

Appeal Decision

Site visit made on 3 August 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

APP/T5150/C/21/3288217

37 Uxendon Crescent, Wembley HA9 9TW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Brent Council.
- The appeal was made by Ms Vanita Patel.
- The notice was issued on 25 October 2021; reference No. E/20/0473.
- The breach of planning control was: Without planning permission, the material change of use of the premises to two flats.
- The requirements of the notice are:
 - Step 1 Permanently cease the use of the premises as flats.
 - Step 2 Remove the internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, except the ONE on the ground floor.
 - Step 3 Restore the internal configuration to the original layout before the unauthorised change of use took place.
- The period for compliance with the requirements is 6 months.
- The appeal was made on ground (d) as set out in the amended Act.

Summary of decision: The enforcement notice is upheld.

Costs application

1. The London Borough of Brent Council make an application for a full award of costs against the Appellant, Ms Vanita Patel. That is the subject of a separate decision.

Appeal property

2. The appeal property, No. 37 Uxendon Crescent, Wembley, is an extended 2 storey semi-detached house that has been divided into 2 self-contained residential flats, one on the ground floor, the other occupying the first floor and the roof space.

Appellant's case

3. Ms Vanita Patel, co-owner of the property, appealed against the enforcement notice on ground (d) only, asserting that No. 37 had been divided into 2 self-contained flats more than 4 years before the Council issued the notice. The change of use of No. 37 to 2 residential flats was therefore immune from enforcement action. Ms Patel had submitted numerous documents pertaining to each flat, including tenancy agreements,

gas and water bills and council tax correspondence, which she said, supported the claim of a long standing change of use of the house to 2 flats.

Council's case

4. A planning contravention notice dated 11 November 2020 was served by the Council alleging the change of use of the premises at No. 37 to flats. In response to that notice, Ms Vanita Patel said she was the joint freeholder owner with Deepa Kanji Jesani. She had declared that the property was changed on 1 August 2013 from a single dwelling to a multi dwelling and that it was being used and occupied as a ground floor flat and a first floor flat. D Kanji Jesani and Ms V Patel of 39 Uxendon Crescent applied to the Council for a certificate of lawfulness for the existing use of No. 37 as 2 flats. That was refused on 14 July 2021.
5. The Council were far from satisfied that Ms Patel had discharged the burden of proof upon her to show that the change of use of No. 37 to 2 self-contained flats had occurred more than 4 years before the enforcement notice was issued and that they had been continuously occupied during that period.
6. The Appellant's evidence included false documents, misleading suggestions and glaring omissions. She had not met the burden to show that the flats had become lawful.
7. Even if it could have been shown that the 2 flats were in continuous use, as such, for more than 4 years, the Appellant would be disqualified from the benefit of s.171 of the Act as there had been positive deception directly intended to undermine the planning process. The wrong-doer would have profited directly from the deception if the use during the 4 year period were to enable the Appellant to resist subsequent enforcement.

Inspector's considerations

8. S.174(2)(d) of the Act says that, at the date 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. The 4 year rule in s.171B(2) applies to enforcement notices concerned with a material change of use of a single dwellinghouse to flats. The burden of proof is on the appellant in an enforcement appeal to make their case in respect of this legal ground. The case of *Nelsovil v SSE* [1962] 13 P&CR 151 is authority for that position.
9. I agree with the Council in this instance that, far from meeting that burden, the evidence to support the Appellant's ground (d) appeal is deficient, contradictory and unconvincing. For example, 2 tenancy agreements were submitted, but only one dwelling was registered with the valuation office and only one bill paid.
10. A tenancy agreement was submitted for a household of 5 to occupy the first floor flat for a rent of £900 per month from 1/8/18. Yet a housing benefit award, to a person occupying the whole of the single dwellinghouse, for £415.38 per week from 1/4/21 was shown. That was twice the rate of the

tenancy agreement evidenced for the same person occupying a flat within the appeal premises at £900 per month until 31/7/21. No services bills for separate flats were shown. No sworn statements from tenants of separate flats regarding their occupation of No. 37 were submitted. Most, if not all of the Appellant's documented evidence was irrelevant or unhelpful to her case.

11. It was held in *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 that a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. Insufficient, inadequate and contradictory evidence was submitted in this ground (d) appeal. It failed to demonstrate that, on the balance of probability, the property had been occupied as 2 separate flats for the requisite period of 4 years. The appeal on ground (d) fails.

FORMAL DECISION

12. The appeal fails. The enforcement notice is upheld.

John Whalley

INSPECTOR