Appeal Decision

by B S Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2022

Appeal Ref: APP/P4605/C/21/3281422
58 High Street, Kings Heath, BIRMINGHAM, B14 7JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Wood Bridge Housing Ltd against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 21 July 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of the rear single storey extension from storage to residential in the approximate position marked in green on the attached plan and subdivision of the first and second floors to create 3 flats in the approximate location marked in blue on the attached plan.
- The requirements of the notice are: (i) cease the use of the rear ground floor extension for residential purposes and return to its approved use as ancillary storage; (ii) cease the use of the first and second floor as three self-contained flats and return the first and second floor to its permitted use as a single dwellinghouse.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be corrected by deleting requirements (i) and (ii) and replacing them with "(i) Cease the use of the rear ground floor extension for residential purposes; (ii) Cease the use of the first and second floor as self-contained flats and do not use it other than as a single dwelling house". Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. The appeal was originally made on grounds (b) and (f), although the facts given by the appellants on each ground related solely to 'the four year rule'. The appellants have subsequently amended their appeal to ground (d).

3. Turning to the requirements of the notice, whilst the appellants may resume the previous lawful use of the premises on compliance with the notice, a notice cannot require that the previous lawful use is *actively* carried out. Therefore, I shall correct the requirements by deleting such matters. The unintended consequence of a simple requirement to cease the use as three self-contained flats is that it could be complied with by using it as two (or four) such units and so I have clarified this. The corrections can be made without injustice to the parties.

The appeal on ground (d)

4. This ground is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. On

this ground, the onus is on the appellants to demonstrate, on the balance of probability, that the use in question commenced more than four years prior to the date of the notice, i.e. prior to 21 July 2017, and was continuous thereafter.

5. The appellants have provided no evidence whatsoever to substantiate their case. However, the Council has provided evidence which casts considerable doubt that the appellants' assertion could be true.

6. First, satellite images of April 2017 show that construction of the rear extension had not been commenced. Building Regulations approval was not granted until 10 May 2017 and thus there was an improbably short timescale for the works to be completed and residential occupation to have begun prior to the relevant date.

7. Second, information from the Council Tax Department indicates that on 31 May 2017, the property was gutted back to bare brickwork and boarded up. Whilst it was noted to be under renovation on 12 June, that would only have left some 5 weeks for it to be completed and for tenants to move in. However, an email from the appellants dated 2 October 2018 indicates the property was in use as '1 building' from 29 March 2017 and implies that new tenants of a sub-divided property could not have moved in until after 16 August 2017. The Council tax records for each of the 4 individual flats show that, in each case, the earliest recorded occupation was at least 4 months after 21 July 2017.

8. On the basis of the evidence before me, it is not possible for me to conclude, on the balance of probability, that the material change of use as alleged in the notice took place more than 4 years prior to the date of issue of the notice.

9. The appellants argue that the taking of enforcement action is a waste of taxpayers' money. However, it is for the Council to decide whether it is expedient to take such action and it has provided substantial reasoning in part 4 of the notice to justify taking such action.

10. I conclude that the appeal on ground (d) must fail and I shall uphold the notice.

B S Rogers

INSPECTOR