



Appeal Decisions

Site visit made on 20 June 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2022

Appeal A: APP/Y5420/C/21/3288749 **35 Farningham Road, London N17 0PP**

- 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 Hersh Sternlicht of Palmview Estates Ltd against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 1 November 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use to six self-contained flats.
 - The requirements of the notice are: 1. Cease the use of the property 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. 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 the grounds set out in section 174(2)(b), (c), (d) and (f) 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 as amended have lapsed.
-

Appeal B: APP/Y5420/X/20/3265652

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The application Ref HGY/2020/1569, dated 3 June 2020, was refused by notice dated 31 July 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: Six self-contained flats.
-

Summary of Decisions

Appeal A

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

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The parties opted for the appeals to be determined by means of written representations and did not identify injustice that would otherwise arise. I am content to determine the appeals on the written evidence that is already before me, and do not consider that injustice would arise.
4. The appellant submitted information to the Inspectorate via a link and was advised it could not be opened and to submit this in a different format. I have therefore determined the appeals on the basis of the evidence before me; being that submitted in the appropriate format¹ and by the deadlines given to both parties and therefore accepted by the Inspectorate.
5. The appellant, or a representative on his behalf, did not attend my scheduled site visit. On his enforcement appeal form, the appellant did not consider it essential for me to enter the site. There are also floorplans already before me. Accordingly, injustice to the parties does not arise from an internal site inspection having not been undertaken.

Appeal A – The ground (b) and (c) appeals

6. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
7. The appellant contends that the flats have been used for more than 4 years and so the breach alleged by the Council is not applicable. However, that is a matter for the ground (d) appeal and refusal to certificate, which I shall subsequently consider.
8. The appellant therefore accepts there are 6 flats within the property, and his case is only that they have acquired lawfulness through the passage of time. Accordingly, what has been alleged, namely a material change of use to 6 flats, has occurred as a matter of fact.
9. There is then very little evidence before me to demonstrate on the balance of probabilities that the use of the property as 6 flats does not constitute development, that planning permission has been granted or the use is a form of permitted development.
10. The appellant has therefore misunderstood the scope of a ground (b) and (c) appeal and his case should more appropriately be considered on the ground (d) appeal and refusal to certificate, as I shall do.
11. The appeals on ground (b) and (c) therefore fail.

Appeals A and B – The ground (d) appeal and refusal to certificate

12. In matters such as this the onus is on the appellant to demonstrate his case on the balance of probabilities. The use of each of the six flats must therefore

¹ As detailed online, Planning Inspectorate Procedural Guide: Planning appeals - England

have subsisted for a continuous period of 4 years prior to the issue of the notice or date of the appeal application. These dates are 1 November 2021 and 3 June 2020 respectively. Those uses will need to have subsisted so that at any time during a continuous four-year period the Council could have taken enforcement action. My assessment is therefore very fact specific, based upon the evidence before me.

13. The appellant has provided a tenancy agreement for each flat (2 for flat 6). However, none of those provided demonstrate on the balance of probabilities the use of a flat for a continuous period of 4 years, because they only relate to significantly shorter periods. Moreover, tenancy agreements in themselves do not evidence the actual period of occupancy that subsequently materialised, only that a tenancy was entered into on a given date.
14. Landlord statements have also been provided; however, these only relate to the period between February 2018 to February 2020 and so do not demonstrate a 4-year period of continuous use of each flat.
15. The appellant's application form for lawfulness then declares the use began on 19 February 2008. This is however contradicted by an application determined in 2013 for the change of use of the property from a dwelling to a House in Multiple Occupation (HMO)². This therefore casts significant doubt in my mind concerning the appellants version of events.
16. The appellant asserts that there is full evidence including many tenants giving affidavits, as well as lease agreements and rent statements covering the full 4 years. However, the onus was on the appellant to provide this evidence for the purposes of these appeals, if it does exist, and he has failed to do so³.
17. The Council acknowledges that there is evidence the 6 flats have been listed on the Council Tax valuation list since September 2013. This however does not demonstrate on the balance of probabilities that there has been their actual use as self-contained flats, or the continuity of any use. I therefore afford these records very limited weight.
18. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate and to demonstrate that it was too late to take enforcement action. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities. The Council can therefore take enforcement action against the use, as it has done so.
19. The appeals on ground (d) and against the refusal to certificate therefore fail.

Appeal A - The ground (f) appeal

20. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.

² Council ref HGY/2013/2068

³ See also Preliminary Matters

21. The appellant contends that the requirements of the notice relate to points that either do not exist, and, there is no point in turning the property back into one house as it should be permitted for use as an HMO.
22. The appellant then provides very little evidence as to which of the requirements relate to matters that do not exist, and a site visit would unlikely have assisted me in determining, for example, the number of utility supplies in the building. If there is only one supply, the appellant will be able to demonstrate this to the Council as part of its processes to ensure compliance with the notice and so injustice does not arise.
23. The requirements of the notice then go no further than requiring the removal of the additional kitchens and other fixtures and fittings that facilitate the unauthorised use of the property as 6 flats. It does not stymie or prohibit the use as an HMO, should that be the previous lawful use of the property.
24. As there are no other lesser requirements proposed before me, and the appellant accepts the additional kitchen facilities should be removed, the appeal on ground (f) therefore fails.

Overall Conclusion

25. For the reasons given above I conclude that Appeal A should not succeed. I shall therefore uphold the enforcement notice.
26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that Appeal B should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decisions

Appeal A

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

Appeal B

28. The appeal is dismissed.

Paul T Hocking

INSPECTOR