



Appeal Decision

Site visit made on 31 January 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/N5090/C/20/3261094

36 Sunningfields Road, London NW4 4RL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Pratap Velji Gadher against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 1 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission the conversion of the dwelling house into three self contained units and two bed sitting rooms sharing facilities on the first floor.
 - The requirements of the notice are to:
 1. Cease the use of the property as self-contained units and bed sitting rooms
 2. Remove bathroom facilities, including the removal of toilets, basins, baths and showers from all but one room.
 3. Remove kitchen facilities, including the removal of all kitchen units, sinks, cookers and food preparation areas from all but one room.
 - The period for compliance with the requirements is: 6 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Ground (d)

2. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The ground (d) appeal relates to the ground floor flat, the studio flat in the roof space and the unit in the garden.
3. It is for the appellant to make their case on the balance of probabilities. As set out in Planning Practice Guidance (PPG), the appellant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
4. Section 171B(2) of the Act sets out that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
5. The appellant asserts that all 3 of the self-contained units has been in existence and occupied as self-contained dwellings for more than 4 years. The

appellant's case under ground (d) does not relate to the first floor of the property, which the appellant considers is a House in Multiple Occupation (HMO) for which the time limit would be 10 years.

6. I saw that each of the 3 units referred to above is a self-contained unit which comprises the facilities required for day to day private domestic existence. Users of the second floor flat will use the stairs, and pass through the hallway of the first floor, which is used by occupants of the first floor. However, although the first floor is not self-contained, from the evidence provided, it appears that only occupants of the first floor bedrooms use the facilities provided on the first floor.
7. Although the property has an HMO Licence, this is not determinative that it comprises an HMO for planning purposes. If a building is occupied only by only two persons who form two households, it will not be an HMO. Only if it is occupied by three or more persons not forming a single household will it fall within the definition of an HMO, by virtue of Regulation 6(2) of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.
8. From the evidence, it appears that the first floor has only been occupied by up to two people. Consequently, since the first floor comprises the facilities necessary for day to day living, I consider it is a dwellinghouse for the purposes of section 171B(2) of the Act and a 4 year immunity period will apply.
9. Although I have found the first floor does not comprise an HMO, evidence has been provided in respect of its conversion and occupation. The notice does not allege an HMO and clearly states within the reasons for taking enforcement action that it appears that the breach of planning control has occurred within the last four years.
10. The Council does not dispute the accuracy of the evidence provided by the appellant in support of ground (d), rather its case is made on the basis that an enforcement notice was served in 2014 for the same breach. Consequently, I am satisfied that there would therefore be no prejudice to either party's case in my consideration of the first floor under ground (d).
11. Given the above, the appellant will need to show, on the balance of probabilities, that the breach did not constitute a contravention of any of the requirements of an enforcement notice then in force and if so, that the breach took place on or before 1 September 2016 and if so, that it continued without significant interruption for at least 4 years thereafter.
12. Enforcement action was taken against the same breach in 2014 under reference ENF/0127/13/H, dated 28 July 2014. However, the Council issued a formal notice, dated 26 January 2022, withdrawing the enforcement notice. The implication of section 171B(4) for section 191(2)(a) is that the time for taking enforcement action will not expire until four years after the issue of the enforcement notice, even if the relevant immunity period under section 171B(1), (2) or (3) has passed.
13. From the date of issuing the first enforcement notice, the local planning authority had a further four years within which to take further action. Although the Council has only recently withdrawn the notice, it had until 28 July 2018 to

issue another notice. It did not do so, and so the time for taking enforcement action on the basis of section 171B(4)(b) has passed.

14. A statutory declaration made by the director of AP Electrical and Fire Alarms Limited, states that they were involved in the installation of works in 2014 at the property. Between 2014 and 29 September 2020, it is stated that the individual visited the property twice a year to inspect and service the fire detection and alarm system and that the layout has not changed during that period. The statement appears consistent with electrical certificates and insurance policies provided for the property and points towards the property having been converted in 2014.
15. The statement is also consistent with advertisements, which detail the facilities afforded by each of the units and is also consistent with the HMO license issued on 27 June 2014, which describes two ground floor self contained units and a second floor self contained unit. Moreover, it is also consistent with the Council taking enforcement action in 2014.
16. A letter from a Sales and Lettings Management company states that they have known the appellant since 2014 and have visited the property many times over the last 4 years for advertising the flats, including ground floor 1 bedroom self-contained flat, ground floor rear self-contained studio flat, two bedsits on the 1st floor with shared facilities and a second floor/loft self-contained flat.
17. A statutory declaration has been provided, made by an individual who occupied the ground floor flat between November 2016 and July 2020. The occupant describes the how they occupied the property and also describes the layout of the other units. They also describe how they were tasked with showing prospective tenants around other flats and rooms when they became available and so is familiar with the layout of the whole building.
18. Similarly, a statutory declaration made by an occupant of the top floor flat between September 2016 and September 2018 describes how they occupied the property and also describes the layout of the other units. Letters provided by the occupant of the rear ground floor flat and ground floor flat, while not statutory declarations, are also consistent with the evidence provided regarding layout and conversion.
19. The information provided in the statutory declarations and letters appears consistent with a series of Assured Shorthold Tenancy agreements (ASTs) for the property. The ASTs provided point towards each of the units being occupied for at least 4 years, with only limited gaps. Although ASTs can only indicate an individual's right to occupy the premises, given their consistency with other evidence provided, in my view they weigh strongly in support of the appellant's case.
20. The occupant of No 38 Sunningfields Road states that when they moved into the property in 2013, building works at No 36 were being carried out and therefore, if any of the units were in use prior to 2013, the extension and loft conversion would not be lawful. However, the building works are not the subject of the notice, nor is the renting of the driveway using 'Just Park'. The interested party does not dispute that the units have been in existence for 4 years.

21. The evidence provided by the appellant, in my view, points towards the property having been converted well before 1 September 2016 and continuing without significant interruption thereafter. I find the appellant's evidence sufficiently precise and unambiguous and have no substantive evidence to contradict their evidence or make their version of events less than probable.
22. Consequently, I find on the balance of probabilities that the property was converted to three self contained units and two bed sitting rooms sharing facilities on the first floor on or before 1 September 2016 and continued without significant interruption for at least 4 years thereafter. The appeal under ground (d) therefore succeeds.

Conclusion

23. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

M Savage

INSPECTOR