The Planning Inspectorate

Appeal Decision

Site visit made on 10 January 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 7TH FEBRUARY 2023

Appeal Ref: APP/N5090/C/22/3295486
Land at 3 and 4 Meadway Close, Barnet EN5 5LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Lia-Maria Philiastides against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 15 February 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the conversion of two self-contained flats into 1 no. single family dwellinghouse.
- The requirements of the notice are: 1. Cease the use of the ground and first floors of the property as a single family dwellinghouse; and 2. Revert the property back to state it was prior to the breach, in accordance with pre-existing drawing number 1590.P.03 "Ground and first floor plans (prior to Nov 2019)" from planning application ref 21/5306/RCU; including but not limited to the re-insertion of a kitchen to the first floor, and closing up the opening created at ground floor level.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant submitted an appeal[1] following refusal of a planning application[2] for essentially the same development which is the subject of the above enforcement notice. This was turned away by the Planning Inspectorate as being out of time.

The Notice

2. The appellant identifies an issue in relation to the identification of the appeal property in the notice. Whilst this matter was raised under ground (b), since it potentially relates to the validity of the notice, it is better dealt with first.

3. The notice refers to '3 Meadway Close' but it seems that the intention was for the notice to relate to properties at 3 and 4 Meadway Close, which externally together appear as a semi-detached house. The allegation then is essentially

[1] Ref: APP/N5090/W/22/3295478
[2] Ref: 21/5306/RCU ('2021 Application')

that these properties have been converted from two flats into a single dwelling. No plan was attached to the notice to identify the properties in question.

4. Whilst I note the appellant's concerns in these respects, I have wide powers available to me under s176(1) of the Town and Country Planning Act 1990 (1990 Act) to correct any defect, error or misdescription in the notice provided that this does not cause injustice to either party. Given that a planning application was made in respect of 3 and 4 Meadway Close[3] for conversion to a single dwelling, which was labelled as retrospective, the appellant would not have in reality been confused as to the intention in terms of identification of the land subject to the notice. I do not therefore consider any injustice would result if I were to correct the notice to properly identify the land in question.

5. Whilst not raised by either party, the allegation in the notice should also be corrected to refer to a material change of use (MCU) rather than a 'conversion'. I can make this correction without injustice since both parties appear to have proceeded on the basis that a 'conversion' is a synonym for a MCU.

The appeal on ground (b)

6. The appeal on ground (b) is that the matters alleged in the notice have not occurred. The onus is on the appellant to make their case on the balance of probability.

7. In support of its position, the Council draws my attention to the 2021 Application which it comments was 'completely' retrospective in nature. The Council relies in this regard upon various documentation submitted with the 2021 Application.

8. The appellant's position is essentially that miscommunication between the appellant and her agent regarding the 2021 Application meant that this application was erroneously labelled as retrospective. The appellant indicates that works removing a partition to create internal access between the ground floor and first floor were completed prior to submission of the 2021 Application, but the flats were not in use as a single dwelling at that time, albeit that the appellant had been contemplating such use.

Evidence

9. Looking then at the evidence in relation to the 2021 Application, the introductory page of the Planning Statement refers to 'conversion' into a single dwellinghouse 'for works completed in November 2019'. Paragraph 1.6 similarly refers to the building having been 'altered internally to be used as a single family dwelling' and that the application seeks 'retrospective permission for this change'. Paragraph 2.5 states that 'As of November 2019, the property has been used as a single family dwelling'.

10. The application form then describes the proposal as 'The conversion of two dwellings into a single dwellinghouse (works completed in Nov 2019)'. Confirmation is given that the 'works or change of use' were completed by 30 November 2019. In the 'existing use' section, the response given is 'Single-family dwelling (seeking retrospective permission for works completed in Nov 2019)'.

[3] Albeit that the application form gives the address of the proposal as 3 Meadway Close

11. As to application plans, Drawing number 1590.P.04 is labelled as 'Current ground and first floor plans' and shows an opening created at ground floor level to enable internal access between the floors. On this drawing, internal accommodation is also configured for use as a single dwelling with only one kitchen, which is at ground floor level. Drawing number 1590.P.03 is labelled as 'Ground and first floor plans (prior to Nov 2019)' and shows the ground floor partition in place preventing internal access between floors. On this drawing, both floors also have their own kitchens, bathrooms and living areas i.e. the arrangement is as two self-contained flats.

12. The appellant provides a detailed explanation of the history of the property explaining that she had previously let the first floor and occupied the ground floor herself. The first floor has though been vacant of tenants as of December 2017 following which the appellant has apparently maintained the accommodation and used this for temporary storage of her own belongings which had previously been kept in a shed.

13. The appellant comments that the November 2019 works to create internal access between the two floors were undertaken due to practical difficulties in managing the first floor accommodation without internal access. In view of No 4 being vacant, it was not heated and so a door was installed in the location of the newly opened partition to prevent a draft from upstairs to the ground floor.

14. Since vacation of No 4 by tenants in December 2017, the appellant states that she has paid Council tax on the basis of separate assessments for No. 3 and No.4, with vacant premises council tax payment also having been paid for No.4. Billing documentation for the period December 2017 to March 2021 in respect of No.4 is submitted in evidence.

15. At my site visit, I saw that the internal arrangements have essentially remained as self-contained accommodation on each floor, with rooms on each floor as bathrooms, kitchens, living areas and bedrooms. A lockable door at the top of the stairs provides access to the first floor accommodation which did not seem to have been heated. A further lockable door is in place of the removed partition, which provides internal access between the two floors. There were some personal possessions on display presumably belonging to the appellant on the first floor but these were in marked contrast to the far greater quantity within the ground floor accommodation where the ground floor kitchen and bedroom appeared to clearly be in use.

Analysis

16. The appellant has outlined that advice was given to her that a planning application for a MCU to a single dwelling was necessary, and that those instructions were given during the COVID-19 pandemic at a time when meetings/site visits were not possible. The appellant's position then is effectively that this was causative in miscommunication between the appellant and her agent. Consequently the 2021 Application was apparently submitted as retrospective but in fact related to a MCU which had not yet occurred.

17. In my view, wording in the Planning Statement points towards there having been some miscommunication in relation to timings as regards removal of the partition and actual use as a single dwelling. As outlined above, the term 'conversion', which is used repeatedly in the Planning Statement, can

sometimes be used as a synonym for a material change of use (MCU), and other times, it can be used to describe works facilitating a MCU.

18. Although there is one reference in the Planning Statement to use as a single dwelling having commenced in November 2019, many other references refer effectively to conversion works (i.e. removal of the partition enabling internal access between floors) as having been completed in November 2019. This is further supported by the fact that the plan labelled as 'Current ground and first floor plans' does not appear to reflect the current internal arrangements in that there remains a kitchen room at first floor and there is now a lockable door in place of the removed partition. I am conscious also that no site visit was undertaken prior to the issue of the notice (pandemic related restrictions are cited by the Council) such as to verify the position.

19. Whilst the assessment that I must make is whether the matters alleged had occurred by the date of the notice, based on what I was able to see at my site visit, it seems to me that this supports to some degree at least the appellant's position that use as a single dwelling had not commenced at the date of the notice. For example, the kitchen room at first floor had not been removed, the bedroom at ground floor remained in use, and there was a marked difference in the arrangement and quantity of furniture and personal possessions as between the ground and first floor, with the bedroom and kitchen at ground floor clearly in full use, in contrast to those on the first floor.

20. The arrangement of the property also remains such that it is clearly capable of being used as two separate flats with kitchen rooms and bathrooms on both floor and lockable doors between the floors. The use being made of the first floor by the appellant appears to have been of a casual, insignificant and intermittent nature and at a de minimis level. On the evidence before me, I find as a matter of fact and degree that such use does not amount to a MCU to a single dwelling.

21. As such, whilst I sympathise with the Council's position in having acted on the basis of an application labelled as retrospective, I am mindful that no site visit was undertaken to verify the position, and the appellant then has provided a version of events which is both precise and unambiguous. This is supported also by the fact that the first floor kitchen room remains in place contrary to the 'current' plans submitted with the 2021 Application, by separate Council tax payments for No.s 3 and 4 and by my observation of present internal arrangements at my site visit.

22. I find then as a matter of fact and degree and on the evidence before me that the matters alleged have not occurred. Accordingly, the appeal on ground (b) succeeds.

Conclusion

23. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice had not occurred by the date of the issue of the notice. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (a), (c) and (f), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Formal Decision

24. It is directed that the enforcement notice is corrected by:

- In paragraph 2 of the notice deletion of the wording '3 Meadway Close' and substituting '3 and 4 Meadway Close'; and
- In paragraph 3 of the notice deletion of the word 'conversion' and substituting 'material change of use'.

25. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

V Bond

INSPECTOR