



Appeal Decision

Site visit made on 9 November 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/Z5060/C/21/3271401

133 Chelmer Crescent, Barking, London, IG11 0PY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeal is made by Mr Aderogba Babajide against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 5 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the property from a single family dwelling to self-contained units of accommodation.
 - The requirements of the notice are:
 1. Cease the use as separate self-contained units of accommodation.
 2. Revert the property to a single family dwelling.
 3. Remove all alterations and fixtures enabling the change of use to separate self-contained units of accommodation.
 4. Remove all consequent waste material from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Act. 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.

Appeal on ground (d)

2. An appeal on ground (d) is that at the date the enforcement notice was issued the breach of planning control was immune from enforcement action due to the passage of time, in this case 4 years. The appellant must therefore show that the use of the property as self-contained units of accommodation began on or before 5 March 2017 and continued for a period of 4 years without any significant interruption. For this legal ground of appeal the Court¹ established that the onus of proof falls to an appellant, with the test of the evidence being on the balance of probability.
3. At the time of my visit to the property it was in use as 3 self-contained flats comprising 2 flats to the ground floor and 1 flat at first floor. The kitchen, bathroom/toilet facilities were all appeared to be of some considerable age and I did not see anything that was inconsistent with the appellant’s case.
4. The appellant has submitted copies of licencing documents pursuant to the Housing Act in relation to the 2 ground floor flats from 2019. They do not relate

¹ *Nelson v SSE* [1962] 13 P&CR 151

to use as flats for the entirety of the relevant 4 year period. Hence, while not inconsistent with the appellant's case, they only provide limited evidential weight in support of allowing the appeal.

5. While the Council's statement of case refers to a lack of evidence from the appellant, it provides no alternative evidence to contradict the appellant's case. In this regard the Court, in *Gabbitas*², held that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If a Council has no evidence of its own, or from others, to contradict or otherwise make the appellants' version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
6. Having regard to all of the information before me, I have no reason to doubt the appellant's case and, moreover, there is no contradictory evidence to make the appellant's version of events less than probable. As such, I find on the balance of probability that the appeal should succeed on ground (d) and the enforcement notice will be quashed.
7. In these circumstances, the appeal on ground (a) 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.

Thomas Shields

INSPECTOR

² *Gabbitas v Secretary of State for the Environment* [1985] JPL 630