



Appeal Decision

Site visit made on 7 June 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Appeal Ref: APP/A5270/C/21/3283496

93 York Road, Acton, London W3 6TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mohammed Ali against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 18 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to 10 self-contained studio flats and the erection of a part single, part two storey rear extension.
 - The requirements of the notice are to:
 1. Cease the use of the Property as flats
 2. Remove all kitchen facilities and associated drainage connection and water connection integral to, and facilitating the material change of use
 3. Remove all bathroom facilities and associated drainage connection and water connection integral to, and facilitating the material change of use
 4. Remove all fixtures, fittings, doors and internal dividing walls integral to, and facilitating the material change of use
 5. Demolish the part single, part two storey rear extension and restore the external walls of the building to its former state using materials to match the existing building
 6. Remove all resultant debris
 - The periods for compliance with the requirements is: Six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - In section 4 of the notice, delete '10' and substitute '4' so that it reads 'The alleged breach of planning control has occurred within the last 4 years with respect of the operational development and 4 years with respect of the material change of use'.
 - In section 5 of the notice, delete 'six' and substitute 'nine' so that it reads 'You are required to complete these actions within nine months from the date this notice takes effect.'
2. Subject to the correction and variation above, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appellant asserts that the existing use is that of 7 self-contained flats and not 10 as alleged and in this regard, has provided a layout showing flats labelled A to G. The Council has suggested such a matter could be dealt with as a hidden ground (b) appeal, which is made on the basis that the matters

alleged in the notice have not occurred as a matter of fact. Under a ground (b) appeal, what matters is whether the alleged breach had occurred by the time the notice had been issued.

4. From the Council's evidence, in particular notes of a site visit made on 25 March 2021 and responses submitted in response to a Planning Contravention Notice (PCN) it appears likely that the premises had been converted to 10 flats by the time the notice had been issued. Indeed, the appellant confirms in their final comments that three additional flats, resulting in a total of 10, came into existence on 1 August 2020. The appellant's argument that 7 of the units were in use as self-contained residential units at least 4 years before the issuing of the enforcement notice is a matter which should be dealt with under ground (d).

Ground (d)

5. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Although the notice states that the time limit for the taking of enforcement action was 10 years with respect to the material change of use, the Council confirms that since the premises comprises flats, the relevant time period is four years¹. Since the appellant has advanced their case under ground (d) on the basis of four years, I consider there would be no injustice in correcting the notice to refer to four years.
6. The main thrust of the appellant's case under ground (d) is that 7 of the units were in use as self-contained residential units at least 4 years before the issuing of the enforcement notice. The main issue is, therefore, whether the appellant can show on the balance of probabilities that the material change of use of the building began on or before 18 August 2017² and, if so, whether it continued without significant interruption for at least 4 years thereafter.
7. For the avoidance of doubt, I shall consider the lawfulness of each unit of accommodation. Were I to find any one of the units, but not all, has been continuously occupied for at least four years prior to the issue of the enforcement notice, there may be partial success on ground (d), so that the enforcement notice is corrected rather than quashed.
8. As set out in Planning Practice Guidance (PPG), the appellant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
9. The appellant asserts that the flats have been rented out since late 2010 following refurbishment of the entire property. Flats A-E are identified as being rented out to tenants on housing benefit and flats F and G are identified as being rented to private tenants. The appellant states that the records should be verified with Ealing Council housing benefit department, however, in an appeal under ground (d), the burden of proof is on the appellant.

¹ S171B(2) of the Act

² Namely 4 years prior to the date of issue of the notice.

10. The appellant has provided a layout plan of the premises at Appendix 19 of their Statement of Case, which shows Flat A, a one bedroom unit at basement level, three one bedroom units, labelled B, C and G³ at ground floor level, two one bedroom units, labelled F and D at first floor level, and a one bedroom unit with living room and separately accessed bathroom, labelled Flat E, at second floor level.
11. At the time of my visit, I saw that the layout of the ground floor has changed, with the addition of two flats to the rear, the rearrangement of the unit identified as Flat G and the creation of an additional one bedroom unit at the first floor level.
12. A Council Tax inspection carried out in 2010 states the property was split into 5 flats, Flat A (basement), Flat B (ground floor), Flat C (ground floor), Flat D (first floor) and Flat E (top floor). For Council Tax purposes, Flats A (identified as BST), B (identified as ground floor), C (identified as ground floor) and E (identified as top floor) have been banded as flats with effect from 5 August 2010. Flats D (identified as first floor) and F (identified as first floor) were banded with effect from 18 November 2019, though a previous banding for unit D was deleted. No HMRC records exist for Flat G.
13. The appellant has provided a document entitled 'Valuation Office Agency – Council Tax Manual', which, it is asserted, shows the units would be self-contained flats. However, in my experience, HMOs with adapted letting rooms, even where some facilities are shared, may be separately banded for Council tax purposes. Consequently, the registration is not, of itself determinative. Furthermore, the Council tax information does not show how the units of accommodation were laid out. Although Council Tax banding may change for a number of different reasons, the changes in banding point towards the layout of the property changing.
14. The Council has provided a plan which was submitted in support of a HMO license application in 2018, which shows a one bedroom unit at basement floor, labelled Flat A, a two bedroom unit labelled Flat C and one bedroom unit labelled Flat B at ground floor level, a one bedroom unit, Flat D, at first floor level and a two bedroom unit at second floor level, Flat E. The licence application itself also confirms there were 5 units of accommodation, labelled A to E.
15. In support of his case, the appellant has provided a series of Assured Shorthold Tenancy Agreements (ASTs). The documents provided are each for the year 2016 and are not complete ASTs, only showing the first and last pages. The ASTs only show that in 2016, the person identified on the respective document was entitled to occupy the premises and do not show how the premises was laid out, or whether the units were, at the time of issue, self-contained. Moreover, the ASTs do not show continuous use.
16. Electoral roll information for 2015 identifies Flat B and rooms 1 to 4 at the property. Elector details are provided for Flat B and Room 2 only. The remaining rooms do not include elector details, suggesting the rooms were not occupied at the time. The electoral roll information points towards there only being 5 units in 2015 and the premises comprising, at least in part, an HMO.

³ Described as Flat C in AutoCadSHX Text

17. The elector details on the electoral roll information are inconsistent with the names given on the ASTs and the HMO application form. The appellant suggests the discrepancy between the names on the HMO application form and the electoral register was an error. However, even if I were to accept this, there remains discrepancy between the number of units asserted to have existed at that time.
18. Given the above, it seems highly likely that the layout of the premises has changed at least twice between the submission of the licence application and the enforcement notice. In particular, it seems likely that the layouts of the ground floor and first floor have changed, with units being subdivided.
19. With respect to 'Flat A', the appellant has provided a vehicle tax reminder letter, bank statements and a Benefit Decision Notice addressed to the occupant at 93A (or Flat A) York Road and a statutory declaration signed by the occupant, which states that they have occupied the premises 'as a dwelling place and to continue lawful usage of the said premises under the same category'. However, the evidence provided does not describe how the unit has been occupied, whether the occupant had access to other facilities within the premises or whether the layout of the premises has changed.
20. The tenant is identified as occupying the lower ground front, Flat A, in the licence application, with the start date of tenancy identified as 1 February 2012. A statutory declaration, signed by the occupant of Flat A, states that they, together with their family, occupied the premises from 15 October 2013. Such inconsistency undermines the accuracy of the statutory declaration.
21. The occupant makes reference to Flats D, F and G and states that 'mostly during my occupancy of the said premises other premise (Flats D, F & G) existed and was occupied by respective tenants...'. However, no plan has been appended to the statutory declaration. Furthermore, as set out above, evidence provided by the Council points towards the layout of the building changing over the period of their occupancy, which is not detailed within the statutory declaration.
22. With respect to Flat B, it seems likely its location within the property has changed. Within the HMO licence application plan, Flat B is shown on the ground floor to the rear of the property whereas within the 'existing plan' submitted by the appellant it is shown to the front of the ground floor. The licence application identifies the occupant of Flat B and states that their tenancy started on 1 March 2012, however, electoral roll information identifies a different name to that provided on the AST and licence application.
23. With respect to Flat C, given the difference between the licence application plan and the 'existing plan', it seems likely it has been subdivided into two flats (Flat B and Flat C). With respect to Flat D, it also seems likely it has been subdivided into two flats (Flat D and Flat F).
24. With respect to Flat E, a statutory declaration signed by the occupant states they were a resident of 'Flat D' from 19 June 2010 until 12 June 2021. Within the body of the statutory declaration, the witness makes reference to 'Flat E' second floor. The licence application identifies the same occupant of Flat E, with a start date of tenancy as 1 October 2010. While this may be an error, documentation provided by the Council shows that Flat E was empty on 20

September 2010, contradicting the evidence provided by the witness in the statutory declaration.

25. With respect to Flat G, it seems likely it has been subdivided to form an additional flat to the rear and has previously been identified as 'Flat B' on the licence application.
26. The statutory declarations do not explain how the respective occupants used the premises, nor do they show that such occupation was continuous. The inconsistencies with the licence application and electoral roll information significantly undermine the accuracy of the statutory declarations. Moreover, they do not include reference to a plan showing which part of the building the respective witness is referring to. This is a significant omission given the likelihood that the layout has changed over the years. The statutory declarations provided are very similar style and format and given the above are, in my view, imprecise and ambiguous. Consequently, I afford them very limited weight.
27. The appellant has not explained how the layout of the property has changed over time. While I agree it is more than likely the premises has been occupied as residential accommodation in some way, it has not been demonstrated, on the balance of probabilities that any of the flats have occupied and used as self-contained units continuously for a period of at least four years. Consequently, the appeal under ground (d) must fail.

Ground (f)

28. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is clear from the requirements and the reasons for taking enforcement action that the purpose of the notice is to remedy the breach.
29. The appellant suggests that if the lawful use of the building is a C3 use, it would be excessive to require all kitchen and bathroom facilities to be removed. However, the appellant has not demonstrated that the lawful use of the building is a C3 dwelling. As set out above, it appears that the layout of the premises has changed over time. Although the original dwelling would have contained a kitchen and bathroom, from my inspection of the site, I consider it highly likely that the kitchens and bathrooms within the property were installed to facilitate the material change of use. The requirements to remove these items, including fixtures, fittings, doors and internal dividing walls, all relate to those which are integral to and facilitating the material change of use. Requiring their removal is therefore not excessive.
30. The appellant suggests it would be excessive to require any lawful flats to have their kitchens and bathrooms removed as fixtures, fittings, doors and internal dividing walls. However, as set out above, I have found the flats are not lawful and the appeal under ground (d) has failed.
31. Planning permission reference 214698FUL for the change of use of the property into a large House in Multiple Occupation (HMO) comprising nine bedrooms; part single and part two storey rear extension; internal and external

alterations; and provision of associated cycle and refuse storage (part retrospective application) was approved on 6 October 2021. The Council suggests varying the notice to include a requirement to bring the unauthorised development into full compliance with the permission, however, given the provisions of section 180⁴ of the Act, I consider this is unnecessary.

32. Thus, for the reasons given above, the appeal under ground (f) must fail.

Ground (g)

33. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant states that the time identified in the notice is too short to give adequate notice to tenants, as well as source and commission a reputable builder to carry out the works required. However, as pointed out by the Council, no detail of the notice period applicable to current occupiers has been provided. Although the appellant has provided a series of ASTs, these are all dated 2016 and are incomplete documents.

34. The appellant asserts that, in the event they wish to undertake permission 21498FUL, it would take at least 12 months to complete. While I consider it unlikely that such works would take 12 months, some of the occupants of the existing units may need to vacate the premises while the works are being carried out. As such, I consider it would be reasonable to increase the compliance period to 9 months, to enable occupants to relocate and for the works to be carried out.

35. Thus, the appeal under ground (g) succeeds to that extent.

Conclusion

36. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR

⁴ Section 180 sets out that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.