



Appeal Decision

No Site Visit

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/U5930/C/21/3279805

98 Belmont Park Road, London E10 6AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Arfan Aslam against an enforcement notice issued by the Council for the London Borough of Waltham Forest.
- The notice, numbered 500296, was issued on 23 June 2021.
- The breach of planning control as alleged in the notice is without planning permission:
 1. The material change of use of the Land from single family dwellinghouse (Use Class C3) to, two self-contained residential flats (Use Class C3).
 2. The associated building works to convert the Land from a single family dwellinghouse to two self-contained flats.
- The requirements of the notice are:
 1. Cease the use of the Land as two self-contained flats.
 2. Remove all means of sub-division from the Land and containment works, including partition walls and internal door divisions that facilitate the use of the Land as two self-contained flats.
 3. Remove all additional gas meters from the Land that facilitate the use of the Land as two self-contained flats so that only one remains.
 4. Remove all additional boilers from the Land that facilitate the use of the Land as two self-contained flats so that only one remains.
 5. Remove all additional kitchens, sinks, cookers, washing machines, fridge freezers and other kitchen accessories, fixtures and fittings from the Land that facilitate the use of the Land as two self-contained flats so that only one remains.
 6. Remove all additional showers and toilets, sinks and associated fittings and fixtures from the Land that facilitate the use of the Land as two self-contained flats so that only one remains.
 7. Remove all resulting materials, rubble and general detritus from the Land following compliance with requirements 1 – 6 resulting from the works.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in sections 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld with variations in the terms set out in the Formal Decision below.

Matters concerning the notice

1. The appellant has provided evidence suggesting that the property was not in use as a single family dwellinghouse (Use Class C3) before the alleged material change of use occurred. There is no need for the former use to be specified in the allegation and I will vary the notice accordingly.
2. The purpose of the notice is to remedy the breach of planning control. For that to occur, the use as self-contained flats would need to cease. Requiring the use as 'two' self-contained flats to cease implies that use as some other number of self-contained flats would achieve compliance without fully addressing the breach of planning control. The word 'two' is also superfluous in steps 2, 3 and

4. It is clear from the evidence that the appeal parties understand that it is the use of the property as anything more than a single dwellinghouse that needs to cease. No injustice would arise from the deletion of the word 'two' from Steps 1, 2, 3 and 4 of the requirements. I shall vary the notice accordingly.
3. Steps 5 and 6 of the requirements aim to secure the removal of additional kitchen and additional bath/shower room facilities. Their wording is however unclear as to whether it is only one kitchen, one bath/shower room, one sink, one toilet or one flat that can remain. Step 7 contains duplication and the words 'resulting from the works' are superfluous. The remaining 'resulting', in Step 7, will be replaced with the word 'resultant'. The wording of these Steps can be clarified without making the steps more onerous, and I shall vary the notice accordingly.

Preliminary matters

4. Final comments were received from the appellant after the relevant date had passed. Those final comments were returned before I was appointed to determine this appeal.
5. The pre-arranged site visit on 9 August 2022 was aborted. Upon reflection, given the written submissions and grounds of appeal pleaded, the appellant and Council agreed that a site visit was unnecessary. No injustice would arise from a site visit not being undertaken and I have proceeded on that basis.

Appeal on ground (d)

6. For the appeal to succeed on this ground the appellant needs to show that, at the date the notice was issued, no enforcement action could be taken in respect of the matters alleged. The relevant test is the balance of probability. The relevant period of immunity is 4 years, beginning with the date of the breach¹. Any 4-year period is relevant. The notice was issued on 23 June 2021 and the breach of planning control would need to have occurred on or before 23 June 2017, the material date.
7. The quote, invoices and receipts submitted, dating between 29 March 2018 to 2 July 2018, relate to works to be carried out, the purchase of paint, manhole and bathroom fixtures and fittings. Other than in respect of the works to be carried out, there is nothing to indicate that these invoices and receipts relate to the appeal property. Gas safety certificates, dated November 2018, have been submitted for the self-contained flats. These only show that there were 2 flats at the date of the gas safety inspection. All these documents are dated after the material date and do not show continuous occupation of the self-contained flats for any period of time.
8. The statement of truth provided by Iram Ahmed states that the property was used by Forest Care Services between December 2006 and April 2008. While their described occupation of the property may not have been as a single family dwellinghouse, it would not represent a use as 2 self-contained flats either. This evidence does not therefore show that the property has been continuously occupied for 4 years or more as 2 self-contained flats.
9. The statement of truth provided by Huang Zhi Xiong confirms that he lived at the property between April 2008 and June 2013. During his occupation he

¹ S171B(1) and (2) of the Town and Country Planning Act 1990 as amended

claims to have carried out alterations to the property and sublet the upstairs accommodation. He does not confirm when the works to separate the property occurred. Furthermore, no details of what facilities for day-to-day domestic existence were available above ground floor level are provided. While this evidence covers an approximately 5-year period, given the absence of a date when the sub-division of the property began and the lack of detail relating to the facilities available above ground level, it is imprecise and ambiguous.

10. After Huang Zhi Xiong's departure from the property, the appellant should be able to provide documentation to corroborate occupation of the property as self-contained flats. Such documentation could have included, for example, occupiers' names, dates of their occupation, installation details for boilers and utility meters, sworn statements from occupiers or former occupiers. No such documentation has however been provided.
11. The Council claims that the property is registered as a single dwelling for Council Tax purposes, although no documentary evidence of this is provided. The Council has provided a copy of an 'Application for a Private Rented Property Licence', dated 14 June 2015. This document was completed by the appellant, and it states that the property is for single occupation by one household, and that it has one kitchen and one bathroom. This contradicts the appellant's version of events.
12. While it is not always necessary for evidence provided by the appellant to be corroborated, in this case contradictory evidence has been provided. No explanation relating to the content of the 'Application for a Private Rented Property Licence' has been given. The appellant's evidence is therefore imprecise and ambiguous. I find, on the balance of probability, that the appellant has failed to show that the self-contained flats have been continuously occupied for any 4-year period beginning on or before the material date.
13. For the reasons given, the appeal on ground (d) fails.

Appeal on ground (g)

14. For an appeal to succeed on this ground it needs to be shown that the compliance period specified in the notice falls short of what should reasonably be allowed.
15. The appellant claims that due to a backlog in the courts, 6 months is too short to secure vacant possession and carry out the works set out in the requirements. There is nothing in the appellant's case to suggest why vacant possession would be difficult to secure, or information relating to how long it would take to reasonably complete the works. I therefore find that 6 months is adequate to remedy the breach of planning control.
16. The appeal on ground (g) fails.

Overall conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations.

Formal Decision

18. It is directed that the enforcement notice is varied by:

*In section **3. The matters which appear to constitute the breach of planning control:** the deletion of the words 'from single family dwellinghouse (Use Class C3)'*

*In section **5. What you are required to do:***

- In Steps 1, 2, 3 and 4: the deletion of the word 'two';*
- In Step 5: the deletion of all the words and the substitution of the words 'Remove all additional kitchens and their fixtures and fittings, including but not limited to sinks, cookers, washing machines, fridge freezers and other kitchen accessories, that facilitate the use as self-contained flats. For the avoidance of doubt, only one kitchen shall remain.'*
- In Step 6: the deletion of all the words and the substitution of the words 'Remove all additional bath/shower rooms and their associated fixtures and fittings, including but not limited to showers, toilets and sinks, that facilitate the use as self-contained flats. For the avoidance of doubt, only one bath/shower room shall remain.'*
- In Step 7: the substitution of all the words and the substitution of the words 'Remove all resultant materials, rubble, general detritus from the Land following compliance with requirements 1 – 6.'*

Subject to the variations, the appeal is dismissed, and the enforcement notice is upheld.

M Madge

INSPECTOR