



Appeal Decision

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2022

Appeal Ref: APP/Y5420/C/21/3284045

34 Kimberley Road, London, N17 9BD

- 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 Act").
- The appeal is made by Mr E Arican against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 6 September 2021.
- The breach of planning control alleged in the notice is without planning permission, the material change of dwellinghouse to four (4) self-contained flats and the material change of use of the outbuilding to one (1) self-contained flat.
- The requirements of the enforcement notice are:
 - 1) Cease the use of the dwellinghouse as self-contained flats.
 - 2) Remove from the property all but one of the kitchens (a kitchen includes cooking appliances, sinks, kitchen worktops and cupboards).
 - 3) Remove from the property all but one supply of electricity, gas and water.
 - 4) Remove from the property all but one of the doorbells.
 - 5) Remove from the property any internal dividing doorways and partitions facilitating the use of the property as self-contained flats.
 - 6) Cease the use of the outbuilding as a self-contained flat; remove the kitchen (a kitchen includes cooking appliances, sinks, kitchen worktops and cupboards).
 - 7) Remove from the land all debris arising from compliance with the above steps.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on grounds set out in section 174(2)(d) of the Act.

Summary of Decision: The appeal is dismissed.

Appeal on ground (d)

1. An appeal on ground (d) is a claim that at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The burden of proof, tested on the balance of probabilities, falls to the appellant to establish that the use of the house and outbuilding as separate self-contained flats commenced at least 4 years before the date on which the notice was issued, hence before 6 September 2017, and continued thereafter without material interruption for at least 4 years.
2. The judgment in *Gabbitts v SSE & Newham LBC* [1985] JPL 630 makes it clear that if a Council has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal on ground (d), provided that the appellant's evidence alone is sufficiently precise and unambiguous.
3. The appellant's evidence is set out in his appeal form and in his submitted appeal statement and appendices. The quality of the accommodation,

including matters of privacy and safety, are not relevant to an appeal on ground (d) which relates only to the question of whether the use is immune from enforcement action due to the passage of time.

4. Although no specific date is referred to the appellant states that use as separate flats began more than 10 years ago. In support of his case he has submitted copies of tenancy agreements (TA) for the 4 flats within the main building. None have been submitted for the outbuilding.

Ground floor flat

5. Comments received by the Inspectorate on 5 December 2021 from the tenant Gheorghita state that he has lived there for more than 5 years (hence before 5 December 2016) and that he was joined by his wife nearly 4 years ago (hence about 5 December 2017). However, this timeline is at odds with copies of two TAs submitted by the appellant which show Gheorghita's occupancy commencing on 5 May 2017 for one year, with his wife as an additional tenant commencing 10 February 2018 for one year.

First floor front flat

6. A single TA for this flat indicates occupancy commencing on 5 January 2016 for a period of one year.

First floor rear flat

7. A single TA for this flat indicates occupancy commencing on 4 May 2015 for a period of one year.

Second floor flat

8. Comments received by the Inspectorate on 5 December 2021 from the tenant Stone state that he has lived there for about 2 years. A single TA for this flat indicates occupancy commencing 5 May 2015 for a period of 6 months.

Outbuilding

9. No documentary or other written evidence has been submitted in respect of the use of the outbuilding as a separate flat.

Analysis

10. The tenant's comments submitted in respect of the ground floor flat are at variance with the TAs, as outlined above. The tenant's comments submitted in respect of the second floor flat relate to a period of occupancy of only 2 years. Even putting these variances aside, the submitted TAs in respect of all 4 flats in the main building clearly do not cover a continuous 4 year period of occupancy. As such, they are of little evidential value and weight in support of the appellant's case. Overall, in terms of showing a continuous 4 year use, I find the evidence to have significant gaps and is ambiguous.
11. Furthermore, the appellant's evidence is contradicted by the Council's evidence. It includes a copy of an LDC¹ application form with accompanying floor plans dated 10 June 2016 and May 2016 respectively. The LDC application sought confirmation that a proposed loft and side extension would be permitted development² based on the property at that time being a C3

¹ Lawful Development Certificate

² "Permitted development" - as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015

dwellinghouse. The LDC floor plans also showed the property in such use. Consequently, the appellant's evidence in this appeal, which seeks to show use as flats in 2016, is completely at odds with his 2016 LDC application which clearly evidenced use of the property at that time as a single dwelling house.

12. I conclude overall, on the balance of probabilities, that the use of the house and outbuilding as 5 self-contained flats has not taken place continuously for more than 4 years before the notice was issued. The use is not therefore immune from enforcement action.
13. The appeal on ground (d) fails.

FORMAL DECISION

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

Thomas Shields

INSPECTOR