The Planning Inspectorate

Appeal Decisions

Site visit made on 14 June 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Appeal A Ref: APP/A5270/C/20/3259612
Appeal B Ref: APP/A5270/C/20/3259613
2 Gladstone Cottages, Wimborne Avenue, SOUTHALL, Middlesex UB2 4HD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Sunny Soni (Appeal A) and Mrs Rujveer Kaur Soni (Appeal B) against an enforcement notice issued by London Borough of Ealing.
- The notice was issued on 24 August 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change in use of the rear of the ground floor of the premises to a self-contained flat.
- The requirements of the notice are to:
  1. Cease the use of the rear of the ground floor as a self-contained flat;
  2. Remove the kitchen and drainage connections from the self-contained flat;
  3. Remove the shower and drainage connections from the self-contained flat;
  4. Remove all internal partitions, locks and doors that facilitate the use of the self- contained flat; and
  5. Remove all resultant debris.
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision

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

Procedural Matter

2. A site visit was arranged for 3.15pm on Tuesday 14 June 2022 and the appellants were informed about this on 24 May 2022. The letter set out that it was important that the appellants make arrangements for the Inspector to be met at the site to enable the inspection to be made. If the appellants could not attend, then they were to arrange for someone else to take their place and if that was not possible, they were to inform the Planning Inspectorate.

3. On the day of the site visit, neither of the appellants met the Inspector at the site and the Inspector had not been advised of any other arrangements. The Inspector had been met at the site by two representatives from the Council who knocked at the door of the appeal property and who spoke to a lady from the adjoining office building when there was no reply. She advised that the occupier of the flat was at work and would not return until after 5.00pm. She subsequently managed to speak to the letting agent, who spoke to the Council representatives, but he was unaware of the site visit and could not assist. As there was also no response to the phone call made to the appellants when access could not be achieved, the Inspector decided it would be inappropriate to proceed any further and the site visit was aborted.

4. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit'. As there are no other grounds of appeal other than a legal ground, the appeal has therefore been decided without a site visit.

Background

5. No 2 Gladstone Cottages comprises a modest two storey semi-detached period building. The appeal site is situated at ground level behind a small room used as an office, which faces onto the street. There are two adjoining entrance doors on the front elevation. One opens directly into the office and the other opens onto a shared hallway where there are doors to the appeal site and the upstairs flat. The ground floor flat comprises a lounge, kitchen, WC and a bedroom with a shower, according to a Council inspection made in 2017.

The ground (d) appeal

6. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellants. As such, they need to show, on the balance of probabilities, that the use of part of the premises as a self-contained flat on the ground floor began more than four years before the notice was issued. In addition, that the use continued such that at any time during the four year period the Council could have taken enforcement action against the use. The relevant date is 24 August 2016 as the notice is dated 24 August 2020.

The appellants' case

7. The appellants state that they bought the premises on 21 August 2016 and on 23 August 2016 Tenant A signed a three month tenancy agreement. The original entrance to the flat was shared with the office. It was only at a later unspecified date that a separate entrance was created from the street. Tenants B and C signed their tenancy agreement on 2 December 2016, initially for one year, but they have continued to occupy the flat ever since until one of them passed away recently.

The Council's case

8. The premises first came to the attention of the Council on 5 October 2016, when a complaint was made that a second entrance door from the street was being installed. A Planning Enforcement Officer visited and took a photograph of the new door on 24 October 2016 but did not gain access to the premises.

9. On 11 January 2017 the Council's Database and Valuation Team notified Planning Enforcement that the premises had been subdivided into a commercial unit, a ground floor flat at the rear and a first floor flat. They had inspected the inside of the ground floor rear flat on 4 January 2017 and had passed on those details to Planning Enforcement. These details comprised a hand-drawn layout of the flat and the names of the occupiers, namely Tenants B and C, who stated their occupancy began on 2 December 2016.

10. A Planning Enforcement Officer visited the flat on 11 August 2020 and took photographs of the rooms. These show the layout as seen by the Database and Valuation Officer. The Council also submits Valuation Office Agency entries

which show that the flat was given a Band A for the purpose of paying Council tax on 3 November 2016. In addition, Council tax records show that Mr Soni was liable for Council tax from 3 November 2016 until 1 December 2016. Thereafter, those listed are Tenants B and C.

11. Extracts from the electoral register show that electors were only registered for 2 Gladstone Cottages from 2017. However, there is no differentiation between the ground floor flat or the first floor flat in the register. Tenants B and C only appear on the register in 2018 and 2019 with Tenant B being shown as deleted in May 2020.

Assessment

12. There is evidence to support that the appellants bought the property, listed as 2 Gladstone Cottages, in August 2016. The Council's Land Registry extract shows this occurred on the 22 not the 21 August, as stated by the appellants. The Council also provide an extract of a Google Street View image dated April 2016, which shows that there was one entrance into 2 Gladstone Cottages. The entrance door is in the middle of the shop front and appears to be the only door into the building. At the aborted site visit I saw there was no independent access to the rear of the building from a side road as this is prevented by intervening properties.

13. Judging by the business signs on the premises in the April 2016 image, the ground floor was occupied by a firm of solicitors but the first floor was occupied by another business. Details of this company are advertised within the first floor window and on one of the ground floor windows. Both businesses could have vacated the site before the building was sold to the appellants and flats could have been installed at ground and 1st floor level, especially as the appellants state there was a "kitchen and bathroom" on the ground floor when they purchased the building.

14. However, this does not appear to have been the case for two reasons. Firstly, the Council's photograph taken in October 2016, following a complaint that a new door was being installed, shows that the same firm of solicitors appeared to still be in occupation from the April 2016 image. Secondly, it was not until October 2016 that an independent entrance from the street was created by the appellants to access the ground floor flat. Between August and October 2016 Tenant A would have had to walk through the solicitors' office to gain access to the flat. I find it unlikely that this would have been acceptable to the solicitors from a security point of view.

15. The Council have provided a copy of a commercial tenancy agreement entered into on 3 November 2016 by an estate agency business to use the office within the building. It appears from the Council's Google Street View image dated July 2017, which shows an estate agency in occupation, that this tenancy agreement was acted upon. There is no information from the appellants though as to when the solicitors vacated the building. It could have been after the flats were created, when they no longer had access to a kitchen or a WC, but the appellants provide no substantiated evidence as to either when the flats were laid out or that they existed in August 2016.

16. Tenant A's agreement was signed just one day after the appellants' purchased the property. This is an extremely short time frame and there is no explanation provided to show how the property was advertised to obtain

Tenant A. It is possible that Tenant A was a friend who moved in but it is not clear. Although the tenancy agreement is signed by the landlord, the letting agent and the tenant there is no evidence to show that Tenant A existed, such as a passport photograph or bank statements to show the receipt of rent from them.

17. I find it is more likely than not that the appellants subdivided the premises after purchase. It is probable that a shower cubicle was installed in the room to be used as a bedroom, as there was no space in the WC. The "kitchen and bathroom" stated to be present by the appellants in August 2016, were probably the facilities used by the former office staff.

18. Tenants B and C sign their tenancy agreement on 2 December 2016 and their occupation was seen by Council officers in January 2017 and August 2020. Their names also appear on the electoral roll in 2018-2019 and 2020 and their names are listed as the liable parties for Council tax from 2 December 2016. There is no evidence that Tenants B and C paid their Council tax dues, or indeed rent throughout their period of occupation, which would support a case for continuous residential use. However, having regard to the totality of the evidence, I find there has been continuous residential occupation for a period of three years and nine months prior to the issue of the notice.

19. I am not persuaded though that a residential use began more than four years before the notice was issued and continued without material interruption for a period of four years thereafter. This is because the appellants' evidence is not sufficiently precise and unambiguous for the reasons given. The appellants' own evidence does not need to be corroborated by independent evidence to be accepted but the appellants' own evidence appears to be inconsistent with the Council's evidence. The appeal on ground (d) therefore fails.

Conclusion

20. For the reasons given above, I consider that the appeal should not succeed.

D Fleming

INSPECTOR