



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision 14/07/2023

Appeal Ref: APP/A1910/C/22/3311899

45 Lawn Lane, Hemel Hempstead, Hertfordshire HP3 9HL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Samera Hassan against an enforcement notice issued by Dacorum Borough Council.
 - The notice, numbered E/21/00302/NPP, was issued on 25 October 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission on the Land, the material change of use of a building marked in the approximate position 'X' on the attached plan, to a dwelling house.
 - The requirements of the notice are to:
 - In connection with the above alleged unauthorised material change of use of the Land:
 - (a) cease the use of the building as a dwellinghouse.
 - Dismantle and remove from the building the following where they facilitate the alleged material change of use:
 - (b) washing machine, sink unit and all associated plumbing equipment, fridge, freezer, microwave, cooker unit, overhead oven extractor fan and all materials associated with its fitting and operation, kitchen worktops, floor storage cupboards units, overhead storage cupboard units
 - (c) bed, sofa, television, bedroom type set of drawers
 - (d) shower unit, sink unit, toilet pan and toilet cistern and all associated fittings, plumbing and plant equipment
 - (e) internal dividing walls
 - In addition:
 - (f) Remove from the Land all debris, equipment, fixtures and fittings resulting from compliance with requirements (b) – (e) above.
 - The period for compliance with the requirements is: 9 (nine) 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.
 - Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

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

Preliminary matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the appeal documents, a decision can be reached on the papers. Both parties were informed and offered the chance to respond. No objections were received.

The appeal on Ground (d)

3. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. Under s171B(2) of the Act, where there has been a breach of planning

control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The notice was issued on 25 October 2022. For the appeal to succeed, the appellant must show that the change of use from an outbuilding to a single dwellinghouse had occurred by no later than 25 October 2018.

4. To support their case, the appellant has provided the following evidence:

- A letter from Herts Lettings dated 16 January 2023 confirming their control/management of the appeal building since early 2018 with the building initially being occupied by their own staff (Ifran Iqbal and Zackary Owens). From 15 June 2020 Herts Lettings fully managed the building.
- Copies of assured shorthold tenancy agreements (TA) for a 12 month auto renewal tenancy for 'The Annexe' from 10 January 2018 to 30 April 2022¹.
- Copies of bank statements for Mr Zachary Owens trading as Herts Lettings for the period 12 October 2019 to 13 December 2019.
- A screenshot showing sporadic credit and debit entries during a period from November 2019 to November 2022. There is no explanation as to what evidence the screenshots are providing. What I have taken from these is that some payments were made into some account by 3 individuals. This is detailed below.
- A screenshot of an email message from Z Owens (occupier of 45a Lawn Lane, The Annexe) dated 29 May 2019.
- A notarised Statutory Declaration dated 2 January 2023.

5. Drawing this all together, I will summarise the evidence before me.

6. TA signed by the appellant and Mr Ifran Iqbal from 10 January 2018 to 31 December 2018. The monthly rent is £500. There is no documentary evidence of rent paid or received for this period.
7. TA signed by the appellant and Mr Zackary Owens from 1 February 2019 to 31 January 2020. The monthly rent is £575. The copies of the bank statements from Barclays partially coincides with this rental. There are no credits or debits for £575 and there appear to be no records of any rental payments from Mr Owens. However, there is a listing with a ref: '45 Annexe' with a direct credit from Ariola Myftari for £800 on 1 November 2019, 2 December 2019 and 2 January 2020. There is no explanation about why payments are registered against a name other than the one on the TA.
8. TA signed by Herts Lettings and Mr Sarangaraj Dharmarajan from 15 June 2020 to 30 May 2020. There appears to be an error in the end date, and it is reasonable to assume that this could be 30 May 2021. The monthly rent is £750. Screenshots of credit and debit entries show payments for £750 made by Dharma S, which I assume to be the tenant, on 5 October 2020, 3 November 2020, 3 December 2020 and 4 January 2020.
9. TA signed by Herts Lettings and Miss Winifred Samantha Nevin from 1 September 2021 to 30 August 2022. The monthly rent is £1000. There is no

¹ Paragraph 10 of this decision refers to a perceived error with the year

presented evidence of payments made or received from or relating to the tenant.

10. TA signed by Herts Lettings and Mr Bartlomiej Adamiec from 24 May 2022 to 30 April 2022. Again, there appears to be an error in the end date and once more it is reasonable to assume that this could be 30 April 2023. The monthly rent is £800. Screenshots of credit and debit entries show payments for £800 made by Adamiec B on 5 September 2022 and 2 November 2022.
11. There is ambiguity with the evidence presented. The TAs cover a period from January 2018 to April 2022 (assumed to be 2023) and there is a gap of 4 months and 3 months where there is no TA in place and no indication of rental payments being made. Gaps are explained as being 'between tenancies'. However, it seems to me that a gap of 4 months and one of 3 months is a significant period when the building may have been put to a different use. Notwithstanding these gaps, the evidence of rent paid or an income received is intermittent for the periods during which the building is said to have been occupied by a tenant. Complete evidence of payments made or received during the pertinent period should be available to support the appellant's case with Herts Lettings having some form of control/management of the appeal building since early 2018.
12. While I acknowledge that a Statutory Declaration has been provided by the appellant stating that the outbuilding has been continuously rented out to tenants since at least January 2018, except for vacant periods between lets, the content does not accord with the evidence provided, and this casts doubt on its accuracy. In these circumstances I give it limited weight.
13. Prior to the Council's enforcement investigation, its private housing team had conducted a site visit on 31 May 2019, and it was reported that at this time the outbuilding was not in a condition to be used as residential and was being used for storage. The appellant justifies this matter with a screenshot of an email dated 29 May 2019 from Zachary Owens (listed as the tenant in the TA) to the appellant explaining that they were using the building for 'mini storage for a few days' and that their residential use would resume.
14. The photographs taken in May 2019 by the Council show the building in use for storage, with furniture piled up and stacked rolls of insulation. It also shows the filter hood above a space where the cooker should be and there is wiring hanging from the duct and the equipment is missing the splash back and duct casing. Furthermore, the 2019 photographs show the exterior of the building without the horizontal cladding and windows with tape on the frames, which indicates to me that they were a recent addition to the building and that the building works had not been completed to provide a waterproof structure.
15. Overall, I find that the submitted evidence lacks precision and is ambiguous. Consequently, I am unable to conclude on the balance of probabilities that the use of the outbuilding as a self-contained dwelling has existed for more than 4 years beginning with the date of the breach. Accordingly, the appellant has not shown, as a matter of fact and degree, that when the notice was issued, no enforcement action could be taken in respect of the breach of planning control.
16. For these reasons, the appeal on ground (d) cannot succeed.

S A Hanson INSPECTOR