The Planning Inspectorate

Appeal Decision

Site visit made on 10 January 2024

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

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/Z5060/C/22/3304798
Land and premises at 683a Green Lane, Dagenham, RM8 1YA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jerome MacDonald against an enforcement notice issued by London Borough of Barking and Dagenham Council.
- The notice was issued on 12 July 2022.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised subdivision of the flat above the shop, to multiple self-contained units of accommodation.
- The requirements of the notice are to:
  - Cease the use of the property as multiple self-contained units of accommodation.
  - Remove all alterations and fixtures enabling the creation of the multiple 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) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by:

   - deleting the allegation in section 3 and substituting with; 'Without planning permission, the material change of use of the flat above the shop to three flats.'

2. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

The Enforcement Notice

3. The appeal relates to a three storey, mid-terrace property with roof extension. It is undisputed that the two floors above the ground floor commercial unit, originally comprised one flat. The breach of planning control as alleged in the notice is the subdivision of that flat to multiple self-contained units of accommodation.

4. At the time of my site visit, there were three individual units: Flat A at first floor level; Flat B at second floor level; and Flat C in the extended roof space. That configuration is consistent with the floor plans submitted in support of the appeal. Although the enforcement notice does not specify the precise number of units, the Council does not argue that configuration is any different to that which existed at the time the enforcement notice was issued.

5. S55(3)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) states that for the avoidance of doubt *the use as two or more separate*

dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used.

6. The allegation should therefore be corrected to the material change of use of the flat above the shop to three flats, so as to properly describe the breach of planning control. I am satisfied that I am able to make that correction without injustice to any party under the powers transferred to me by s176(1)(a) of the 1990 Act. Although this correction to the allegation logically suggests consequential variations to the requirements, that would serve no purpose as I am quashing the notice.

The Appeal on Ground (d)

7. In order to succeed on ground (d), it is for the appellant to demonstrate, on the balance of probabilities, that a breach of planning control consisting of the material change of use of the flat above the shop to three flats 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 meet the immunity period from enforcement action under s171B(2) of the 1990 Act. The material date is therefore 12 July 2018.

8. The appellant attests in his statutory declaration (SD) that when he purchased the property in 2013 there were two flats above the ground floor commercial unit (one on each floor), known as Nos 683A and 683B. That configuration is corroborated in the SD made by the previous owner.

9. The appellant's SD goes on to explain that in 2017 he built a rear dormer and added a third flat in the extended loft space. That is corroborated by the SD from a builder who states that he was contracted by the appellant between April 2016 and July 2017 to refurbish the two properties at 683A and 683B and to form a new dwelling in the roof via a loft conversion. Further supporting evidence to that effect is provided in the form of invoices for works at 683A/B/C between January and July 2017. Individual domestic electrical installations certificates from August 2017 are also provided for all three flats.

10. The evidence is therefore sufficiently precise and unambiguous to demonstrate that the flat originally known as No 683A had been physically subdivided to create three separate Flats known as Nos 683A, 683B and 683C, more than four years prior to the date of the enforcement notice, on the balance of probabilities.

11. The appellant states in his SD that once the works were complete, he then let all three flats and that they have been let continuously since early 2018, at least, other than for short periods in between tenancies.

12. The SD provided by the appellant's accountant confirms that the appellant has been receiving rent for all three units since September 2017. A spreadsheet of the rental income received has been prepared by the accountant, albeit based on information provided by the appellant. For Flat A, that details payments from January 2018 to March 2022. For Flat B, from September 2017 to April 2022 and for Flat C from February 2018 to March 2022.

13. Bank statement transactions are also provided for the period between September 2017 and August 2022, which correspond with the spreadsheet details for all three flats.

14. A signed tenancy agreement is provided from October 2013 for No 683A. A SD from that tenant confirms that she lived there from that time until January 2016. She confirms that during her residency there was another flat in the building, namely 683B, which was rented to a family.

15. A second 12 month tenancy agreement dated 15 January 2018 is provided for No 683A. The name of the tenant corresponds with the individual payment details in the bank statement transactions under reference 'RENT683A'. The rental amount paid also corresponds with the tenancy agreement and evidences payment and therefore occupancy by the tenant until September 2020.

16. The next signed tenancy agreement for 683A is dated 14 November 2020 for a six month term. A renewal of that agreement is provided dated 21 September 2021 for a 12 month term. The bank statement evidences payment of rent by the named tenant under reference 683A, for the corresponding amount from November 2020 through to July 2022.

17. The first signed tenancy agreement provided for No 683B is dated 25 September 2017, for a 12 month term. The name of the tenant corresponds with the individual payment details in the submitted bank statements under reference 'RENT683B'. The rental amount paid also corresponds with the tenancy agreement and corroborates that the tenant occupied the property until February 2021.

18. The next signed tenancy agreement for No 683B is dated 26 March 2021 for a 12 month term. The bank statements evidence payment by the named tenant under reference RENT for the corresponding amount from March 2021 until June 2022.

19. The first signed tenancy agreement provided for No 683C is dated 2 February 2018 and is for a 12 month term. The bank statement reference in the initial payment corresponds with the named tenant. The references in the payments thereafter are '683C'. Although the tenants name does not appear, the bank account details are the same. The rental amount paid also corresponds with the tenancy agreement and evidences occupancy by the tenant until April 2021. The SD from the tenant provides further corroborating evidence that he occupied the flat known as 683C from February 2018 to April 2021. He also confirms that during his time at the flat, the two other flats, A and B, were also occupied by tenants.

20. The second signed tenancy agreement for No 683C is dated 1 May 2021 and is for a 12 month term. The bank statement evidences payment by the named tenant under reference RENT683C for the corresponding amount, from May 2021 until April 2022.

21. The appellant explains that the tenancy agreement for the next tenants has been misplaced. Instead, an unsigned and undated copy is provided. Nevertheless, the name of the tenants matches the payments shown in the bank statement for the corresponding amount under reference 'RENT'. Those payments demonstrate occupation between May and August 2022.

22. Individual gas safety certificates are also provided for Nos 683A, 683B and 683C, from 2018, 2019, 2020 and 2021. An earlier certificate is also provided for No 683C from 2017.

23. Bringing the above together, whilst some of the supporting evidence for No 683B falls around one month short of the date of issue of the enforcement notice, the Council has provided no evidence of its own which contradicts the appellant's version of events. That includes his SD from December 2022 in which he states that he has continuously let all three flats since early 2018.

24. The weight of evidence therefore clearly and unambiguously demonstrates that the material change of use of the flat above the shop to three flats occurred more than four years before the date of issue of the enforcement notice and has continued without material interruption for a period of four years thereafter. It is manifestly shown that it was too late to take enforcement action.

Conclusion

25. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.

26. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on ground (g) does not need to be considered.

Richard S Jones

INSPECTOR