



Appeal Decision

Site visit made on 1 September 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 September 2022

Appeal Ref: APP/W5780/C/21/3271312

56 Argyle Road, Ilford, IG1 3BG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ashfaq Ahmed Rahman against an enforcement notice issued by London Borough of Redbridge.
 - The notice, numbered E0876/17, was issued on 18 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the conversion from a single dwelling house into flats.
 - The requirements of the notice are to: (i) Cease the use of the Property as flats and convert back into a single dwellinghouse; (ii) Remove all kitchen units, sink, stove and kitchen appliances such as microwaves and fridges; (iii) Remove all bathroom and toilet facilities; (iv) Remove all partitions including walls and doors which separate the flats; and (v) Remove all resulting materials, rubble and debris.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Ground (d)

2. An appeal on ground (d) is 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 the matter stated in the notice. As the alleged breach of planning control is the change of use to flats which are each a single dwellinghouse, no enforcement action may be taken after the end of 4 years beginning with the date of the breach¹. The appellant must therefore show that there has been a continuous 4 year period of use of each flat as a single dwellinghouse prior to 18 February 2021. The onus of proof is on the appellant on the balance of probability.
3. The appellant's case is that the appeal property was sub-divided into 5 flats between August 2015 and December 2016 and that each flat was completed on a different date. They state that each flat was then occupied continuously shortly after the completion of the conversion works and without significant interruption, and that in each case this was from a date earlier than 4 years before the issue of the notice. The appellant has provided his own sworn evidence to this effect along with witness statements from the builder and plumber who undertook the conversion works and who corroborate the dates.

¹ Section 171B(2) of the 1990 Act

4. The Council accept, and it was clear from the site visit, that each flat is physically and functionally separate, and contains all the necessary facilities for day to day living. It is therefore necessary to consider whether the appellant has provided evidence to prove on the balance of probability the substantially uninterrupted use as a single dwellinghouse for a period of four years in each case.
5. The appellant has provided some information which applies to the whole of the appeal property, namely the annual individual gas safety reports for Flats 1 – 5 between 2017 – 2020. Whilst this does not prove that they were occupied during those years it is evidence that the appeal property was configured as 5 flats during those inspections.
6. The appellant has provided sworn evidence in relation to the dates and occupiers of each flat, as well as to the date of the conversion works. As this evidence is precise and unambiguous, as referred to in Planning Practice Guidance, there is no reason to doubt it unless there is other evidence to contradict or otherwise make the appellant's version of events less than probable.
7. The Council Tax records show 5 separate accounts at the appeal property since 24 October 2018. However, this does not mean that the property was not being used as 5 separate dwelling-houses for the purposes of planning prior to that date as it is often the case that a property is used for a planning purpose that is not properly registered for the payment of Council Tax. Similarly, the Building Control completion record is not proof of the exact date on which the works were finished or the use of the planning unit began. The witness statements (whilst not sworn evidence) provided by a tenant and the builder and other tradesmen, along with the invoices for materials, support on balance the appellant's case that the works were in fact finished by December 2016.
8. The tenancy agreements provided are corroborated with identification documents for the named tenants, some records of rent payments and in some instances evidence of the tenancy deposit account certificate. Whilst there are periods of time which are not covered by tenancy agreements, this is not uncommon as shorthold tenancies can be allowed to carry on past the initial term as agreed by the landlord and tenant without a new written agreement being required. It is therefore not fatal to the appellant's case if there are periods not covered by a written tenancy agreement, if on the balance of probability the appellant's version of events shows the necessary continuous use as single dwellings. The details of the rent payments do not cover the entire periods of occupation but do tally with the dates and names on the lease agreements provided by the appellant and add credence to his case by providing corroboration.

Flat A/Flat 1

9. The appellant has provided in sworn evidence the details of the dates and names of the occupants with supporting tenancy agreements dating from 8 August 2016 until after the issue of the notice. Whilst there are some short periods between the terms of several of the occupancies these are not significant interruptions and represent the normal periods between lettings, and as such are not a period where the use ceased.

10. The appellant has therefore proven the continuous use of Flat 1 as a single dwellinghouse on the balance of probability for a period of 4 years prior to the service of the notice.

Flat B/Flat 2

11. The appellant has provided in sworn evidence the details of the dates and names of the occupants with supporting tenancy agreements dating from 30 October 2015 until after the issue of the notice. Whilst there are some short periods between the terms of several of the occupancies these are not significant interruptions and represent the normal periods between lettings, and as such are not a period where the use ceased.
12. The appellant has therefore proven the continuous use of Flat 2 as a single dwellinghouse on the balance of probability for a period of 4 years prior to the service of the notice.

Flat C/Flat 3

13. The appellant has provided in sworn evidence the details of the dates and names of the occupants with supporting tenancy agreements dating from 29 June 2016 until after the issue of the notice. Whilst there are some short periods between the terms of several of the occupancies these are not significant interruptions and represent the normal periods between lettings, and as such are not a period where the use ceased.
14. The appellant has therefore proven the continuous use of Flat 3 as a single dwellinghouse on the balance of probability for a period of 4 years prior to the service of the notice.

Flat D/Flat 4

15. The appellant has provided in sworn evidence the details of the dates and names of the occupants with supporting tenancy agreements dating from 20 November 2016 until after the issue of the notice. Whilst there are some short periods between the terms of several of the occupancies these are not significant interruptions and represent the normal periods between lettings, and as are not a period where the use ceased.
16. The appellant has therefore proven the continuous use of Flat 4 as a single dwellinghouse on the balance of probability for a period of 4 years prior to the service of the notice.

Flat E/Flat 5

17. The appellant has provided in sworn evidence the details of the dates and names of the occupants with supporting tenancy agreements dating from 20 January 2017 until after the issue of the notice. Whilst there are some short periods between the terms of several of the occupancies these are not significant interruptions and represent the normal periods between lettings, and as such are not a period where the use ceased. I accept the appellant's explanation that there was an error within the dates provided in the original statutory declaration as the supporting evidence shows the last rental payment from the first tenant to have been in February 2019 (and not 2017).

18. The appellant has therefore proven the continuous use of Flat 5 as a single dwellinghouse on the balance of probability for a period of 4 years prior to the service of the notice.

Conclusion

19. The appellant has provided evidence on the balance of probability that there has been a continuous 4 year period of use of each of the five flats as a single dwellinghouse prior to 18 February 2021
20. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.
21. In these circumstances, the appeals of ground (a) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Zoë Franks

INSPECTOR