



Appeal Decision

Site visit made on 7 November 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 30 November 2023

Appeal Ref: APP/G3110/C/22/3307151

16 Hadow Road, Marston, Oxford, Oxfordshire, OX3 0JW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Ruth Sly against an enforcement notice issued by Oxford City Council.
- The notice, tef: 20/00294/ENF, was issued on 15 August 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised subdivision of the property on the Land from use as a single dwellinghouse to use as three separate dwellinghouses (Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)).
- The requirements of the notice are: (i) Cease the use of the property on the Land as 3 separate dwellinghouses; and (ii) Return the property on the Land to use as a single dwellinghouse (Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)).
- The appeal is proceeding on the ground 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.

Decision

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

The Appeal on Ground (d)

2. This ground is that the sub-division of the property into three separate dwellings took place more than 4 years before the notice was issued. There are three issues, firstly when did the sub-division take place, secondly has occupation of the three dwellings been continuous and thirdly if it has did the holiday lets use intervene to begin the clock again.
3. Apart from the holiday lets issue the Council have no evidence of their own to contradict the appellant's. Consequently, I should accept the appellant's version of events as long as it is internally consistent and coherent.
4. No16 is one of a row of terraced houses that were constructed in the late 2000s as part of a larger development. It was purchased in 2008 by the appellant who says she immediately had it converted into 3 self-contained flats and began renting them out. There is no single piece of evidence that is conclusive for the conversion or renting so I shall look briefly at the evidence in the round.
5. Firstly the general evidence. There is an invoice from a joiner Tony Truffitt for works at No16 dated January 2009. There also invoices in November 2008 from C J Newman for works carried out, but no information as to where. The appellant's notes state Newman worked for Truffitt on the conversion. It would seem the final tidying up was completed in December 2008, but most of the

- work completed by the end of November. In October 2008 there is a bill for the installation of cooker points on the first and second floors and bathroom works on the ground floor of No16. This is consistent with a conversion to 3 flats. This is followed by an email to the police saying that 3 brand new flats are available to rent in Marston (which is where Hadow Road is located).
6. In November 2009 there is an email enquiry about a flat at No16 and in May 2010 Red-Lets provide an advertisement to rent out a 1 bed studio flat at No16. In May 2011 the Newbury Building Soc wrote to the appellant about her mortgage which was now in doubt because she had converted the property at No16 into 3 flats without the approval of building regulations. In June 2012 there is an invoice from a plumber for works at No16, though the invoice refers to work on flats. There is a further plumber's invoice in January 2013 referring to work on the top floor flat at No16.
 7. In September 2014 there is an email exchange with the accommodation manager at a NHS trust about a 1 person flat for a Dr Bandi, who subsequently signs an AST in the same month. In December 2014 there is an email exchange with a Mr Damas (a tenant at No16) referring to a top floor flat at the property.
 8. There is no specific reference to three flats, and the property address is consistently No16, but there is no doubt from the incidental evidence that the property must have been converted into flats and that they were rented out from time to time. In addition there is the statutory declaration from the appellant and from a gas engineer. The latter confirms that he went to No16 regularly from 2008. He had to go into the ground floor flat and the top floor flat so can confirm the dwelling was split into 3 flats. There are letters from the occupiers of No18, one of whom, has been in the property since it was built, that to the best of his knowledge No16 has always been occupied as 3 flats and he has never had any trouble from them. In my view it is clear the property was converted into 3 flats and on the balance of probabilities this took place, as the appellant says, in late 2008.
 9. Evidence from ASTs and occasional emails from tenants also points to continuous occupation. The appellant has provided a list of all the occupants for the 3 flats from 2008 to present and nearly all are supported by ASTs. I accept these documents refer to No16, and not to any specific flat, but given my conclusion above it follows that the tenancies must be for the 3 flats as described by the appellant.
 10. Consequently, by 2014 the three flats had been occupied for considerably more than 4 years and so had become immune from enforcement action. However, that status was still unofficial and could be lost by abandonment or a material change of use which would represent a new page in the planning history and start the 4 year clock again. It is the Council's contention that this is what happened in 2015/16. In April 2015, Jamie King took out a lease on the top floor flat and in January/February 2016 Quarters Living took out leases on the ground floor flat and first floor flat flats. Quarters Living is a letting company which whilst they do provide long term lets seem to specialise in holiday lettings. Jamie King is the director of Quarters Living and it would seem from the advertisements provided by the Council that all 3 flats were let out as holiday lets for the next 3 or so years.

11. In actual fact we do not know what happened to the flats in those years. There are some reviews on-line that suggest they were used by holiday makers, but which flats is uncertain and how often they were let out is also unclear, but Quarters Living made regular payments to the appellant. The bank statements show this started as £750 a month but by 2019 had grown to over £2300 a month. This fits with the suggestion they first were paying for the top floor flat and then for all 3.
12. I agree with the Council that renting out the flats as holiday lets could be materially different to renting them as separate dwellings. They obviously remain dwellings in the 'Gravesham' sense, but their use could be materially different. An appeal decision¹ has been provided where this issue is discussed in full, but it is not controversial that holiday lets can generate much more noise and disturbance than a normal house, there are more comings and goings, not just of the holidaymakers but also those servicing the flats in between rentals and this can amount to a material change of use. However, as also acknowledge in the Inspector's decision this is always a matter of fact and degree in each case.
13. In this appeal the difference is not between three holiday units and a single family house as the building had been long converted and also it is not an application for permission to make a material change of use, but a ground (d) appeal, so the question is not whether it is possible the use as holiday lets could have amounted to a material change of use in certain circumstances, but whether in fact there was an actual material change of use. For that latter proposition there seems to be very little evidence except for a single complaint. Given the use for holiday lets was going on for 3-4 years in a residential area does not suggest many, if any, of the issues identified above were associated with it. Consequently, I do not think the period of occupation by Quarters Living does amount to a material change of use and the timeline for the use as three separate dwellings was not broken in 2016.
14. The Council refer to the lack of building regulations approval and the failure to pay council tax, but it cannot be inferred from these omissions the use of three flats had not begun, as it quite patently had. I also do not consider the answers to the rather opaque PCN weigh against the appellant. Taking all this together I consider that on the balance of probabilities the use of No16 as three separate dwellings is immune from enforcement action and the appeal on ground (d) succeeds. I shall allow the appeal and quash the notice.

Simon Hand MA

INSPECTOR

¹ APP/G3110/C/19/3239740 etc. Issued 10 July 2020 concerning a property also in Oxford