



Appeal Decision

Inquiry held on 8 and 9 May 2024

Site visit made on 9 May 2024

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2024

Appeal Ref: APP/T5150/C/22/3308003

17 Windsor Crescent, Wembley HA9 9AN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Imran Ashraf against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 23 August 2022.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the premises to multiple self-contained flats.
 - The requirements of the notice are to:
 - Step 1 Cease the use of the premises as multiple self-contained flats.
 - Step 2 Remove from the premises all partitions, fixtures and fittings that facilitate the unauthorised change of use, and restore the internal layout of the premises to that of a single dwelling, including the removal of ALL kitchens, in excess of ONE, and ALL bathrooms, in excess of THREE.
 - The period for compliance with the requirements is 4 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).
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Decision

1. It is directed that the enforcement notice is corrected by:-
 - In schedule 2 of the notice, deleting the words "multiple self-contained" and substituting them with the word "four".
 - In schedule 4 of the notice, deletion of the words "multiple self-contained".
2. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. Since the appeal followed the inquiry procedure, I held a Case Management Conference (CMC) online on 20 February 2024 with the appellant and a representative of the Local Planning Authority (LPA). It was held to discuss the arrangements for the inquiry and not the merits of the appeal.
4. At the inquiry, all evidence was taken on affirmation.
5. An application for costs was made by the Council of the London Borough of Brent against Mr Imran Ashraf. This is the subject of a separate decision.

The Site and the Enforcement Notice

6. The enforcement notice and this appeal relate to a three-storey terraced residential property on the north side of Wembley Crescent. I understand that

the pre-existing lawful use of the building was as a single dwellinghouse. There is no dispute that there has been a material change of use of the building to use as separate flats as alleged.

7. Pursuant to s176(1) of the Town and Country Planning Act 1990, as amended (the Act), I have the power to correct any defect, error or misdescription in the enforcement notice if I am satisfied that the correction or variation will not cause injustice to the appellant or the LPA. In this case, the allegation set out in the notice is somewhat imprecise in its reference to 'multiple' flats.
8. The evidence shows that there are in fact four flats in the appeal building:
 - One 1-bedroom flat on the ground floor (Flat A);
 - One 2-bedroom flat on the first floor (Flat B); and,
 - Two 1-bedroom flats on the second floor (Flats C and D), with Flat C facing the rear and its bathroom and kitchen accessed off a shared landing area.
9. The parties agreed at the inquiry that the notice could be corrected without causing injustice in the interests of accuracy. I have decided that the most straightforward approach would be to correct the allegation to simply say that there are four flats. For consistency, I will also correct the wording of Step 1 to simply require the cessation of the unauthorised use. Again, doing so will cause no injustice to either party. I shall therefore correct the notice accordingly by exercising the powers available to me under s176(1) of the Act.

The appeal on ground (d)

10. The ground of appeal is that, on the date the notice was issued, no enforcement action could be taken in respect of what is alleged, that is, the material change of use to use as four flats. The onus is on the appellant to make that case on the balance of probabilities. Their evidence should be accepted if it is sufficiently precise and unambiguous, and there is no evidence to contradict their version of events or make it less than probable.
11. Under s171B(2) of the Act, no enforcement action may be taken against a change of use of a building to use as a single dwellinghouse after the end of the period of four years beginning with the date of the breach, so long as that date was before 25 April 2024. Since the word 'building' can mean 'part of a building', s171B(2) applies to each of the alleged flats. There is no dispute that the appeal change of use took place before 25 April 2024, meaning that the 'four year rule' applies.
12. To determine the date of a change of use to a dwelling, regard should be had to two factors, neither of which is decisive: when the building or flat provided viable facilities for private day-to-day living, and when the residential use actually commenced. However, it is necessary for the appellant to show not only when the use of each flat began, but whether it continued for a four year period without significant interruption, such that the LPA could have taken enforcement action at any time.
13. The notice was issued on 23 August 2022, and so the use of each flat must have begun by no later than 23 August 2018 for the appeal to succeed on

ground (d). I could make a split decision on this ground in the event that the appellant shows that some of the flats are 'immune' from enforcement action.

Background to the change of use

14. The appellant and their brother purchased the appeal property in September 2013. The appellant claims that works were carried out in October 2013 to create Flats A, B, C and D as described above. In support of that case, the appellant directs me to correspondence¹ with a property renovation company, Doru Construction, in September 2013.
15. This shows that Doru Construction in fact merely provided an estimate for various works at the property. The estimate did not include such detail as to show that the works would include or result in the subdivision of the property into four separate flats. The appellant has not submitted any documentary evidence to show when the layout of the building was changed, and the four flats were fitted out for use as separate units of residential accommodation.
16. The chronology of events and periods of occupancy upon which the appellant relies to support their case that the flats would be immune from enforcement action, differs between each flat. I shall therefore deal with each flat separately.

Flat A – ground floor

17. The appellant set out a chronological account of who occupied each unit within the property, and over what timescale, in their appeal statement of case². In addition, and in the run up to the inquiry, I was provided with a further timeline for Flat A³. This suggests that Flat A was occupied by Anand Patel from 6 January 2014 to an unspecified date in 2016. The appellant's bank records indeed show a transfer from 'A Patel' on that date, but the accompanying tenancy agreement⁴ states that the tenancy did not commence until 1 March 2014 – and it was not signed by the appellant as landlord.
18. The initial payment received on 6 January 2014 was for £1000, but the later tenancy agreement stated that the rent for Flat A would be £1,100 per month. A Patel made further cash deposits of £2,000 and £7,900 on 5 February and 13 March 2014, but those sums together with the initial payment do not add up to the 11 months of rent that the appellant claims was being paid.
19. Moreover, there is no record, other than a handwritten annotation on the bank statement, that these payments were from Anand Patel. A payment of £1,100 was made from 'Patel J Anand' in June 2015, but that was some 15 months after the tenancy officially commenced, and 16 months after the last payment. And then they did not make any further deposits until December 2015, although they did thereafter make monthly payments until April 2016.
20. Anand Patel paid the appellant variable amounts in their last four payments, and that could be because they owed rent from 2014 and 2015. However, the appellant has not shown why he would have allowed any tenant to accrue such a debt, or that Anand Patel probably occupied Flat A continuously from March

¹ CD1.23

² Appeal Statement by Just Planning, dated 7 November 2022

³ CD1.1

⁴ CD5.1

2014 until April 2016, such that the Council could have taken enforcement action against the residential use at any time.

21. In any event, less than four years elapsed between March 2014 and April 2016, so the use of Flat A could not have become immune from enforcement action in that time. There was then, on the appellant's own evidence, a significant gap in occupation before the next tenant, A Ignat, is claimed to have moved in during May 2017. The clock would start again from that point, but the appellant has not produced a tenancy agreement for A Ignat, and there is no evidence to link their monthly payments of £1300 to the appeal building.
22. Mr Mathivanan told the inquiry that he and his wife moved from Flat D to Flat A on 28 June 2018, this being more than four years before the notice was issued. The first tenancy agreement⁵ produced in relation to the Mathivanans occupation of Flat A was a single page document which the appellant later admitted, under cross-examination, to having manufactured in support of the appeal. That was evident because, in this and eight other agreements, there was a small print reference to Covid-19 legislation although this tenancy agreement was said to have been signed and commenced before the Covid-19 pandemic had occurred. During cross-examination, the appellant confirmed that these nine agreements⁶ had been produced to support his case and therefore they were not genuine. Therefore, I cannot attach any weight to the 28 June 2018 tenancy agreement for Flat A and, indeed, Mr Mathivanan told the inquiry that he had never seen or signed it.
23. He confirmed, however, that he had signed another submitted agreement for Flat A⁷, which was dated 21 June 2018 and stated that the tenancy would commence from 1 July 2018 with a monthly rental sum of £1,350. This agreement was not signed in the presence of any witnesses, but regular receipt of payments from Mr Mathiavan to the appellant, as evidenced by bank statements, make it probable that Flat A was in continuous residential use from July 2018 until the Mathivanans moved out in January 2019.
24. It also appears that Flat A was in continuous residential use between 9 April 2019 and October 2021. A tenancy agreement⁸, the appellant's timeline, and bank statements, collectively suggest that Mr Bitiusca and Ms Badiu paid the required rent during that period. However, the appellant has not explained why the flat was unoccupied, or how it was used in the nine plus week gap between the Mathivanans leaving and Mr Bitiusca and Ms Badiu moving in.
25. The evidence relating to the next (and current) tenant is also imprecise and ambiguous. It appears from the timeline and a tenancy agreement⁹ that Mr Ahmed moved into Flat A on 11 November 2021, just one month after Mr Bitiusca and Ms Badiu moved out. However, this agreement relates to a '1 bedroom flat first floor', but Flat A is on the ground floor, and the agreement was not signed by the tenant. Mr Ahmed's signature has also been redacted from what is claimed to be his statutory declaration¹⁰, and the appellant did not meet my request for a clean copy of that statement to be provided.

⁵ CD5.3

⁶ Tenancy Agreements CD5.3, CD5.6, CD5.9, CD5.10, CD5.11, CD5.16, CD5.18, CD5.23 & CD5.24

⁷ CD5.2

⁸ CD5.4

⁹ CD5.12

¹⁰ CD7.1

26. Nevertheless, the statutory declaration is of limited assistance anyway because Mr Ahmed claims to pay £900 per month in rent when the tenancy agreement gives a figure of £1,400. To account for this irregularity, the appellant claimed that the remainder of the rent is made up with Housing Benefit payments. However, the appellant could not verify that submission, and the Council has no record of paying Housing Benefit in respect of any individual at the property.

Flat A conclusion

27. Looking at the evidence in the round, I find it probable that Flat A has been used as a dwelling since at least July 2018 when the Mathivanans moved in, but not that it has been used as such for a continuous four year period, without significant interruption, before the date that the notice was issued.

Flat B – first floor

28. The appellant's appeal statement claims that Ms Fozia Kousar lived in Flat B from 4 January 2016 until an unspecified date in December 2020. A tenancy agreement¹¹ has been provided along with evidence of regular rental payments. However, under cross-examination, the appellant conceded that this tenancy agreement was not genuine, and that Ms Kousar had in fact never lived at the property. Instead, the appellant confirmed that they were receiving payments from her in relation to another rental property that he manages at a separate address and not connected with the appeal property.
29. The appellant's appeal statement also claims that Mr George Kroehling moved into Flat B on 4 January 2021, and moved out sometime in March 2021. Following this the timeline indicates that Ms Rayanne Nascimento moved into this flat on 1 April 2021, and resided here until June 2021. However, it is acknowledged by the appellant that the supporting tenancy agreements¹² are not genuine, and so there is no evidence before me to link their monthly payments to the appeal building. Therefore, I cannot give any weight to this evidence.
30. To address these matters, and in the run up to the inquiry, the appellant has provided a revised timeline¹³ for Flat B, with a different list of tenants that contradicts his appeal statement.
31. This indicates that Mr Pankaj Kumar Jain and his family moved into Flat B at some point in 2015, and moved out on 30 April 2016. I have been presented with a tenancy agreement¹⁴, commencing from 7 December 2014 for £1,450 per month. The receipt of regular monthly payments from this tenant to the appellant suggests that Flat B was in continuous residential use from December 2014 to April 2016. However, this conflicts with the appellant's initial account as set out in their appeal statement. While the appellant favours this revised version of events to support his case, when taken together, this evidence is inconsistent and therefore unreliable.
32. Furthermore, I note the correspondence between Mr Jain and the appellant's letting agent in November and December 2014 discussing a tenancy at the

¹¹ CD5.6

¹² CD5.9 and CD5.10

¹³ CD1.3

¹⁴ CD5.5

- property¹⁵. However, this does not demonstrate Mr Jain's occupation of the property, particularly in light of conflicting evidence.
33. It is then suggested that Annabella Argarin and her two children moved in on 3 May 2016 and resided in the flat until July 2018. The appellant's bank statements show regular payments from 'Argarin A B' from April 2016 to February 2018, but no evidence has been presented to link these payments to the appeal building.
34. The revised timeline claims that Mr A Dudhia then moved into Flat B, having moved from Flat C on the second floor of the building. A statutory declaration¹⁶ by Mr Dudhia states that he lived at the appeal property in Flat C and Flat B from 1 June 2014 to 1 July 2019. However, the statement does not specify the specific periods in which he lived in each flat. In fact, the way it is phrased suggests that he occupied both flats over this period. In this respect, the statement is ambiguous.
35. Mr Dudhia's statement also claims that the appellant and his son have at points occupied the ground floor flat A. However, this does not correspond with the appellant's own evidence and version of events.
36. I am directed to a tenancy agreement¹⁷ for Mr Dudhia's period of occupancy at the property. This is dated 1 June 2014, but it specifically relates to a flat on the second floor of the property, identified as '2nd Floor Flat C'. Furthermore, the tenancy is stated as commencing from 1 June 2021, which does not correspond with the appellant's chronology of events for this flat. Bank statements show variable payments from Mr Dudhia to the appellant, and these records are incomplete. There is nothing before me to link these payments to the occupation of Flat B over the suggested period. The evidence is both inconsistent and unclear, and it does not demonstrate, on the balance of probabilities, that Mr Dudhia occupied Flat B over this stated period.
37. The revised timeline makes a single reference to a G Kreohling having occupied Flat B at some point in 2019. However, this conflicts with the appellant's earlier account and evidence set out above. No further evidence has been put forward to demonstrate that this individual resided in Flat B at any time.
38. It is then claimed that the appellant and his son lived in Flat B until July 2021. Nevertheless, no specific date has been given for when this period of occupancy began. Beyond the appellant's own witness account, no evidence has been provided to corroborate this claimed period of occupancy.
39. Mr Robello told the inquiry that he was the current tenant of Flat B, and that he has lived there with his family since August 2021. An undated tenancy agreement¹⁸ states that the tenancy began on 12 July 2021 for a monthly rental sum of £1,575. Despite Mr Robello recalling that he had signed this document, the appellant stated that this tenancy agreement was not genuine.
40. Nevertheless, during my visit I observed that Mr Robello currently resides at the property with his wife and children. Also, evidence of regular monthly payments matching the claimed rental value has been provided and these

¹⁵ CD1.13, pages 21-26

¹⁶ ID4 Statutory Declaration of Ashik Bipinchandra Dudhia, dated 25 April 2024

¹⁷ CD5.14

¹⁸ CD5.11

payments have persisted since July 2021. Therefore, coupled with Mr Robello's sworn witness evidence, it is more likely than not, that Flat B has been in continuous residential use since Mr Robello moved in in August 2021.

Flat B conclusion

41. Bringing all of these points together, the evidence suggests that it is likely that Flat B has been in continuous use as a dwelling since August 2021 when Mr Robello and his family moved in, a period of approximately 12 months prior to the date of the enforcement notice. However, prior to this the evidence is largely contradictory and lacking in both substance and accuracy. It is therefore not sufficiently precise or unambiguous to demonstrate continuous residential use for the requisite 4 year period, on the balance of probabilities.

Flat C – second floor, rear facing

42. The appellant's appeal statement claims that Mr Mathivanan moved into Flat C on 1 December 2016 and lived there until June 2018. He was then followed by Ms Bonifaci in August 2018 and Mr D P Pereira from 10 March 2019 to April 2021, and finally Mr G Ochian from 14 May 2021 to the current date. However, this is in stark contrast with the appellant's timeline¹⁹ presented to the inquiry, which provides a completely different list of tenants.
43. This timeline claims that Mr A Dudhia moved into Flat C at some point in 2014 and moved to Flat B at some point in 2018. The tenancy agreement²⁰ for Mr Dudhia's claimed tenancy of Flat C is dated 1 June 2014. However, the tenancy is stated as commencing from 1 June 2021. I also note that this agreement is not signed in the presence of any witnesses and it has also been put forward in evidence to support this tenant's occupancy of Flat B. Together, this presents a significant degree of ambiguity. It is also of note that Mr Dudhia is not named as a tenant anywhere within the appellant's appeal statement.
44. There is evidence of regular monthly payments from Mr Dudhia over this claimed period of occupancy. However, the payments vary considerably, do not in their entirety match the rental sum in the alleged tenancy agreement, and there is insufficient evidence to link these payments to the appeal property.
45. It is then claimed that Dalston De Souza and his wife moved into Flat C at some point in 2019. I have been provided with two tenancy agreements to support this period of occupancy. The first agreement²¹ refers to Flat D and is, by the appellant's own admission, not a genuine tenancy agreement. The second agreement²² is illegible and therefore I cannot make out its content or validate its authenticity. Therefore, while there is evidence of payments from Mr De Souza to the appellant over a 7-month period during 2019, I have no documentary evidence before me to link these payments to a period of tenancy at the appeal property.
46. The evidence in relation to the next tenant is also vague and imprecise. The timeline presented to the inquiry, along with a supporting tenancy agreement²³, suggests that D Jayamanne and Maria Chiara Perer occupied Flat C from 25 November 2019. However, the tenancy agreement specifically refers

¹⁹ CD1.6

²⁰ CD5.14

²¹ CD5.23

²² CD5.17

²³ CD5.24

to Flat D. In any case, it is also one of the 'manufactured' agreements and therefore carries no weight in favour of the appellant's case. There is evidence of payments from these individuals to the appellant, but again there is no evidence to suggest that these payments were made in relation to a period of tenancy at the appeal property.

47. The evidence indicates that Kavan Patel and Shika Patel moved into Flat C on 26 December 2022, and currently reside in Flat C. However, because this occurred after the enforcement notice was served it is of little relevance to the appeal.

Flat C conclusion

48. For all of the above reasons, I find that the evidence presented in relation to the occupancy of Flat C is contradictory, imprecise, and ambiguous, to the extent that it has not been demonstrated, on the balance of probabilities, that it had been in continuous residential use for the required 4-year period, before the date the notice was served.

Flat D – second floor, front facing

49. According to the appellant's appeal statement Mr De Souza and Ms Lobo moved into Flat D in March 2019, followed by Ms Perer and Mr Jayamanne in November 2019 until September 2022. However, this account is contradicted by the version of events presented at the inquiry, with an alternative timeline²⁴ providing a different set of tenants and version of events.
50. This indicates that Ms Marta Bonifaci occupied Flat D at some point during 2019. I have been presented with two tenancy agreements for this tenant. The first agreement²⁵ gives a conflicting account of the location of the flat within the property, with reference to both the 1st and 2nd floor. The words '1st floor' is crossed out and a handwritten annotation provides the only reference to Flat C within the document. Furthermore, pages are missing from the agreement, and it is not signed.
51. The second agreement²⁶ appears to be an amended version of the first, once again with a conflicting account of the location of the flat within the property. In addition, the handwritten annotation 'Flat C' looks to have been overwritten with the words 'Flat D'. This agreement is dated 27 July 2018 and commences from 15 August 2018, but it is not signed in the presence of any witnesses, providing a degree of uncertainty over the authenticity of the agreement.
52. Furthermore, only three consistent monthly payments of £750 were received from Ms Bonifaci from August 2018 to October 2018. This matches the value stated within the tenancy agreement, but no further payments were received until a single, and final payment of £100 in February 2019. Other than the suggestion that Ms Bonifaci struggled to pay the rent, I have no evidence before me to account for the sporadic nature of these payments. Nor have I been provided with any further evidence to corroborate this period of tenancy. I have had sight of some correspondence between Ms Bonifaci and the appellant²⁷, but this does not demonstrate ongoing occupancy of the Flat.

²⁴ CD1.7

²⁵ CD5.19

²⁶ CD5.22

²⁷ CD1.13, pages 15-18

Therefore, I am not persuaded that the evidence is sufficiently precise to demonstrate Ms Bonifaci's ongoing occupancy of this flat.

53. The timeline then suggests that "Diego Paganin Pereira" [sic] occupied Flat D at some point in 2019 to 2020, but no specific dates are provided. Mr Pereare told the inquiry that he moved into Flat D in March 2019 with his wife Isabelle and paid £850 per month in rent. Mr Pereare confirmed that he did not recall signing a tenancy agreement and that he had never seen, or signed, the tenancy agreement²⁸ that was put forward by the appellant to support this period of occupancy. Furthermore, that tenancy agreement states that it relates to Flat C, whereas Mr Pereare claims to have resided in Flat D. The document is not dated, and the appellant accepts that this was 'manufactured' to support the appeal.
54. An initial payment of £360 was received in March 2019 from "Paganin Pere". This appears to coincide with the commencement of the tenancy. However, the amount does not correspond with the monthly rental sum of £850. Further payments are for variable amounts, none of which amount to the £850 per month rental figure stated by the witness. Furthermore, there are months where no payments are made at all, e.g. July, August, September and November 2019, along with several months in 2021.
55. Mr Pereare stated that the reasons for the payments being of variable amounts each month was because his wife carried out cleaning work for the appellant, and therefore her services were deducted from the rental payments. He also suggested that on occasion rent payments were a mix of bank transfer and cash. However, no evidence has been presented to corroborate this, and no account given as to why payments were missing. Therefore, there is no evidence before me to support the witness's account, or to link his payments to a tenancy at the appeal property. Accordingly, I find this witness's account to be unreliable.
56. Mr Ochian gave sworn evidence to the inquiry stating that he had moved into Flat D on, or around, 1 June 2021, and pays a monthly rent of £900. A tenancy agreement²⁹ states that Mr Ochian's tenancy commenced from 24 May 2021 and identifies the tenancy as being for Flat C. However, I have already found this agreement to be bogus, and Mr Ochian confirmed that he had never seen or signed it.
57. Nevertheless, Mr Ochian confirmed that his initial rental payments during 2021 were made for three months at a time paid in advance. Thereafter, the receipt of regular payments of £900 per month support Mr Ochian's witness evidence. Therefore, despite the lack of a tenancy agreement for this period, Mr Ochian's witness evidence carries significant weight, particularly as the evidence of regular payments support his account. Furthermore, during my visit I could see that Mr Ochian continues to reside within Flat D at the property. On the strength of all this, it is therefore more probable than not that Flat D has been in continuous residential use since Mr Ochian began his tenancy in June 2021.
58. In addition, I have been provided with a tenancy agreement³⁰ for "Christina Ventillion" [sic] in relation to Flat D, dated 1 February 2014. However, this

²⁸ CD5.16

²⁹ CD5.18

³⁰ CD5.20

agreement is incomplete and is not signed by anyone. Therefore, I am unable to verify its authenticity. I note the email correspondence between "Ms Ventilacion" and the appellant³¹, but this does not demonstrate that she occupied the property.

59. Mr Mathivanan told the inquiry that he had moved into Flat D at some point in December 2016 and then moved to flat A in June 2018. He stated that he paid £850 per month in rent for Flat D over this period. I have been provided with three tenancy agreements dated 16 November 2016 with Mr Mathivanan named as the tenant. The first³² is signed by both the appellant and Mr Mathivanan on 16 November 2016 but it is not signed in the presence of any witnesses. It states that the tenancy will commence from 1 December 2016. However, this document does not identify the property as Flat D and instead makes reference to both the first and second floor of the property. In this respect, the agreement is confusing.
60. The second³³ and third³⁴ Mathivanan agreement appear to be variations of the same document. However, both documents include handwritten annotations to change the location of flat within the property. On the second document, the words '1st floor' have been crossed out and appear to have been replaced with the words 'FLAT C'. The 'C' then appears to have been overwritten with the letter 'D'. There is a further reference to both the 1st floor and 2nd floor within the agreement, creating further confusion. Furthermore, it is not signed in the presence of witnesses.
61. The third Mathivanan agreement has a handwritten annotation crossing out the word '1st floor' and replacing this with the words 'FLAT C', but there is further reference to the 1st floor and 2nd floor within the agreement. This document makes no reference to Flat D, pages are missing from it, and it is not signed by the appellant or in the presence of witnesses.
62. The very fact I have been presented with three variable tenancy agreements for this tenant creates a degree of uncertainty over this claimed period of tenancy. Despite some evidence of regular payments from Mr Mathivavan over this period, these inconsistent agreements cast significant doubt over his tenancy of Flat D. This version of events also contradicts the appellant's appeal statement which clearly states that Mr Mathivanan initially resided in Flat C from December 2016.
63. Therefore, despite Mr Mathivavan's witness account, I find a great deal of ambiguity in the evidence surrounding his claimed tenancy of Flat D.

Flat D conclusion

64. Taking all of the evidence together, it is likely that Flat D has been in use as a single dwelling since 1 June 2021, a period just short of 1 year and 3 months prior to the date of the enforcement notice. However, beyond this the evidence does not demonstrate, on the balance of probabilities, continued residential use. Therefore, this falls short of the requisite 4-year period.

³¹ CD1.13, pages 4-8 & 44-46

³² CD5.7

³³ CD5.8

³⁴ CD5.15

Other evidence

65. At the inquiry the appellant provided additional evidence in the form of a Boiler System Installation Invoice, dated 17 May 2021 (ID3). Mr Williams told the inquiry that in addition to this installation, he had carried out work on the property at some point in 2018 or 2019. This involved fixing a blocked drain within the kitchen on the first floor. At that time, he recalled the property being divided into separate apartments but was unable to confirm how many. He was able to confirm that he had seen three kitchens and three bathrooms within the property, but he was unable to provide a precise date for when he made these observations. Therefore, I find his evidence to be rather vague. In any case, it does not support the appellant's assertion that there were four occupied flats at the property during 2018 or 2019.
66. I have found several other significant inconsistencies with the appellant's version of events. For example, if the property had been converted into four flats in October 2013, as the appellant claims, it is unclear why in May 2015 the appellant was seeking the professional services of his architect, Ms Darshika Shah, for the proposed conversion of the property from a dwellinghouse to two self-contained units³⁵.
67. Also, in August 2022 correspondence between the appellant and Ms Shah³⁶ suggests that he was gathering evidence to pursue an application for a Certificate of Lawfulness for the retention and regularisation of conversion of a dwellinghouse to two self-contained units at the appeal site. Drawings dated 26 August 2022³⁷ show that the existing layout of the property at that time did not include flats on the second floor of the building. Instead, there were three bedrooms on the second floor, and Ms Shah's witness evidence to the inquiry confirmed this. This strongly suggests that the second floor did not include self-contained residential units at that time.
68. Furthermore, in his letter of 27 October 2015 to his mortgage broker³⁸ the appellant states that the property had been "developed into 3 separated self-contained units", and that he currently owned several properties. Under cross examination the appellant stated that this was not the case, and that he had not been truthful in that correspondence.
69. It is also puzzling as to why, during a telephone conversation on 19 August 2022 between the appellant and the LPA's Deputy Planning Enforcement Manager, Mr Davies³⁹, he stated that the property was in use as two flats, if in fact, as the appellant now claims, the property was in use as four flats at that time. Indeed, the appellant's admission during that call appears to support the evidence from Ms Shah, that her services were being sought to prepare an application for a Certificate of Lawfulness for the retention of two flats.
70. In his final comments⁴⁰ the appellant denies that he told the LPA that the property comprised of only two flats. However, under-cross examination the appellant stated that he was not telling the truth when he spoke to Mr Davies on 19 August, and that he had panicked during the call because he didn't know

³⁵ CD1.25 Letter from Sha Designs Ltd to the appellant, dated 5 May 2015

³⁶ CD1.25 Email correspondence dated 21 August 2022 and letter from Sha Designs Ltd to the appellant, dated 2 August 2022.

³⁷ CD2.1

³⁸ CD1.15 & CD1.22 Letter to Murad Umerji from the appellant, dated 27 October 2015

³⁹ CD1.12

⁴⁰ Final Comments on Case, dated 15 December 2022

what to say or who Mr Davies was. This was despite the fact that it was the appellant that made the call to Mr Davies in response to earlier email correspondence with him.

71. I have been provided with various other documentation and correspondence to support the appeal, including bundles of emails, bills, receipts and other records. However, the appellant has not drawn my attention to anything significant within this evidence that would sufficiently support his case or make his version of events more likely than not.
72. The appellant has suggested that any contradictions or errors in his evidence are attributable to the fact that he has faced periods of poor health in recent times, and has faced challenges in his personal life, that has affected his ability to properly construct his case. I also note that he was initially represented by a planning agent but was subsequently unrepresented at the inquiry.
73. I have a great deal of sympathy for the appellant in these regards. However, these matters do not remove the legal burden placed on the appellant to provide sufficiently precise and unambiguous evidence to make out their case, on the balance of probabilities.

Ground (d) overall conclusion

74. Overall, there are significant inconsistencies and contradictions in the appellant's case, and, by his own admission, he has had tenancy agreements 'manufactured' to support his version of events. He also told the inquiry that other documentation submitted in support of his appeal may not be genuine. He claims that, despite any lack of authenticity, these documents provide a true account of who has lived at the property and over what period.
75. Furthermore, the appellant has admitted that he has not been truthful on at least two occasions in relation to the number of units that he has established at the property. His admissions in these respects cast significant doubt over his version of events, to the extent that I do not consider him to be a reliable or credible witness.
76. The evidence put forward by the appellant in this case has been poorly compiled, is inconsistent, and, at times, it has been difficult to follow. In these regards, and for the reasons I have set out above, the appellant's evidence is not sufficiently precise and is far from being unambiguous.
77. Consequently, the appellant has not provided sufficient evidence to persuade me, on the balance of probability, that the use of the property as four flats, or indeed any individual flat, had persisted for a consecutive four-year period prior to the enforcement notice being served.
78. Therefore, the ground (d) appeal must fail.

The appeal on ground (g)

79. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is four months.
80. The appellant's case on this ground of appeal is that the flats are occupied by tenants who will need to be given sufficient notice to vacate the property. He is

also concerned with the cost of carrying out the works required to comply with the notice. Therefore, he seeks a compliance period of 12 months.

81. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the requirements of the enforcement notice against the private interests bound up in the unauthorised development. In doing so, I acknowledge that the unauthorised development has resulted in the loss of a family home in an area with an acute shortage of family homes. Furthermore, the flats appear to be quite small and therefore provide substandard and cramped living conditions to existing occupants.
82. Interested parties spoke of how the intensive use of the appeal premises is causing parking problems and increased noise and disturbance that is harmful to the living conditions of neighbouring residents. It is, therefore, in the public interest to remedy the breach of planning control as soon as reasonably possible and without delay.
83. Despite the appellant's initial concerns, he told the inquiry that the current tenancies could be broken with one month's notice. Therefore, assuming he was able to gain vacant possession of the property within one month, the notice would allow a further period of three months for him to complete the necessary works to remove the kitchens, bathrooms and any relevant internal partitions, fixtures and fittings that facilitate the use.
84. To my mind, this would appear a reasonable timeframe. Furthermore, the appellant has not presented any evidence to suggest that they are experiencing financial hardship that would make it difficult for them to carry out the necessary works.
85. Extending the compliance period to 12 months, as suggested, would perpetuate the breach of planning control and the associated harm. Therefore, in weighing the balance between public and private interests, I consider that the public interest of expeditious compliance with the requirements of the enforcement notice outweighs the private interest in extending the period for compliance. I am, therefore, not persuaded that there is a need to extend the period for compliance with the requirements of the notice, and I am satisfied that the period of compliance stated in the notice is a proportionate response to the breach of planning control that has occurred.
86. Accordingly, the appeal on ground (g) fails.

Conclusion

87. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

J M Tweddle

INSPECTOR

