The Planning Inspectorate

Appeal Decision

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2021

Appeal Ref: APP/Z0116/C/21/3276842
58 Banner Road, Bristol BS6 5LZ

- 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 Andrew Sharry against an enforcement notice issued by Bristol City Council.
- The enforcement notice was issued on 11 May 2021.
- The breach of planning control as alleged in the notice is: *Without planning permission the formation of a self-contained residential unit in the basement of the building at 58 Banner Road, Bristol BS6 5LZ.*
- The requirements of the notice are: *Cease the use of the basement area of the building as a self-contained residential unit.*
- The period for compliance with the requirements is 10 (ten) 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 (the 1990 Act). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended have lapsed.

Decision

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

Preliminary Matters

2. 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[1].

3. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. Section 171B(1) of the 1990 Act sets out the relevant time period for taking enforcement action. In the case of a breach involving the creation of a residential unit of accommodation it is four years. For the development to be immune from enforcement action, it is necessary for the appellant to demonstrate that the basement flat, subsisted as a separate unit of accommodation, at least four years before the date the notice was issued. In this instance, that date is 11 May 2017.

[1] The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "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 case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

The appeal on ground (d)

4. The appellant provided, as part of their evidence, a letter dated 9 September 2014 addressed to Mr C Mcleary, 11 Sussex Place, Ashley Road, Bristol BS2 9QN from the Building Control Department, Bristol City Council. The letter refers to a Part B fire safety completion certificate for 58 Banner Road for "construction of a four storey building comprising two self-contained flats and one self-contained maisonette". However, this provides no information or plans to suggest how the building was divided.

5. Notwithstanding this, I am informed that in March 2015 a planning application[2] was submitted which confirmed that the basement was integrated with the lower ground floor, creating a maisonette. Plan ref 3429-3P dated March 2015 shows the basement area with a living room, kitchen, bedroom with en-suite and a staircase up to the lower ground floor with two bedrooms and a bathroom.

6. Regarding occupiers of the property, tenancy agreements have not been submitted, but copies of letters are provided in the form of one from Montpelier Health Centre, dated 6 March 2017, and another from University Hospitals Bristol, dated 10 March 2016, addressed to Mrs Hanna Onderska at "Basement Flat, 58 Banner Road". A copy of a statement from Lloyds Bank addressed to Hanna Onderska at "58 Banner Road" details transactions between 15 August 2016 and 8 September 2016 and there is also a letter from HMRC dated 6 April 2017 addressed to Ms H Onderska at "Basement Flat, 58 Banner Road". A statutory declaration dated 4 August 2021 signed by Hanna Onderska accompanies the appeal and affirms that she resided at the "Basement Flat" between January 2015 until March 2017.

7. In their email dated 3 September 2021 entitled "supporting letter" (hereafter referred to as "the SL"), the appellant states, amongst other matters, that Shem Pierre Mills was in the Basement Flat for nine months from April 2017 to January 2018. A statutory declaration signed by Mr Mills confirms this statement. Nevertheless, a copy of a statement dated 29 July 2019 and addressed to Mr Shem Mills shows electricity usage supplied to "58a, Bristol, Avon BS6 5LZ" for 1 June 2017 to 22 March 2019 addressed to Mr Mills, "Ground Floor Flat". Payments are recorded as being made between 9 June 2017 and 6 June 2019 which is considerably longer than nine months and would coincide with the time when the basement was purportedly being occupied by Ms Onderska.

8. The SL further states that Nigel Jordan has occupied the flat since July 2018. The Council's Home Choice team has advised in an email dated 6 July 2021 that Nigel Jordan, who is the current occupier, has occupied the property since 18 August 2017. His address is listed with Home Choice as the "Basement and Lower Ground Floor Maisonette", 58 Banner Road. The Council says that in October 2020 it had the premises listed for Council Tax purposes under the appellant's name as "Maisonette lower ground floor and basement flat 58 Banner Road BS6 5JZ". Following the discovery of the Basement Flat as a separate self-contained unit in November 2020, the Council Tax records were updated and back dated to October 2020. Copies of Council Tax

[2] 15/01568/F approved by notice date 20 May 2015 for "Retention of external alterations, associated with internal reconfiguration of stairs to provide access to lower ground floor plan to provide maisonette."

statements/bills have not been provided by the appellant to help to clarify how and by whom the appeal site has been occupied.

9. Electricity bills from EDF Energy are provided for the period 9 January 2014 to 10 January 2021 for the "Lower Ground Floor" addressed to "Mr Gabriele Desimone, 58b Banner Road". The appellant describes the accommodation as the "flat above the Basement Flat" (which to my mind would be the lower ground floor) but says in their SL that the "EDF bills are for the first floor flat showing separate services".

10. Further to this, a "completion statement" for the sale of "Lower Ground Floor Flat 58 Banner Road" dated 22 April 2021 is provided by the appellant with an accompanying email dated 2 September 2021 saying that the flat was "sold as a one bed flat leaving the basement flat as a unit on its own". However, the appellant describes the accommodation as the "Ground Floor Flat" in the SL as having been sold. Nevertheless, the completion statement provides no more than brief calculations and the solicitors' company name on a plain sheet of paper. Furthermore, there are no sales particulars or land registry details provided to give further credence to this matter or to show the accommodation provided by the unit.

11. Overall, I find that the information provided does not paint a clear picture to show how the property has been sub divided and occupied. The units have been described as 58, 58a, 58b Lower Ground Floor, Basement Flat. The information before me casts considerable doubt on the veracity of the appellant's limited and, at times, contradictory evidence. Having regard to this information I conclude that, on the balance of probabilities, the evidence provided is not sufficiently precise and unambiguous to justify a finding that the use of the Basement Flat at 58 Banner Road, Bristol BS6 5LZ as a separate dwellinghouse has been sustained for the requisite period.

12. Thus, the breach of planning control is not immune from enforcement action and the appeal on ground (d) therefore fails.

S A Hanson

INSPECTOR