



Appeal Decision

Site visit made on 13 March 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2022

Appeal Ref: APP/T5150/C/20/3250419

91C Hay Lane, London NW9 0LL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Costas Sakkas against an enforcement notice issued by London Borough of Brent.
 - The notice was issued on 27 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from two to three flats.
 - The requirements of the notice are to:
 - 1) Cease the use of the premises as more than two flats;
 - 2) Restore the internal layout of the premises ensuring that the layout includes one flat on the ground floor and one flat on the first and second floors;
 - 3) Remove the kitchen on the second floor of the premises.
 - The period for compliance with the requirement is: 6 Months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. 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 Act have lapsed.
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Decision

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

Preliminary Matters

2. There is no dispute between the main parties that there are currently 3 flats within the property. There is no definition of the term 'dwellinghouse' in the Act but it has been held in settled case-law that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it, the facilities required for day-to-day private domestic existence. There is no dispute that each of these flats is now a dwellinghouse within this definition.
3. The allegation on the notice refers to the material change of use of the whole building by the increase in number of flats within it from 2 to 3. The word 'building' in s171B(2) of the Act must be read as defined in s336(1) of the same Act as including any part of a building, and flats are dwellinghouses for these purposes. The development alleged would normally therefore have the protection of the four year rule under the provisions of s171B(2).

The Appeal on ground (d)

4. The appeal on ground (d) is whether, at the date that the notice was issued, it was too late to take enforcement action against the unauthorised development. Given the above, it is necessary for the appellant to demonstrate on the balance of probabilities that the change of use as alleged took place and has continued for any period of 4 years prior to the date of the notice. They need to

show therefore that there were 3 flats in existence which had been occupied since 27 February 2016.

5. The Council also alleges that false representations had been made on behalf of the appellant about the third flat within the property. As such, it may also be necessary to consider whether that amounted to positive deception in matters integral to the planning process, which was directly intended to and did undermine the regular operation of the process. If that has been the case, the appellant may not be entitled to rely upon the time-limits for taking enforcement action.
6. The appellant has submitted a number of documents regarding a "flat", which is referred at times as '91c', the 'second floor flat' but also at that time just as 91 Hay Lane. Throughout the documentation, there is no complete consistency in terms of timing of when the use of '91c' within the address has occurred or what the nature of any residential use has been.
7. On 29 January 2016, correspondence from 'FCC Paragon' involved in letting the property refers to 'second floor flat 91 Hay Lane' as does the deposit certificate for the tenant 'MN'. A 12-month shorthold tenancy agreement with tenant 'MN' and another tenant 'AZ' commenced on 30 January 2016, again in relation to the 'second floor flat' (91 Hay Lane rather than 91c). The tenancy agreement is not confirmation that occupancy has taken place or that this was within self-contained accommodation on the second floor only without any sharing of facilities within the broader building. The tenancy and the terms including a rider to the contract, appear to be generic and do not help to provide any detail about what accommodation was provided for the tenants.
8. A letter of 5 March 2020 from the letting agent 'Howard Baker Estates' confirms that those tenants were at the property from 30 January 2016 to 28 February 2019. The agent states in a previous email dated 20 February 2020 that they were instructed in mid-December 2015 to rent out the "above property", that meaning therefore '91c'. These documents state that the tenants were 'MN' and 'AZ' and that they moved in on 30 January 2016. It is reasonable in the absence of any evidence to dispute these matters, that these tenants did occupy the property. Of note however is that reference to '91c' only is included rather than presenting any information about the wider building and how many other units were in existence. Also of significance is the lack of any document or plan accompanying any documents to explain what the accommodation comprised of when these tenants occupied the property.
9. The appellant refers to Council Tax registration and there are reference numbers with that information but all that I can conclude from what is presented in evidence is that there was 1 property on 30 September 2001 and 2 by 2 December 2013. For the appellant to demonstrate their case, they need to show that there have been 3 occupied dwellings for more than 4 years because that is what is alleged on the notice.
10. Some utility company information has also been provided including a British Gas letter dated 2 January 2016 and welcoming the occupier '91c' asking for the date of moving in, a meter reading and the date of that reading. This does not indicate that the flat was occupied or that it was ready for occupation on that date but it gives an indication that somebody had registered the property for a utility connection. Simply having a utility connection is not in itself an indication of what facilities were provided within the property or whether it was

occupied. A subsequent final electricity bill from 'Npower' is provided referring to a meter reading from 25 February 2019 which is just before a further tenancy agreement was signed for different tenants on 16 March 2019. It does indicate that there was a previous bill as well on 16 December 2018. This was addressed to tenant 'MN' and confirms that they were in occupation. However, it does not assist in filling the gaps in the appellant's evidence regarding the nature of the occupation and facilities that were provided over the relevant 4-year period.

11. A hip to gable roof extension and rear dormer window were constructed sometime before a previous enforcement notice was issued on 9 December 2014. That notice was also subject to an appeal. The inspector in that case was not considering any allegation that a flat had been incorporated within that roof-space. Even though the address on that decision is '91, 91a and 91b' that is not any clear indication that there were 3 flats at that time. This can just as easily indicate that No 91 may have been separated into 2 sub-addresses. That is the impression given by the photographs submitted by the Council showing 2 front doors within a recessed porch which by the time of the 2020 photographs (and the provided Google 'street-view' images dated 2018) had a single front-door installed in front of them.
12. The inspector at that time of the 2014 appeal decision was not considering the internal configuration or use of the property and this decision as such provided no indication of what the appellant is now trying to prove. The inspector's main issues clearly related only to the external impacts of the development that they were considering. There is no suggestion within that appeal decision that the inspector entered the property to look around inside and he may not have needed to given the main issues that he had identified. I am not provided with any indication of what the internal arrangement of the property was at the time of that previous appeal. The facts about what addresses the Planning Inspectorate corresponded with at that time is not significant particularly as I am not provided with any of the background documents from that time to provide a full picture of the circumstances.
13. In an email to the Council just before the service of the notice, the appellant refers to a note from the building control officer. It states that the premises having been converted into a flat although a copy of that note is not provided. The Council does not dispute that this note exists but there is no detail about what precisely existed at that time, how the premises as a whole were laid out and how they were being occupied.
14. On the other hand, on 6 October 2016 the Council visited the site due to allegations that an additional flat had been created within the building. Although access into the building was not possible, there were no external indications that there were 3 flats, for example, there were only 2 external front doors with addresses numbering '91a' and '91b' with no indication of '91c'. Two obvious addresses being sign-posted is consistent with the Council tax information from 2013 and other information. This doesn't help to show that a third flat existed in the property at this time.
15. After this visit the Council, on 7 October 2016, wrote to the appellant and his wife. A copy of the letter is provided with the Council's appeal statement. The subject of the letter is very clear in referring to "the alleged change of use of the loft of the premises to a flat" and to the address as 91C Hay Lane. The

letter goes on to explain that this is the subject of an enforcement investigation and that the officer needed to obtain access to the site in order to determine whether a breach of planning control had occurred. I am also provided with the response to this letter which is signed by Mrs P Sakka and dated 18 October 2016. I understand that Mrs P Sakka is the wife of the appellant and a person served with a copy of the notice.

16. The reply from Mrs P Sakka is very explicit in referring to the Council officer by name and to their letter of 7 October as well as stating that "91c does not exist, it is 91b". Furthermore, it refers to the only change being made to 91b being the reinstatement of the kitchen which in itself does not indicate that a flat has or has not been created. Mrs Sakka's response casts significant doubt about there being a third flat at the premises at that time. I consider that the letter is an indication of the appellant's account of what existed at that time and also a direct denial of what the Council's letter had clearly alleged. The letter concludes by appearing to put the onus on the Council to make a further response but is at best, with respect to what the appellant is trying to prove, ambiguous about precisely what existed at that time. This does not help to indicate that any residential occupation at that time was within a further dwellinghouse in a third flat.
17. Whilst the front door not being provided for the third flat '91c' until 2018 may simply be written off by the appellant as being personal choice, this together with what Mrs Sakka's letter states, indicates that there may not have been a third self-contained flat within the loft of the premises for the 4-year period prior to the notice being issued. It is not explained for instance how occupants of a third flat if it did exist as a self-contained entity, gained access. It also again indicates ambiguity at the heart of the appellant's case. If there had been residential occupation but in some other way rather than within a third dwellinghouse in the form I have defined it above, the 4 year period of immunity would not have been applicable.
18. The evidence is insufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the development as alleged began 4 years or more before the date the notice was issued. As such enforcement action appears to have been taken within the appropriate time-limit and the appeal on ground (d) must fail.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Andy Harwood

INSPECTOR