



Appeal Decision

Site visit made on 11 December 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 January 2024

Appeal Ref: APP/U5360/C/22/3310884

Rear of Pandangle House, Acton Mews, London E8 4DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Meir Levine against an enforcement notice issued by London Borough of Hackney.
 - The notice was issued on 29 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a self-contained flat.
 - The requirements of the notice are to:
 - 1 Cease the use of the ground and first floor unit of the rear of Padangle House, accessed via Acton Mews (pictured in Appendix 1) as a self-contained residential flat;
 - 2 Remove all fixtures and fittings and equipment facilitating the use of the Property as a self-contained residential flat;
 - 3 Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 - 4 Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground[s] 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. I have taken the address above from the enforcement notice. The appellants have described the address as Flat 1 Pandangle House, 270 Kingsland Road. When I visited the site, a notice was stuck to the window of the door into the premises stating '2083 Acton Mews'. There has also been some confusion about the relevant postcode. It is not clear what the correct address is but that used by the Council on the notice was sufficient for the appellant to identify which premises were subject to the notice. I do not consider that there is any clear error therefore on the notice that I need to correct.
3. The appeal is proceeding on ground (d) and the appellant confirmed in writing that they did not wish to proceed with the ground (a) appeal as originally pleaded on the appeal form.
4. Given the issues in dispute only relate to that ground of appeal, a site visit was not essential but I did carry out an unaccompanied visit although could not

therefore enter the property. I consider that I have sufficient information to proceed to a decision without going inside the property.

The Appeal on ground (d)

5. This ground of appeal is that at the time the notice was issued, it was too late to take enforcement action. The appellant has not appealed in relation to how breach of planning control has been alleged on the notice. There is no dispute therefore that a single dwellinghouse as alleged exists. By reason of S171B(2) of the Act, where there has been a material change of use of a building to use as a single dwellinghouse, no enforcement action may be taken after the end of a period of 4 years beginning with the date of the breach. The notice was issued on 29 September 2022 and so the onus is upon the appellant to demonstrate that the use commenced at the latest by 29 September 2018 and was continuous for 4 years since it commenced. The planning merits of the use are not relevant to consider in this appeal.
6. The appellant has provided limited evidence in the form of an assured shorthold tenancy agreement (AST) and also a statement of account (SOA). The AST was entered into on 18 February 2015 and is signed by the tenant who I will refer to as 'Mr B'. The AST has not been signed by the landlord company indicated on the AST and it is not clarified what position the appellant has in relation to that company. The SOA indicates that Mr B has paid rent monthly since 1 April 2015. There is no suggestion by or evidence from the Council to indicate that these documents are inauthentic.
7. There is therefore evidence that Mr B has entered into the AST and that they have paid money to the landlord company. The Council has also provided photographs from various points in time. The Council unfortunately were not able to gain access to the property when they attempted to in September 2021 and October 2021. A photograph of the front of the property is provided with the Council's statement showing an arrangement of windows and a door similar to what I saw when I visited. Screenshots from an on-line source show that in May 2014 the apertures for the windows and doors had been created by that time although were boarded over. By April 2016, the windows and door had been installed. This provides a time-line of showing that at least externally noticeable adaptations to the building had been made by sometime between 18 February 2015 when the AST was signed by Mr B and 1 April 2015 when Mr B first paid rent. This is therefore consistent with the appellant's evidence.
8. It has been held however in settled case law, that an appellant seeking to make a case pursuant to ground (d) must provide sufficient evidence which shows, on the balance of probabilities, that there has been a continuous use for the relevant immunity period. The evidence shows that money has been paid continuously but there is no evidence regarding the nature of occupation and whether that has, as a matter of fact and degree, been continuous. The appellant would need to demonstrate that for 4 years following the commencement of the breach of planning control, which seems likely to have been around April 2015, that there was continuous occupancy.
9. Further settled case law has held that a use can only become lawful if it continues throughout the relevant immunity period, such that the Council could have taken enforcement action at any time. It needs to be affirmatively established over the relevant period rather than, for instance, assumed in the absence evidence of non-occupancy. Periods of non-occupancy may result in

the breach of planning control having ceased such that the Council could not have taken enforcement action in that time and the immunity 'clock' would start again upon re-occupation. Once lawfulness has occurred due to continuous use, there would be less sensitivity regarding periods of non-occupation or irregular occupation. The assessment of these matters has not been assisted by the lack of response to a Planning Contravention Notice issued on 6 November 2021. As well as an investigatory tool, that would have been an opportunity for the appellant to formally set-out the details of how the property has been occupied on the formal record.

10. In this case, the evidence submitted can be given some weight and indicates that Mr B, the tenant, appears to have continuous control over the property within the terms of the AST agreement. They have had the ability to occupy the premises continuously. However, that is not the same as affirmatively demonstrated actual continuous occupancy. There are no statements from Mr B who would seem best placed to explain the nature of his use of the premises, from the appellant or others with a detailed knowledge of the premises, to explain the nature of the occupancy. The only statement is from the appellant in the form of an email saying that the use was started in April 2015 and has continued as a self-contained dwelling ever since. However, it is not explained whether that is personal knowledge or word of mouth or on what basis the appellant's agent has been involved with the property to know how Mr B has lived at the address. Whether Mr B has been away from the address for any periods could be critical to the assessment of the appeal.
11. There is not sufficient evidence to demonstrate on the balance of probabilities, that the occupancy of the dwelling has been continuous for any period of 4 years since it commenced. The appeal on ground (d) therefore fails.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Andy Harwood

INSPECTOR