The Planning Inspectorate

Appeal Decisions

Site visit made on 4 August 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2021

Appeal A Ref: APP/T5150/C/20/3246658
Appeal B Ref: APP/T5150/C/20/3246659
19 Neeld Crescent, Wembley HA9 6LW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- **Appeal A** is made by Mr Zahid Manzoor Bhatti and **Appeal B** is made by Mrs Rukhsana Zahid Bhatti against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 10 January 2020.
- The breach of planning control as alleged in the notice is: *Without planning permission the material change of use of the premises to flats.*
- The requirements of the notice are:-
  Step 1: Cease the unauthorised use of the premises as self-contained flats and its occupation by more than one household.
  Step 2: Remove all kitchens, except one, and all bathrooms except three, from the premises.
  Step 3: Remove all partitions, doors, facilities, fixtures, fittings and equipment that facilitate the unauthorised use of the premises.
  Step 4: Remove all items, waste materials and debris from the premises arising from compliance with steps 1 to 3.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(d) of the Act.

Decisions

1. Both appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

2. During the site visit the appellant sought clarification about which documents I had before me, because some documents had been submitted after the deadline for final comments and had been returned to the appellant. I have not seen these and they form no part of my consideration. However, other documents, sent in a series of emails, and which include various receipts, tenant references and tenancy agreements, had been placed before me. After the visit the Council confirmed it had already seen and considered these documents. I have exercised my discretion and will accept them as evidence in this case.

3. Throughout this decision the terms studio flat, studio, flat and units are all terms referred to in the various evidence and are used interchangeably depending on what evidence is being referred to or described.

Background

4. The appeal relates to a semi-detached dwelling in a predominantly residential area that has been extended. Planning permission[1] was granted on 31 December 2007 for works that included demolition of the existing side garage and erection of a single-storey and two-storey side and rear extension and rear dormer window.

5. The submitted plans show the existing dwelling to have a lounge, and combined living room/dining room/kitchen on the ground floor, and 3 bedrooms and a bathroom upstairs. The approved plans show the extension would comprise a study room, shower room, utility and enlarged kitchen on the ground floor, with a prayer room, separate toilet and an en-suite bedroom on the first floor, and a further bedroom in the roof space, resulting in a 5-bedroom dwelling. On the approved plans the extension is shown internally linked and integrated with the existing dwelling at both ground and first floors.

6. Council officers visited the appeal property on 28 November 2019 and observed that the premises was in use as flats and comprised two studio flats on the ground floor, two studio flats on the first floor, and a flat across the ground and first floor. A garden building was in use as an office/storage/garage.

7. On my visit I saw that the two-storey side extension contained 4 small residential units. They were each similarly laid out and comprised one room with a bed, wardrobe/drawers and a kitchenette along part of one wall comprising a sink, worktop, a number of base and wall units, and a fridge. Some of the residential units had a separate plug-in two-ring electric hob on the worktop and/or a microwave. Each unit also had a separate small en-suite shower room with sink and toilet. As the units were each a single room with only a separate shower room, they would be best described as studio flats.

8. The entrance to the two-storey side extension and hence the studio flats is via a door in the side elevation, along the passageway leading from the front drive to the rear garden. There was a small communal hallway with doors leading to 2 studio flats, which the appellant confirmed were Units A (front) and B (rear). A flight of stairs led upstairs to a small landing with separate doors to Units C (front) and D (rear). None of the doors to any of the flats had any identification of being A, B, C or D. From the ground floor entrance hall there was a door that led through a small area that contained the meter boxes, into the kitchen of the dwelling.

9. In the rear garden there was a large outbuilding. Part of it comprised a garage with a car parked inside and workshop. I saw that the other part was in use as another studio flat, equipped with a similar kitchenette and separate en-suite shower room. The appellant confirmed this was Unit E. This is different to what the Council officers reported from their visit.

10. I observed that all five studio flats had belongings in and appeared to be currently occupied. Indeed the occupier of Unit C was present at the time of my visit.

[1] LPA ref: 07/3268

11. I also toured the main dwelling. On the ground floor it comprised a lounge, living/dining/kitchen, a cloakroom under the stairs and a separate utility area off the kitchen at the back. The stairs from the hallway led to 3 bedrooms and a family bathroom on the first floor, and a further bedroom with en-suite bathroom in the roof.

The Appeals on Ground (d)

12. A ground (d) appeal is that, at the date that the notice was issued, it was too late to take enforcement action. For the ground (d) appeals before me to succeed there must be sufficient, precise, and unambiguous evidence to justify a conclusion that, on the balance of probabilities, the use of each studio flat as a self-contained residential unit began more than 4 years before the notice was issued and the use of each studio flat has been continuous since then. The critical 4-year date is therefore 10 January 2016. It is a legal ground of appeal and the burden of proof rests with the appellants.

13. The appellants confirm that the property was a 3 bedroom dwelling with side garage in March 2010, when they moved in. They confirm that building works for extensions to the property were carried out in accordance with the planning permission granted in 2007. It was clear from my site visit observations described above that the two-storey extension is now separated from the main house, apart from the door from the kitchen into the lobby for the studio flats, and hence is not in accordance with the approved plans. The appellants now also confirm the property is a 4-bedroom house with 5 studios.

14. On 9 March 2010 the appellants tells the bank[2] that the double-storey side extension contains 2 rooms on the ground floor and 2 rooms on the first floor all fitted out with en-suite shower rooms. The appellants also submit three 'building drawings' showing 4 en-suite studio rooms in the side extension, labelled as Studio 1 and 2 on the ground floor (rear and front respectively) and Studios 3 and 4 at first floor (rear and front respectively). The room in the roof was just labelled as a bedroom with a large storage area and shown accessed from the dwelling (not the extension). These plans show the two-storey extension separate from the house and not linked through – indeed it has its own entrance door to the side and a new internal staircase has been fitted. There is no submitted response from the bank to this fax.

15. The mortgage valuation report of 31 March 2010 observes the accommodation and the notes state the extension has been valued as a separate entity as it could be considered to be a self-contained unit, but that the extension has not yet been broken through from the original house.

16. It was clear to me from my visit that the approved extension has not been built in accordance with the approved plans. Indeed the layout is similar to the layout shown on the three submitted 'building drawings'. However, this does not demonstrate that any of the studios were being occupied as self-contained residential units.

17. The appellants provide various other evidence to show occupancy of the Units A, B, C, D and E. In September 2011 a couple moved into the ground floor front room of the extension (A) and in November 2011 a kitchenette was fitted.

[2] In submitted Fax to NWB1

Liking the kitchenette, the appellants bought another one in January 2012 for the 'garage adjoining room'. It is not clear if this is Unit E I saw in the outbuilding, or the unit the Council describe as being the 'flat across the ground and first floor'. Then in January 2014 another was fitted and two rooms (Studios A and B) on the ground floor of the extension were advertised for rent from February 2014.

18. In March 2014 a married couple moved into Studio A (ground floor front). There is only a personal reference that has been submitted as evidence, but this does not say anything about the use of the studio and does not prove occupancy of Studio A. Furthermore, there is no formal Tenancy Agreement (TA) for these occupiers that would indicate it was being let out, or the appellants' bank statements to show the receipt of rent. There are later TAs showing Studio A was occupied from 22 February 2015 until the end of 2016, but then there is a gap and no further TAs for Studio A. Signed statements from a number of residents indicate Studio A has then been used by visiting relatives and friends, but this does not prove continued occupancy.

19. The first evidence of occupation of Studio B (ground floor rear) comes in the form of a TA starting from 1 March 2014 until the last TA ended mid-June 2016. Then there is an unexplained gap. There is a signed statement from a lady who says she moved in on 31 August 2018 and was soon joined by her husband and they have lived there since. They use Studio A for when relatives and friends come to visit. However, there is nothing to confirm this and again there are no bank statements to show the receipt of rent.

20. The appellants continued to install other kitchenettes in the other parts of the extension. Studio C (first floor front) and Studio D (first floor rear) were allegedly occupied in April 2014. However there is no documentation of note to confirm this – only tenant details and these do not attribute the people as being occupants of any of the studios at the appeal property.

21. For Studio C there are later TAs commencing 18 April 2015 until late in 2016. Then there is an unexplained gap until a signed statement from a tenant saying he moved into Studio C in January 2019 - and at the time of his statement (23 January 2020) he was still occupying it. But again no substantial evidence to show occupation or payment or receipt of rent.

22. For Studio D there are some TAs confirming it was occupied from June 2014 until summer 2016. After that there is no formal documentation of occupation. There is a signed statement dated 23 February 2020 from the then current occupier of Studio D saying he moved into it after Studio E was converted into an office when he set up a business with his uncle (one of the appellants) in February 2016, but that he would be moving into studio A shortly.

23. From the TAs there is some evidence that Studios A – D were occupied on a formal basis from March 2014 until 2016/2017. However, since 2016/2017 there is little substantive evidence to demonstrate that the flats have remained occupied continuously since then. From mid-2017 onwards no TAs have been submitted for any of the flats and no TAs have been provided at all for Studio E. It is not clear from any submitted plans where Studio E is located, although I saw the studio in the outbuilding the appellant referred to as E.

24. Unlike signed statutory declarations or affidavits, signed statements are unsworn evidence and there is no legal consequence if they are untruthful.

Therefore I attach only limited weight to any signed statement. With regard to TAs, they are not in themselves proof of use or occupation but they do serve as a legal contract indicating intention to occupy and use the premises to live in. Nonetheless, a lack of them indicates to me gaps in the occupancy of each studio flat and this causes me to question the continuous use of each of the studio flats. Furthermore, some of the signed statements are by relatives of the appellant, so it remains unclear if the flats are being used as family guest accommodation rather than as studio flats.

25. It is not unreasonable for flats to remain unlet for periods of time if tenants cannot be found, provided the gaps are not significant as to cause a break in the use. However, the limited evidence before leads me to question whether each of the flats have been used continuously since January 2016, the critical date.

26. I understand from the Council that flats A, B, C and D were only registered for Council Tax purposes in April 2017. This is less than the 4 years required for immunity from enforcement. There is no mention of Flat E.

27. The receipts from Ikea, B&Q, Wickes only prove that the listed items were bought on a particular day. Whilst some of the receipt dates coincide with the dates the appellants say they bought the kitchenettes, for example, the receipts do not show who purchased the items, what address the items were taken to or where they were subsequently installed. Some receipts, such as that from Olympic Plumbing & Bathrooms, may bear the appellants' address but they are not proof that the items were anything to do with the studios or occupancy of them. Any receipts or invoices to Zeenat Gas and Heating Engineers, or deliveries to the appeal property, do not necessarily show there were studios at the appeal property or that they were being occupied. The Argos delivery addressed to Flat E at the appeal property only indicates that someone was residing there at that date, and does not show occupation over a period of time or show continuous occupation since January 2016. Therefore there is no means of attributing the purchases from the receipts to any of the studios or to demonstrate their continuous use. The medical health appointment letters are addressed to the appellant at the appeal address – they show nothing in relation to the studios or who was occupying them or when.

28. From all the evidence before me, on the balance of probabilities, I find the appellants' evidence is not sufficient to demonstrate that the alleged development is not immune from enforcement action.

29. The appeals on ground (d) therefore fail.

Other Matters

30. As a ground (d) appeals are a legal ground of appeal, there is no consideration of the planning merits of the case. Therefore, reference to planning policies is not relevant. Nor are the appellants' personal circumstances or ill health relevant in this case, or their reasons for wanting to gain an income from their property.

Conclusion

31. For the reasons given above I consider that the appeals should not succeed.

K Stephens
INSPECTOR