduced sheets independent of the photographs and are not integral to the images. These photographs do not show the actual dates on which they were taken as might be expected for any relatively recent photographic images.

17. On the other hand a Street View photograph dated June 2015 shows the building still then in its unconverted state – with shop signs still in place, the shop window with placards, the side entrance door, and the parking area to the front without the present low wall and entrance gate. The 2016 planning application says that Mr Hayes in 2012 had agreed with Danchel Carpets to use

a store room in the building in order to establish himself, but that in 2014 the firm wanted to move out to save on costs.

18. The actual location of the store room is not specified but use of a store room is not the same as residential occupation, and it does not demonstrate the conversion took place when stated. It appears highly unlikely that there were conversion works or any residential occupation until after the carpet firm had left, and probably not until some time after June 2015. This may account for there being no Council Tax record provided from before August 2017.

19. In a case of this sort I would expect to see at least some evidence of the conversion works it is claimed took place in 2012 – such as payments to a builder or payments for materials, possibly dated photographs of works in progress. It could reasonably be expected to see continuous series of such things as utilities accounts, Council Tax payments and bank statements, as well as receipts for goods delivered during the relevant period. There is very little of this nature.

20. As it is, the third party Statutory Declarations do not confirm continuous occupation since 2012, or for any continuous 4-year period, nor do Council Tax records, or the appellant's photographs. Although HMRC Income Tax summaries are continuous from April 2013 to March 2017 and are addressed to 5a Jubilee Market, again they do not on their own show continuous residential occupation.

21. Overall, it appears unlikely that the conversion works had been started by June 2015 and that there was any residential use before then. Council Tax records show there was probably such use by August 2017, but not that it had subsisted before or after that. The appellant's evidence is remarkably imprecise and far from unambiguous. On the balance of probabilities I consider that a continuous 4-year period of occupation before 20 January 2020 has not been demonstrated. The appeal on ground (d) therefore fails.

Conclusions

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

Stephen Brown

INSPECTOR