
Appeal Decision

Site visit made on 9 May 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2022

Appeal Ref: APP/A5270/C/20/3263312

Land at 76 Horsenden Lane South, Perivale, Middlesex UB6 8AE

- 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 Suadad Sumaidaie against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 30 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to ten self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as self-contained flats;
 2. Remove the kitchen and drainage connections from nine of the self-contained flats;
 3. Remove the bathroom and drainage connections from seven of the self-contained flats;
 4. Remove all internal doors, partitions, signs and locks which facilitate the use of the premises as self-contained flats; and
 5. Remove all resultant debris.
 - The period for compliance with the requirements is 6 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.
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Decision

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

Application for costs

2. An application for costs was made by the Council of the London Borough of Ealing against Mr Suadad Sumaidaie. This application is the subject of a separate Decision.

Appeal on ground (d)

3. In relation to a breach of planning control consisting of a material change of use of any building to use as a single dwellinghouse, including the subdivision of a dwellinghouse to flats, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach (s171B (2)).
4. The main issue is whether the material change of use took place before the 30 September 2016, with the use as ten self-contained flats continuing for a least four years thereafter. The onus of proof is on the appellant and the test is on the balance of probability.

5. In summary, the appellant maintains that the property has been in use as ten self-contained flats since 2010. His evidence is said to support the four-year period preceding the 30 September 2020 when the notice was issued. The evidence relies on a collection of Landlord Household Insurance Certificates, Electrical Installation Certificates (EIC), Domestic Electrical Installation Condition Reports (EICR), Energy Performance Certificates (EPC), Council Tax Bills, hardware store invoices and email correspondence. In addition, a letter has been provided from a tenant of Flat 1 confirming their residency between April 2014 and April 2020.
6. Dealing first with the Household Insurance Certificates, EIC and EICR. The Landlord Household Insurance Certificates show that the landlord has obtained building insurance annually for Flats identified as 1 to 11 at 76 Horsenden Lane South. However, whilst the description of the property implies that the property has been converted into 11 Flats, these documents do not provide any evidence that those flats have all been occupied and in use throughout that period. Furthermore, there is no evidence of household contents cover, which would be more indicative of occupation. Similarly, whilst the EIC and EICR have been undertaken for each flat, they do not identify the individual occupiers of the flat or indeed provide any proof of occupation. I therefore give this evidence little weight.
7. The invoice from EFE Engineering Ltd refers to the property as a House in Multiple Occupation and is dated 2017. The works therefore took place after the relevant date of 30 September 2016. Similarly, the EPC and Council Tax Bills are dated 2020, again after the relevant date. This evidence therefore carries no weight. Moreover, the Council's records in relation to Council Tax indicate that from 1 April 2017 until 31 March 2020 a single person was liable for paying Council Tax for the property. It was only from August 2020 that the 10 flats were individually banded.¹
8. The hardware store invoices provide evidence that building materials were ordered and delivered to the appeal premises in 2008. They do not confirm that those materials were utilised in connection with the conversion of the property into 10 flats. Indeed, the Council's records indicate that in 2009 the property had installed ensembles into seven of the bedrooms and the owner at that time confirmed the property was to be occupied by his sister with two lodgers.² Those works are also identified in the Council's building control record and shown as completed in 2009.³ In any event, the undertaking of building works does not provide evidence of the continual use of ten self-contained flats.
9. The email correspondence between the Council and Extension Architecture refers to 10 self-contained flats. However, this correspondence is dated 2017 which is after the relevant date. In addition, it is in relation to an HMO licence and does not provide any evidence of occupation.
10. I have taken into consideration the letter from a former tenant of Flat 1, in which he confirms his occupation of this unit between April 2014 and April 2020. He also states that the building was rented to professional people on six months or one-year tenancy agreements. However, this letter is not in the

¹ LPA Statement of Case: Appendix 26.

² LPA Statement of Case: Appendix 4.

³ LPA Statement of Case: Appendix 24.

form of a statutory declaration, and it has not been corroborated by any documentary evidence, for example a copy of his tenancy agreement or invoice/rent payment details. The weight that can be attributed to this letter is therefore minimal.

11. The Council has provided evidence that casts doubt on the appellant's version of events. An inspection of the appeal premises in March 2018 alerted Council Officers to the possible use of the premises as a hotel. The property was at that time listed on a short-term booking website as 'Katty's House'. Whilst I note that the address for key collection is the adjoining property, No. 74, I am satisfied from the images displayed on screenshots from those websites that the units of accommodation available for booking at that time relate to the appeal premises I observed on my site visit.⁴ This evidence casts doubt on the appellant's assertion that from 30 September 2016 until the 30 September 2020 the ten units were in use and continually occupied as self-contained flats.
12. In conclusion, the evidence submitted by the appellant indicates that the property is likely to have been subdivided into 10 separate units for a number of years, although he has not provided exact details of when those conversion works took place. However, I have not been provided with any substantive evidence that would demonstrate that the self-contained units have been in continual use for the relevant period without interruption. Indeed, with the exception of the letter from a tenant of Flat 1, no details of the occupants of those flats have been provided.
13. The local planning authority has produced evidence to contradict and make the appellant's version of events less than probable. Consequently, the circumstances of this case are such that I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to conclude on the balance of probability that the use in question is immune from enforcement action.
14. I conclude that the use has not become lawful due to the passage of time. The appeal on ground (d) fails.

Human Rights

15. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified, the action is in accordance with the law and pursues a legitimate aim of regulating land use in the public interest, and is necessary and proportionate to the situation.

Conclusion

16. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeal should not succeed.

Elizabeth Pleasant

INSPECTOR

⁴ LPA Statement of Case: Appendix 19.