The Planning Inspectorate

Appeal Decision

Site visit made on 10 November 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2023

Appeal Ref: APP/Z5060/C/21/3272378
73 Lansbury Avenue (Flats 1 and 2), Romford, RM6 6SD

- 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 Gurmuke John Singh against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
- The enforcement notice was issued on 5 March 2021.
- 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), (d), (e), (f) and (g) of the Act.

Decision

1. It is directed that the notice be corrected by:

   (i) in Section 3 deleting the word "unauthorised";

   (ii) in Section 5 replacing the bullet points with numbers (1) to (4);

   (iii) in Section 5 deleting requirements (2), (3) and (4)

2. Subject to the corrections the appeal is allowed under ground (d) and the enforcement notice is quashed.

Application for Costs

3. An application for costs was made against the Council by the appellant. This is subject of a separate Decision.

The Enforcement Notice and Procedural Matters

4. I have deleted the word "unauthorised" in Section 3 of the enforcement notice. It is superfluous given the breach already correctly specifies "without planning permission". I have also amended the circular bullets to numbers in Section 5 for ease of reference for both parties and for myself.

5. Requirement (2) in Section 5 goes beyond just remedying the breach of planning control. A notice cannot require that a lawful use is carried out; the breach is fully remedied by requirement (1) alone. I have therefore deleted requirement (2).

6. Removing alterations and fixtures that facilitate a change of use can be a legitimate requirement. However, they need to be specified so it is clear to an appellant what must be done in order to achieve compliance with the notice. None are clearly specified in requirement (3) and hence it lacks sufficient clarity. I have therefore deleted requirement (3).

7. Given that requirements (2) and (3) have been deleted requirement (4) becomes unnecessary. I have therefore deleted requirement (4).

8. In accordance with s176(1) of the Act I am satisfied that no injustice arises to any party by my correcting the notice as set out above.

Ground (e)

9. The appellant argues that a copy of the notice was not served on the occupier of Flat 2 (No.73A) as required by section 172 of the Act. However, I note that a copy of the letter accompanying the notice addressed to "The Occupier" has been submitted in evidence. It would appear on balance therefore that the notice was properly served.

10. The appeal on ground (e) therefore fails.

Ground (d)

11. The appeal on ground (d) is that at the date the notice was issued the use of the property as two flats was immune from enforcement action due to the passage of time, in this case 4 years. The appellant needs to show therefore that the use commenced more than 4 years before the notice was issued (before 5 March 2017) and continued without material interruption for a period of at least four years.

12. In this legal ground of appeal the Courts have established that the onus of proof falls to an appellant[1], with the test of the evidence being on the balance of probabilities[2]. Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted[3].

13. During my visit to the appeal site I saw that the property was divided into two flats. Flat 1 (No.73) on the ground floor comprises a kitchen, bathroom, living room, and one bedroom. Flat 2 (No.73A) occupies the first and second floors comprising a kitchen, bathroom, lounge and two bedrooms.

14. The appellant has submitted a Statutory Declaration (SD) describing the property's history with various cross-references to documentary appendices submitted with his statement of his case. He states that the property was already divided into two flats when he bought it in 1998, and that to the

[1] *Nelsovil v SSE* [1962] 13 P&CR 151
[2] *Thrasyvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732
[3] *Gabbitas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

present day it has always remained as a two-flat layout with him continuously occupying Flat 1. I take 1998 as the starting point of his case.

15. There was an initial period of occupation of Flat 2 by the appellant's brother (Appendix 4). However, that was followed by a period of unoccupancy until April 2002. As such, the 4 year period for immunity purposes stopped when his brother departed, and began again afresh in April 2002 when Flat 2 was occupied by Mr Mih. The appellant has provided a copy of the 2002 tenancy agreement (TA) for Mr Mih (Appendix 5), and VOA[4] website screen prints showing separate tax bandings for Flats 1 and 2 with effect from 1 April 2002.

16. After Mr Mih's departure in 2006 the appellant states he then let the flat to his friend, Mr Shah, who occupied it until 2009. Also submitted is a copy of a July 2008 Council Tax arrears liability Order for Flat 2, together with a receipt for its payment (Appendix 7). Given the date of the Order and the amount of arrears, this appears to correspond with the period of time, in part at least, when the flat was occupied by Mr Shah.

17. Other than the two week gap between Mr Mih leaving and Mr Shah arriving, the appellant's sworn testimony is that there was continuous occupancy of Flat 2 for more than 7 years from 2002 to 2009. In the context of that timescale I do not consider the two week gap to be a significant or material interruption that breaks continuous use.

18. Corroboration of an appellant's case is unnecessary as I set out earlier. Nonetheless, the documents in his appendices I have referred to above do provide some partial corroboration that the property was occupied as two separate flats from April 2002, and on that basis the use as flats would have become immune from enforcement action by April 2006. There are no significant inconsistencies in the appellant's evidence for this period, and none of the Council's evidence for this period contradicts the appellant's such that it would make it less than probable.

19. As held by the Court[5], once a use has become lawful it remains so even if there are subsequently periods of time when the use becomes dormant or inactive. Consequently, any gaps in occupancy of the flats after 2006 would not extinguish their lawful use. Hence, subject to there being no loss of lawful use rights through abandonment, or from a material change of use to another use (for example back to a single dwellinghouse), the lawful use as two flats would endure.

20. In this regard the appellant states that Flat 2 was unoccupied from 2009-2011 while it was rewired and redecorated and new windows installed. Documentary evidence of re-wiring is submitted (Appendices 8 and 9). Additional TA's for tenants occupying Flat 2 have been submitted from 2012 (Appendix 11), from 2016 (Appendix 13), and from 2019 (Appendix 14). Overall, while there were some gaps in occupancy, the appellant's evidence from 2006 to 2019 indicates to me that the use continued with no abandonment.

21. Although the Council consider the use as two flats ceased between 2008 to 2019, this appears to be based solely on their review of Council Tax records, rather than from physical inspection or any other evidence. However, non-payment of Council Tax does not of itself provide direct evidence of how a

[4] Valuation Office Agency
[5] *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461

property is being used. Hence such irregularities in tax data alone cannot automatically lead to a conclusion of how a property is physically being used. In this regard the Council Tax records do not necessarily contradict the appellant's evidence with regard to occupation and use of the property after 2006.

22. To conclude, I find the appellant's case to be sufficiently precise and unambiguous. It is not significantly contradicted by the Council's evidence to make it less than probable. I am satisfied, on the balance of probabilities, that the use of the property as two flats was immune from enforcement action at the date the notice was issued.

23. For these reasons the appeal on ground (d) succeeds and the notice is corrected and quashed. In these circumstances the other grounds of appeal in s174 of the Act do not fall to be considered.

Thomas Shields

INSPECTOR