Appeal Decision

Site visit made on 9 August 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 19 October 2023

Appeal Ref: APP/Z5060/C/22/3300776
46 Saville Road, Chadwell Heath, Romford, RM6 6DT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jay Trikamji (J & G Alexander Properties Ltd) against an enforcement notice issued by London Borough of Barking and Dagenham Council.
- The notice was issued on 12 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised subdivision of the property, to self-contained units of accommodation within the property.
- The requirements of the notice are to:
  - Cease the use of the property as self-contained units of accommodation.
  - Remove all alterations and fixtures enabling the creation of the self-contained units.
  - Remove all consequent waste material from the premises.
- The period for compliance with the requirements is six 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.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Appeal on Ground (d)

2. In order to succeed on ground (d), it is for the appellant to demonstrate, on the balance of probabilities, that the subdivision of the detached two storey property to self-contained units of accommodation began more than four years before the date of issue of the enforcement notice and continued without material interruption for a period of four years thereafter, so as to be immune from enforcement action, pursuant to s171B(2) of the 1990 Act. The material date is therefore 12 May 2018.

3. The appellant asserts that the property has been used for four, one-bed, self-contained flats for more than 20 years. Although the Council state that no evidence has been provided that the change of use from a single-family dwelling occurred prior to the last four years, signed assured shorthold tenancy agreements for letting a residential dwelling, for each of the flats, as well as evidence of payments received, have been submitted in support of the appeal.

4. Dealing firstly with flat 1, a tenancy agreement is provided for a 12 month term, commencing on 11 May 2018. Receipts are provided of rent received from the corresponding tenant for the individual months from May 2018 to March 2020.

5. The next tenancy agreement is provided for a 12 month term commencing 1 June 2020. Receipts are provided of rent received from the corresponding tenant for the individual months from June 2020 to October 2020.

6. That tenancy evidently did not run its full term as a new agreement is provided for a six month term commencing 1 November 2020. Again, corresponding receipts are provided of rental payments for the individual months commencing from November 2020 to February 2021.

7. The final tenancy agreement for flat 1 is for a six month period commencing on 1 February 2021. Bank statements are provided showing money being paid into an account for the corresponding amount and from the corresponding tenant, referenced 'F1-46 Saville' for the months of March to September, although the year isn't shown. There is then a gap in the evidence until the statements start up again for the months March to May. Although again the year isn't shown, they are not duplicates because the day date is different. Moreover, a copy of a ledger appears to highlight the corresponding payment years as 2021 and 2022 respectively.

8. For flat 2, a 12 month tenancy agreement is provided commencing on 7 April 2018. Receipts are provided of rent payments from the corresponding tenant for the individual months from April 2018 to July 2019.

9. The second tenancy agreement for flat 2 is for a period of 12 months commencing on 24 August 2019. Bank statements are provided showing money being paid into an account for the corresponding amount and from the corresponding tenant, referenced 'F2-46 Saville'. Although for most of the statement extracts the year isn't shown with the date of transaction, some do show the statement period or refer elsewhere to the year. Moreover, a copy of a ledger highlights the full corresponding payment dates. It is likely therefore that the statement extracts provided are August 2019 and for each month from November 2019 to the end of April 2022.

10. Turning to flat 3, a tenancy agreement is provided for '*room*' 3 for 12 months from 21 February 2014. That could suggest a HMO use rather than a flat. However, monthly receipts are provided for '*flat*' 3 from the same tenant for the payment of rent for January 2018 and from March 2018 to December 2018.

11. The second tenancy agreement provided is for a 6 months commencing 16 August 2021. However, extracts from bank statements are provided showing money being paid for the corresponding amount and from the corresponding tenant, referenced as rent, commencing on 11 March 2019. The ledger entry is earlier again on 16 February 2019.

12. Although most of the statement extracts provided for flat 3 do not show the year with the date of transaction, some do show the statement period or refer elsewhere to the year. Moreover, a copy of a ledger highlights the full corresponding payments dates. It is likely therefore that the statement extracts evidence payment for the periods between March 2019 to May 2021 and from August 2021 to April 2022.

13. For flat 4, a 12 month tenancy agreement is provided commencing on 2 March 2018. Receipts are provided of rent payment from the corresponding tenant for the individual months from March 2018 to July 2021.

14. A second tenancy agreement is provided for flat 4 for a six month term commencing on 21 September 2021. Evidence is also provided of payments made in the form of Visa debit receipts to Alexander & Co Estates for the corresponding amount for the months September 2021 to April 2022. However, the only reference to the flat is 'F4 – 46 Saville' penned on all bar one of the receipts.

15. Nevertheless, no evidence is provided by the Council which contradicts the appellant's version of events or the evidence submitted in support of the same.

16. I therefore find, on the balance of probabilities, that the subdivision of the property to self-contained units of accommodation began more than four years before the date of issue of the enforcement notice and continued without material interruption for a period of four years thereafter, so as to be immune from enforcement action, pursuant to s171B(2) of the 1990 Act.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.

Richard S Jones

INSPECTOR