



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: 30 May 2022

Appeal Ref: APP/A5270/C/20/3256264

Land at 59 Bilton Road, Perivale, Middlesex UB6 7BA

- 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 Faisal Hassan against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 3 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the property to 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 connection from each self-contained flat
 3. Remove the bathroom and drainage connections from each self-contained flat
 4. Remove all internal doors, locks and partitions which facilitates the use of the property as self-contained flats; and
 5. Remove all resultant debris.
 - The period for compliance with the requirements is six 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. It is directed that the enforcement notice be varied by deleting the wording "each of the self-contained flats" from paragraphs 5.2 and 5.3 and substituting with "three of the self-contained flats". Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. I have dealt with another appeal on this site (APP/A5270/C/20/3255449). That appeal is the subject of a separate decision.

Enforcement Notice

3. Paragraphs 5.2 and 5.3 of the enforcement notice require the appellant to remove the kitchen, bathroom and drainage connections from each self-contained flat. I appreciate that when the use of the property ceases as self-contained flats, the existing kitchens and bathrooms may not be deemed suitable for the lawful use of the property. However, it seems to me that given the lawful use of the property, it would be excessive to require all the kitchens, bathrooms and their associated drainage connections to be removed. The Council accept that there would be no injustice if I were to allow the retention of one kitchen and bathroom with their respective drainage connections, and on that basis I shall vary the notice accordingly.

Appeal on ground (d)

4. 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)).
5. The main issue is whether the material change of use took place before the 3 June 2016 with the use as self-contained flats continuing for a least four years thereafter. The onus is on the appellant to prove his case and the test is on the balance of probability.
6. In summary, the appellant maintains that the property has been in use as four self-contained flats for more than ten years and has provided tenancy agreements for flats known as Flat A, B, C and D dating back to 2009. In addition, details of a planning application submitted for the premises in 2016 has been provided to support his case, together with a collection of correspondence including details from the electoral register, passport details of tenants, correspondence from the Council of the London Borough of Ealing and Electric and Gas Safety Records.
7. Dealing first with the Assured Short Hold Tenancy Agreements (TA). The TA are generally in the same format and signed by the landlord and tenant. They are not however witnessed. The TA also references letting details. For example, the TA for Flat B dated 15 September 2013 under the heading 'Letting' refers to "*Rent for Garden Flat Studio Room to Rent.*" However, the TA for Flat B dated 1 February 2014 refers to '*Rent for upstairs Studio Room to Rent*'. The letting details in all the TA for Flat C refer to '*Rent for Up Stairs Studio Room to Rent*', whilst for Flat D, the letting details refer to: '*Rent for Garden Flat Studio Room to Rent*' (TA, dated 7 April 2009); '*For Studio Room to Rent*' (TA, dated 1 June 2012); and '*Rent for Up Stairs Studio Room to Rent*', (TA, dated 1 July 2015). There is therefore an element of ambiguity in the identification of the rooms/flats which are being rented within the property, including whether the unit of occupation is a room or a self-contained flat.
8. Further doubt is cast on the veracity of the TA after considering the evidence provided to support a Planning Contravention Notice (PCN) completed by the appellant in 2014.¹ The appellant states in the PCN that the property is rented out to four unrelated tenants who share a kitchen. The PCN was also supported by the said TA for the current occupiers. However, the format and details of those agreements do not match those submitted in support of this appeal. The TA accompanying the PCN do not refer to Flats A, B, C and D. They are for the: First Floor at No 59 Bilton Road; Garden Flat at No 59; Room down stair at No 59; and Room in No 59. The amount of rent payable also differs from that shown in the TA accompanying this appeal for the same period. Moreover, only one of the tenants' names identified as occupying the premises in 2014 corresponds with the TA submitted to support this appeal for the same time period (TA for Flat D, occupiers 2012 – 2015). Those other tenants cited in the TA appended to the 2014 PCN were not resident at the premises at that time according to the TA submitted with this appeal.
9. It is the appellant's case that the property has been in continual use as self-contained flats for the last 10 years. However, it is clear from the Council's

¹ LPA Statement of Case, Appendix 10.

evidence, which is supported by the 2014 PCN completed by the appellant, that the use of the property fluctuated between 2009 and 2014. At some time, it was in use as a single dwelling (2011)², whilst at others it was in use as a House in Multiple Occupation where occupiers rented rooms and shared a kitchen.³ Given the ambiguities set out in the paragraphs above, and in the absence of any other supporting evidence, it is not clear how the property has been let over the period required to demonstrate immunity.

10. I have taken into account the plans which accompanied the planning application submitted in July 2016, including confirmation from architects instructed in Spring 2016 that the property was in use at that time as self-contained flats. However, the plans only demonstrate the conversion works, and like the Electric and Gas Safety Reports, are not a record of continuous occupancy. Similarly, the TA only demonstrate that a 12 month tenancy was taken out and the date that tenancy commenced. There are no records to confirm the length of the tenancy in the form of rent books, receipts or bank statements. Taken on their own, neither the TA nor details from the electoral register or passport details, provide evidence of continuous occupation by the tenants.
11. In addition, the Council's evidence in the form of council tax records show that until 2020 the main dwelling was banded as a single property with the appellant liable for charges.
12. 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.
13. I conclude that the use has not become lawful due to the passage of time. The appeal on ground (d) does not succeed.

Human Rights

14. 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

15. 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

² LPA Statement of Case, Appendix 5 & 9.

³ LPA Statement of Case, Appendix 3 & 8.