The Planning Inspectorate

Appeal Decision

Site visit made on 2 May 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 June 2023

Appeal Ref: APP/W1905/C/22/3294992
Land at Ludlow House, 15 Orchid Close, Goffs Oak, Waltham Cross EN7 5NF

- 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 T Uthayakanthan of T.U. Investments (Five) Ltd against an enforcement notice issued by Broxbourne Borough Council.
- The enforcement notice was issued on 16 February 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change in use of the detached garage, shown hatched black on the plan attached to the notice, to a separate, self-contained unit of residential accommodation.
- The requirements of the notice are:
  (i) Cease the use of the garage as a separate unit of accommodation;
  (ii) Remove all kitchen units and facilities from the garage, including all associated fixtures and fittings therefrom (as illustrated by photographs in Annex 1 attached to the notice);
  (iii) Remove the garden fence shown in blue on the plan and further documented by photographs in Annex 1 attached to the notice;
  (iv) Remove all materials, waste and debris resultant from steps (ii) and (iii) from the land.
- The period for compliance with the requirements is:
  Step (i) 1 week from the date this Notice takes effect;
  Step (ii) and (iii) 3 months from the date this Notice takes effect; and
  Step (iv) 4 months from the date this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be varied by the deletion of step (ii) from paragraph 5, followed by the re-numbering of steps (iii) and (iv) to (ii) and (iii) and the deletion of "and (iii)" from paragraph 6. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Background

2. The appeal concerns the residential use of the first floor over a double garage situated adjacent to the rear garden of a detached dwelling. Access is from the hardstanding in front of the garage doors, which leads into a small paved area from where there are locked gates leading either into the garden of the dwelling or the garden of the new unit. Entrance to the accommodation is from a door within the side wall of the garages. At ground level there is a small hallway with a shower room and WC. Stairs from the hallway lead up to one

room lit by rooflights and a gable window. This room is laid out with a kitchen along one side containing in addition to cupboards an oven, hob, sink, fridge and washing machine. At the time of my visit the unit was vacant and there was a double bed in one corner of the room.

The ground (d) appeal

3. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to show, on the balance of probabilities, that the use of the area above the double garage as a self-contained residential unit began more than four years before the notice was issued. In addition, that the use continued such that at any time during the four year period the Council could have taken enforcement action against the use. The relevant date is therefore 16 February 2018.

4. The first stage is to look at the physical works and ascertain the date that the unit was capable of providing viable facilities for living rather than the date when the works were completed. The second stage is to establish when the use of the unit actually commenced and whether there was a continuous residential use thereafter with viable facilities for living, to the extent that the Council could have taken enforcement action against the use of the unit at any time.

5. On the matter of continuous use, there is a difference between an established dwelling house or flat where an occupier does not have to be continuously or even regularly present in order for it to remain in use as a dwelling house or flat and where there is no established use. In the latter case the use has to have been affirmatively established at the start of the four years.

6. It is possible for the change of use of the unit to have commenced prior to actual occupation, provided that the unit was capable of being so used. It is a matter of fact and degree as to when the change of use occurred and it is incorrect for a decision maker to simply regard the commencement of actual residential use after the conversion as giving rise to the change of use. It is not enough to conclude that because the premises were not in fact actually used, there had not been a change of use. On the other hand, it is more difficult to show a change of use just by physical works and nothing more.

Reasons

The appellant's case

7. The appellant states he purchased the property, namely the dwelling and garage, in October 2017. At the time of purchase the unit above the garage was described as being "fully fitted out" and "self-contained". During the purchase process, the appellant saw a valuation report (copy included with the appeal, survey dated 9 May 2016) which included photographs of the unit with a kitchen.

8. As the property being purchased was vacant, the appellant arranged with the vendor to let the unit above the garage after contracts were exchanged on 1 October 2017. A copy of the vendor's letter dated August 2022 confirming this arrangement is included with the appeal.

9. The appellant also includes copies of tenancy agreements covering the periods:

1 Oct 2017 – 31 Mar 2018

1 Apr 2018 – 31 Mar 2019

1 Apr 2019 – 31 Mar 2020

1 Apr 2020 – 30 Sept 2020 and

1 Oct 2021 – 30 Mar 2022

From October 2017 until September 2021 the unit was occupied by Tenants 1 and 2. As the set of tenancy agreements is incomplete, the appellant provides a copy of a statutory declaration from Tenant 2 and another from himself to confirm occupation by Tenant 2.

10. Tenant 3 signed a new tenancy agreement 1 October 2021 but left in December 2021. In addition, the appellant states he registered the units for Council tax in 2018 and provides copies of bills issued on the following dates: 7 March 2018 and 22 October 2021 (4 bills issued on this date).

The Council's case

11. The Council submit that the unit was used to provide residential accommodation on an ancillary basis, not as a separate self-contained unit. They rely on information contained in a planning application submitted in October 2018 to change the use of the whole of the double garage into a two-bedroom self-contained unit. The plans that accompanied the application showed existing kitchen facilities at first floor level but no demarcation by means of a fence between the dwelling and the garage, as there is today. The rear garden was only subdivided in April 2021. After complaints were made, the Council visited the property and saw a new fence in the process of being erected. They also gained entry to the unit above the garage in December 2021 and saw that it was unoccupied.

12. With regard to the Council tax records, they confirm that no Council tax has been paid for a number of years on the unit. Although the appellant contacted the Council in February 2022 to advise that the unit was occupied, he did not provide the additional information required in order to mark the unit as being occupied for Council tax purposes.

Assessment

13. Having regard to the first stage of the assessment, the appellant relies upon the valuation report. This describes the unit as a "studio annexe" to a private dwelling and, later on, as "The annexe was refitted last year….and could be used as a granny annexe or staff flat". The photographs show the unit as being accessed from either across the garden from the main dwelling or via the back garden gate. There is a shower room in the hallway and a fitted kitchen with an oven and hob within the upper room, which means in 2016 the unit had viable facilities for living.

14. Whilst it is shown that the property was laid out as a self-contained unit in 2016, there is no evidence to show that it was used as such prior to the appellant's purchase. Furthermore, there is no indication in the valuation report what rent could be achieved for the unit or what it could be sold for, unlike the details set out for the main house.

15. Turning now to use by the appellant, tenancy agreements are contracts and on their own they are not evidence of use. They only show intent and that a particular person or persons agreed on a certain date to rent a property. In this case the tenancy agreements are not accompanied by any proof of identity of the tenants. The only verification of one of the first tenants is from a statutory declaration made on 1 August 2022. In such circumstances appellants often submit evidence of rent receipts to demonstrate residential use when copies of tenancy agreements are mislaid, on the basis that financial records are legally required to be kept for certain periods. These can assist with verifying tenants and show that a use is taking place, but that is not the case here.

16. The handwritten name of the witness is the same person on all the tenancy agreements. Although not a signature, the name, address and post holder has been written in exactly the same fashion on the first four agreements, even down to the word spacing, letter formation and shaping and only differs on the fifth agreement. Such unerring consistency is often found where documents have been copied.

17. All the agreements state that the tenants are responsible for paying Council tax and fuel bills. This, however, is inconsistent with the appellant's Statement of Case, which explains the unit was connected to the main property utility supply and this was not altered when the appellant purchased the property. The inconsistency is probably explained by the use of a standard template for the tenancy agreements.

18. With regard to the submitted Council tax bills, the first is dated March 2018 and is addressed to Ludlow Investments Limited regarding the "Annexe at Ludlow House". As well as setting out what is due for the next 12 months, it also highlights that £3803.71 is owed from other notices. The appellant offers no explanation as to what this means but he was responsible for the property from October 2017.

19. The remaining four bills were all issued on the same date in October 2021 and cover what was due from 1 November 2018 until 31 March 2022. In addition, they all list what was owed from previous bills. Council tax bills are often relied upon to indicate that a residential use is taking place and, in that respect, they can often assist with the four year narrative. However, in this case, it has not been explained how the unit became listed for Council tax purposes separate from the main house and whether it was inspected prior to being listed.

20. This may be outside the appellant's knowledge but the appellant's reliance on the issue of Council tax notices, with no evidence that any money was paid in respect of them, does not necessarily indicate that a residential use was taking place. The Council advises that the appellant contacted them in February 2022 regarding the occupation of the unit but it is not known what period of occupation was being addressed, and, furthermore, the appellant never provided the information required by the Council to show that the unit was occupied.

21. Turning now to the statutory declarations, that from Tenant 2 states that he vacated the property at the end of September 2021 "to move to Scotland where I now reside." It is dated August 2022 and the declaration is made before a solicitor in Ilford, Essex. There may be a perfectly reasonable

explanation as to how someone living in Scotland completes a statutory declaration in Essex but it is not before me.

22. The garden of the property was subdivided in April 2021. The appellant’s Statement of Case confirms this date and says, “it was the appellant’s intention to provide a private garden for the newly occupying tenant at that time”. However, it is unclear who the “newly occupying tenant” was as according to the tenancy agreements, the subdivision of the garden would have been when the unit was occupied by long term Tenants 1 and 2.

23. Having regard to the totality of the evidence, I am not persuaded that the use of the unit began more than four years before the issue of the notice and continued, without material interruption, for a period of four years thereafter. This is because the appellant's evidence alone is not sufficiently precise and unambiguous to demonstrate this. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted but the appellant's own evidence appears to be inconsistent, with several unexplained discrepancies. The appeal on ground (d) therefore fails.

The ground (g) appeal

24. The ground (g) appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the time necessary to carry out those requirements.

25. The appellant requests that the one week period to cease the use should be extended to 12 months. This is because the appellant is required by law to give a longer formal notice period to the occupier to vacate the property. Specifying three and four months to remove the kitchen, fencing and debris is also awkward and unnecessary.

26. At the time of the site visit it was clear that the property was vacant and, as such, I find the Council’s specified period for step (i) is therefore reasonable. The phasing period for compliance is not unusual or unreasonable when several steps are required to be taken. Although there is no appeal on ground (f), it is necessary to vary the notice by deleting the requirement to remove the kitchen fittings. This is because the appellant has shown that they were in existence prior to the alleged change of use. The valuation report states that they were “re-fitted” in 2015 and refers to the potential for an ancillary use. As they were not installed to facilitate a self-contained use, it is unreasonable to specify that they be removed, unlike the dividing fence, which clearly has enabled a self-contained use.

27. For these reasons the appeal on ground (g) fails.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

D Fleming

INSPECTOR