



Appeal Decision

Inquiry held on 27 February 2024

Site visit made on 26 February 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2024

Appeal Ref: APP/F5730/C/22/3293761

60 Wesley Avenue, London NW10 7BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Eman Mohy-Eldin against an enforcement notice issued by Old Oak and Park Royal Development Corporation (OPDC).
 - The notice was issued on 17 January 2022.
 - The breach of planning control as alleged in the notice is the material change of use of dwellinghouse to four flats.
 - The requirements of the notice are 1. Cease the use of the dwelling as four flats; 2. Reduce the number of kitchens to no more than one; 3. Reduce the number of bathrooms to no more than one; 4. Reduce the number of electricity meters to no more than one; and 5. Remove from the property all debris resulting from compliance with the above steps.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Procedural matter

2. All evidence at the Inquiry was given under oath.

Reasons

The ground (d) appeal

3. The onus of proof in a ground (d) appeal is on the Appellant and she must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the alleged change of use of the dwellinghouse occurred more than four years before the date of issue of the enforcement notice, and that the use has subsisted continuously during that period and without material change. For the ground (d) appeal to be successful, therefore, the change of use must have occurred before 17 January 2018.

4. 60 Wesley Avenue is a two-storey plus attic mid-terraced property. At ground floor level is a studio flat (Flat A) and a two-bedroomed flat (Flat B), at first floor level is a two-bedroom flat (Flat C), and at attic level is a one-bedroom flat (Flat D). At the rear of the property is a garden accessed only from Flat B, and at the rear of the garden is a single storey ancillary outbuilding.

5. The appeal property, previously a dwellinghouse, was purchased by the Appellant and her business partner in 2015 with the intention to convert it into four self-contained flats. The owners were clearly not aware that such a conversion constitutes a material change of use for which planning permission is required. Conversion works commenced but were not completed until 2017.

6. An invoice from Thames Water dated 12 May 2016 indicates that four water meters were installed, and installation reports dated 10 April 2017 indicate that electricity supplies, and meters, were installed for Flats A, C and D; these were in addition to the existing supply that was retained for Flat B. Energy Performance Certificates were issued for all four flats on 15 May 2017.

7. An Assured Tenancy Agreement (AST) for Flat A for a one year term was signed by the Appellant and the tenants, Edgar Jose Da Silva and Arlindo Andrade Da Silva, on 25 April 2017. A certificate of tenancy deposit protection confirms that a deposit was paid and a bank statement confirms that the deposit and the first month's rent were paid to the Appellant on 24 April 2017.

8. An AST for Flat B for a one year term was signed by the Appellant and the tenant, Wesley Moraes Dos Reis, on 1 July 2017. An invoice for payment of deposit protection confirms that a deposit was paid and a bank statement confirms that Mr Dos Reis paid rent to the Appellant on 4 September 2017; so he must have taken up residence of the flat.

9. An AST for Flat C for a one year term was signed by the Appellant and the tenants, Joyce Kyei Mensah and Daniele Di Matteo, on 1 June 2017. An invoice for payment of deposit protection confirms that a deposit was paid and a bank statement confirms that Ms Mensah paid rent to the Appellant on 1 September 2017; so she and Ms Di Matteo must have taken up residence of the flat.

10. An AST for Flat D for a one year term was signed by the Appellant and the tenants, Ignazio Nuccio and Elena Previteri, on 24 June 2017. An invoice for payment of deposit protection confirms that a deposit was paid and a bank statement confirms that Mr Nuccio paid rent to the Appellant on 29 August 2017; so he and Ms Previteri must have taken up residence of the flat.

11. The first tenants of Flats A, B and D all completed, at least, the one year term of their ASTs. The tenants of Flat C left at the end of 2017 and were replaced by Ivone De Fatima Ferreira. An AST for a one year term was signed by Ms Ferreira and the Appellant on 3 February 2018. An invoice for payment of deposit protection confirms that a deposit was paid and a bank statement confirms that rent was paid to the Appellant on behalf of Ms Ferreira on 5 February 2018.

12. Flat C was not occupied during January 2018 but such a short period of vacancy is normal between tenancies. Unambiguous documentary evidence indicates that the property was converted to four flats between 2015 and summer 2017 and that all the flats were occupied and in use from 1 July 2017. The Council does not, in fact, dispute that the four flats were occupied on 17 January 2018. Their concern is with the continuity of use of the flats during the four year period.

13. The Appellant and her business partner did not maintain one bank account into which rent payments were made by occupants of the property. They had multiple bank accounts and transferred money between those accounts. Furthermore, bank statements are not available for all of their accounts so documentary evidence of rent payments, particularly before 2020, is patchy.

14. The Council also highlights the lack of dated photographs of tenancy, invoices for utility services and insurances, sworn affidavits from past occupants, and receipts for products or services. These types of evidence would substantiate the Appellant's case but determination of this ground (d) appeal will be made with regard to the evidence that has been submitted and the affidavit by the Appellant.

15. The Council has also highlighted that, in their view, there are inconsistencies in the evidence. A Building Control Completion Certificate (BCCC) of May 2017 for roof works and a rear extension at the property states, simply as matters of fact, that the works completed were minor and did not include the creation of a new dwelling. The BCCC does not demonstrate any sort of inconsistency.

16. In August 2018 the Corporation took enforcement action against the erection of the outbuilding at the rear and its use as a self-contained dwelling. The Appellant engaged a consultant to appeal the notice. In his appeal statement the consultant referred to the appeal property as a 'dwelling' that has permitted development rights afforded by The Town and Country Planning (General Permitted Development) (England) Order 2015.

17. The appeal related to the erection and use of the outbuilding and it is unlikely that the Appellant gave the consultant any information about the property. It is likely, therefore, that it was his assumption that the property was a dwelling. The statement is inexpertly written, is littered with grammatical errors, and demonstrates a poor grasp of planning. The statement cannot now be held against the Appellant and does not demonstrate any inconsistency.

18. The appeal was, unsurprisingly, unsuccessful. Subsequently, the same consultant submitted a householder application, on behalf of the Appellant and in October 2019, for 'proposal to use the existing outbuilding as a storage' (sic). Such an application can only be made if the property is a dwelling and would not have been accepted by the Corporation if they had been aware that the property was four flats; the delegated report refers to 'the main dwelling'.

19. The Appellant, who has no planning experience or knowledge, engaged the consultant to act on her behalf and, as he had probably assumed that the property was a dwelling in 2018, it is unsurprising that he continued with this misconception in the following year. That planning permission was granted by the Corporation under false pretences is unfortunate, but cannot be held against the Appellant and does not demonstrate any inconsistency.

20. Occupants of the flats have paid their own utility bills and there is no documentary evidence of these payments. But there have been a few short gaps between tenancies and invoices submitted in evidence indicate that the Appellant has paid for electricity used during these gaps. The gaps between tenancies have been short and they do not interrupt the continuity of occupation of the flats.

21. Flat C was unoccupied between the end of May 2019 and the middle of August 2019. However, there is no reason to doubt the Appellant's explanation, given under oath at the Inquiry, that the flat had been left in poor condition by the departing tenant, Mr A Kanto, and that extensive repairs were required before the flat was tenanted to Mr Uldedaj.

22. All occupants of the four flats have, initially, signed an AST for a one year term and documentary evidence indicates that their deposits have been protected. There is documentary evidence, from bank statements, of all occupants paying rent

so there is no reason to doubt that occupants of the flats took up occupation when they signed their ASTs. Some occupants have stayed beyond the term stated in their AST but they have been on rolling tenancies. The Appellant's evidence given under oath at the Inquiry was compelling and convincing and there is no reason to doubt her claim that the four flats have been continuously occupied since before 17 January 2018 and up to the present day.

23. The Appellant has provided sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the alleged change of use commenced before 17 January 2018 and that the use has subsisted continuously since then and without material change. The ground (d) appeal thus succeeds and the ground (f) and (g) appeals do not need to be considered.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Ms S Gibson Barrister

He called

Ms Eman Mohy-Eldin Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Merrett Barrister

He called

Mr J Hughes MRTPI Head of Planning Enforcement and Compliance at OPDC

DOCUMENTS

- 1 Opening statement on behalf of the Local Planning Authority
- 2 Opening submissions for the Appellant
- 3 Closing statement on behalf of the Local Planning Authority
- 4 Closing submissions for the Appellant