
Appeal Decision

Site visit made on 4 May 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/B5480/C/22/3291343

Land at 3-7 Billet Lane, Hornchurch RM11 1TS

- 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 Mr Mehmet Ergun Keles against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 22 December 2021.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the material change of use of land above shop 3-7 Billet Lane into 4 self-contained Flats (2 Studio & 2 x 1bed); and
 2. Without planning permission, the construction of a rear dormer.
 - The requirements of the notice are:
 1. Cease the use of the land as 4 Self-Contained Flats (2No.Studio & 2No.1xBed); and
 2. Demolish the rear dormer; and
 3. Permanently remove all cooking facilities including kitchen equipment and all bathrooms, washing facilities and toilets and remove all electricity metres/fuse boxes from the unlawful dwellings; and
 4. Revert the floors above ground floor and 1st floor of the properties back to the floors which existed prior to carrying out the subdivision into the multiple flats; and
 5. Remove all rubble and debris accumulated when taking steps (1) to (4) above.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal on ground (d)

2. In relation to a breach of planning control consisting in the change of use of any building to a use as a single dwellinghouse, including the subdivision to flats, no enforcement action may be taken after the period of four years beginning with the date of the breach (171B (2)). Furthermore, where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed (171B (1)).
3. The main issues are whether the material change of use to four self-contained flats took place before 22 December 2017 continuing for at least four years thereafter, and whether the building operations undertaken to construct the rear dormer were substantially completed before the 22 December 2017. The

onus of proof is on the appellant to prove his case on the balance of probability.

Self-contained flats

4. In summary, the appellant maintains that the flats have been in use since at least August 2015. Planning permission had been granted to change the use of the ground floor of Nos. 5 & 7 Billet Lane to a restaurant in 2013. This permission also provided for 2 flats at first and second floor level facilitated by a proposal to construct two rear dormers. In addition, in May 2015 planning permission was granted to change the use of a shop at No 3 Billet Lane to a restaurant in conjunction with the adjoining premises at Nos. 5-7. The appellant contends that Google Street View images contained within his statement of case show that between May 2014 and August 2015 the ground floor of 3-7 Billet Lane was converted to a restaurant and the upper floors converted to residential use with access from the rear. Prior to the conversion there had been an ancillary residential use above a shop at No 3 Billet Lane.
5. In addition to the Google Street View images, the appellant has provided Council Tax documents, correspondence from utilities, a tenancy agreement and NHS correspondence to support his case that the four flats have been occupied continuously since 2015.
6. Dealing first with the Google Street View images. The images clearly show that sometime between May 2014 and August 2015 a new shop front was installed at ground floor in the appeal premises and new first floor windows installed above. Images provided between June 2017 and August 2021 show that the ground floor restaurant has had several different occupiers. However, although the first floor windows have window dressings in all of the post 2015 images, the images do not demonstrate that the accommodation was occupied, nor do they provide any information about how the first and/or second floor accommodation was arranged, or the number of flats created. The Council Tax records indicate that from May 2015 there were four flats liable for Council Tax at the premises, however, this record does not confirm that the flats were occupied. There are no bills or records of payment of Council Tax at that time. Indeed, the only record of Council Tax Bills are for Flats 2 and 3 which show the charges due for 2021/2022, and for Flat 1 a notice of a direct debit in August 2018. These documents do not provide evidence of continuous occupation of the flats for the four year period claimed from August 2015, nor from the relevant date of 22 December 2017.
7. The letter provided by EON relates to the opening of a new account for Flat 3. It is addressed to the appellant and dated 14 January 2022, thus after the notice was issued. The correspondence from the NHS addressed to the occupiers of Flat 2 is dated February 2022. None of this correspondence is therefore within the relevant period necessary to demonstrate immunity and nor does it show continuous occupation. The TV licence record is for a one-year period only and dated August 2021, and the correspondence relating to a Vodafone broadband package is undated. Neither of these documents, nor the correspondence from the London Borough of Havering relating to the "Find Your Own Scheme" show continuous occupancy over the relevant period.
8. A single tenancy agreement has been provided for Flat 3, dated 19 October 2017. It is signed only by the leaseholder and agrees to the occupancy of Flat 3 on a rent free basis until 31 December 2023. Whilst this agreement suggests

that Flat 3 existed in October 2017, the agreement alone does not provide proof of continuous occupancy. It is not supported by a Statutory Declaration from the occupier, nor have any details of payment for utilities or Council Tax been provided which would have corroborated the details of this agreement.

9. I appreciate that the planning history of the premises indicates that its first and second floors have either been in use as ancillary residential accommodation to the ground floor premises (No 3) or, have previously been granted consent for use as two self-contained flats (Nos. 5-7). However, the planning history does not provide evidence of occupation. Furthermore, I noted on my site visit that the appeal premises is now in use as five self-contained flats. No details have been provided by the appellant as to when that further subdivision took place.
10. For the reasons given above, the circumstances of this case are such that I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to conclude, on the balance of probability, that the use in question is immune from enforcement action.

Rear dormer

11. It is the appellant's case that considering the Council Tax documents indicate that four flats were liable for Council Tax in May 2015, and the dormer window facilitates the fourth flat in the roof space, then it is reasonable to assume that the dormer would have been constructed at the same time as the conversion, i.e. 2015.
12. On the other hand, the Council have submitted Earthlight aerial images¹ which they state are dated 2016. There is no evidence of the dormer in those images. Furthermore, it is the Council's evidence that the unauthorised works were first brought to their attention in 2019 when a neighbour notified them of the development.
13. Although the Council Tax document suggests that there were four flats within the premises in May 2015 there is no evidence to confirm that the dormer had been constructed by 2015. At the time of my site visit there were two separate self-contained flats within the roof space. One of those flats was contained solely within the dormer above No 3 and the other in the roof space above Nos. 5 and 7. Consequently, the presence of a fourth flat within the roof space does not necessarily confirm the presence of the dormer in 2015.
14. The circumstances of the case are such that I am not satisfied that the appellant's evidence is sufficiently precise to conclude, on the balance of probability, that the dormer was substantially completed by 22 December 2017 and thus it is not immune from enforcement action.

Other Matters

15. I have had regard to the appellant's suggestion that the dormer does not have a harmful effect on the character and appearance of the host property and surrounding area. However, in the absence of an appeal on ground (a), the planning merits of the dormer window are not for my consideration in this appeal, which has been made solely on ground (d).

¹ Appendix LBH 4 – LPA Statement of Case.

16. I conclude that the material change in use of the land above 3-7 Billet Lane into 4 self-contained flats and the rear dormer have not become lawful through the passage of time. The appeal on ground (d) does not succeed.

Human Rights

17. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law the most fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the occupiers' rights under Article 8 and the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified in the notice, the action is in accordance with the law and pursues legitimate aims regulating land use in the public interest and is necessary and proportionate to the situation.

Conclusion

18. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeal should not succeed, and I shall uphold the enforcement notice.

Elizabeth Pleasant

INSPECTOR