



Appeal Decision

Site visit made on 10 October 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2024

Appeal Ref: APP/A5270/C/22/3308546

6 Hoylake Road, Acton, London W3 7NP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms. Elaine De Maria against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 9 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to five flats (the "Unauthorised Use").
 - The requirements of the notice are:
 1. Cease the use of the property as flats;
 2. Remove four kitchens and associated facilities and drainage connections; and
 3. Remove all resultant debris.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds 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 as amended have lapsed.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Procedural Matters

2. Arguments relating to the planning merits of the alleged unauthorised use that has been undertaken, can only be taken into consideration in an appeal made on ground (a). Since there is no ground (a) appeal I cannot take into account the planning merits of the use put forward by the appellant.

Appeal on ground (d)

3. The main issue on ground (d) is whether the appellant has proved on the balance of probability that the use of any part of the appeal building changed to use as a self-contained flat on or before 9 September 2018 (Four years prior to the issue of the enforcement notice) and that the use of that part as a self-contained flat then continued for at least 4 years after the date of the change, without any substantial interruption.
4. The onus is on the appellant under ground (d) to make the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. If the Council has no evidence of its own, or from others, to contradict or otherwise make the version of events less than

probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is, on the balance of probability, sufficiently precise and unambiguous.

5. Given that the appeal, is seeking to demonstrate that the use of the property changed to five self-contained flats on or before 9 September 2018, it is necessary to consider what constitutes a 'dwellinghouse.' Whilst there is no definition of a dwellinghouse within the Act, case law has established that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. This is a question of fact and both actual use and the physical characteristics need to be considered. I understand the term 'flat' for town-planning purposes to denote a part of a building that has the characteristics of a dwelling in its own right, that is to say the ability to afford to those who use it the facilities required for day-to-day private domestic existence. It would satisfy the above test, established in case law, if it would generally be considered by reasonable people to comprise such a dwelling.
6. The appellant's case is that the change of use to five self-contained flats took place in 2012. I shall focus first on the appellant's own evidence, the starting point being photographs of the site, attached to emails (to and from the appellant) dated 13 January 2013.
7. The first photograph labelled "1 bed ground" shows a sofa and an armchair by the side of the window. The second photograph labelled "breakfast bar" shows a small breakfast bar, a sink and some kitchen cupboard. The third picture entitled "shower room" shows the entrance to a shower room and the final picture entitled "top studio b bar" shows a small bar table, narrow wardrobe.
8. However, there are currently five flats within this building (three within the ground floor and two on the first floor). No existing floor plan has been submitted to illustrate what parts of the building these photographs refer to. Therefore, it unclear how these 4 photographs, which show very little of the building, support the appellant's case. Furthermore, there is no sign of personal belongings within these photographs and indeed the property appears unoccupied at that time. Therefore, the photographic evidence does not support the appellant's case that the conversion to 5 self-contained flats took place in 2012
9. The appellant has also submitted assured shorthold tenancy agreements (TA) for the property in support of their case. However, similar to the photographs provided, it is very difficult to identify which part of the property they relate to. Some refer to 6 Hoylake Road, which suggests that the entire property was rented as a single dwelling house. Indeed, this appears to be the case for one TA for Nick Potrich, Roland Bornly, James Ponder and Dimitrios Potsios, as it is highly improbable that four people could reside in any of the small flats currently in situ. As such, the circumstance of this agreement is unclear, as it would suggest in 2019 and 2020, during the pertinent time period for this appeal on ground (d), that the entire property was rented to a group rather than as separate flats.
10. Other TAs do provide some form of address (such as first floor flat; studio flat; flat 1; flat 3; ground floor studio flat; first floor one bed flat; garden flat; first floor studio flat; ground floor one bedroom flat) but these are not sufficient to identify which part of the building/flat they refer to. For instance, there are

three flats on the ground floor and two on the first floor, and so reference such as "first floor flat", "studio flat" or "first floor studio are not clear or specific enough.

11. Furthermore, I observed during my site visit that the flats are not numbered/labelled at the front of the property or on the entrance doors to each flat, and therefore I am unable ascertain what 'flats 1', flats 3', 'first floor studio' refer to. In addition, the TAs, do not demonstrate that the flats contained the facilities required for day-to-day private domestic existence.
12. As such, these TAs fail to provide clear and unambiguous evidence of continuous occupation of any part of the building as a self-contained flat continuously for 4 years. Nor has any helpful supporting commentary been provided to help piece together these TAs to demonstrate that any part of the building as a self-contained flat existed continuously for at least 4 years. I also note the large majority of these TAs are unsigned, which reduces the weight I can give these.
13. One agreement which has been signed/initialled for the "first floor flat"¹ is dated between 10 October 2017 to 10 April 2018, well short of a continuous period of 4 years. Another signed TA is described as "Flat 12" and relates to a 6-month period only from 18 November 2017 to 18 May 2018, also well short of a continuous 4-year period. Again, it is unclear which parts of the building these TAs refer given that there are five flats within the whole building, all unnumbered/unlabelled.
14. Some TAs are also supported by emails, but these do not support the appellant's case. For instance, one email dated 16 December 2013 is between the landlords, and not to the tenants³. Another email from Jessy Chung, dated 23 February 2019⁴ refers to the address as 6 Hoylake Road, which suggests it relates to the let of the whole building as a single dwelling house rather than a separate flat. This is also the case regarding the emails from Jean-Pierre De Maria to Fabio Aramu and Lorenzo Di Paulo dated 9 June 2013⁵ and 14 December 2012⁶.
15. As such, I place little reliance on TAs and supporting emails which do not demonstrate any part of the building was occupied as a flat for at least 4 years, but the appellant does rely on other evidence.
16. With regard to Council Tax, separate banding for 5 flats (and an annex) was applied from 1 April 2022. However, this does not demonstrate the use as five separate flats prior to that date, from 9 September 2018.
17. Furthermore, the building was licenced for a House in Multiple Occupation (HMO) as recently as 8 May 2021 for up to 8 people, which is during the pertinent 4-year period when the appellant is seeking to demonstrate the use as flats. The appellant states that Appendices 5 and 6 refer to an instruction from Ealing Council requesting that the property be licenced as an HMO. However, Appendices 5 and 6 contain no such instruction.

¹ Page 53 of 122 of the appellant's statement.

² Page 58 of the appellant's statement.

³ Page 87 of the appellant's statement, relating to an email from Jean-Pierre De Maria to Elaine De Maria.

⁴ Page 102 of the appellant's statement

⁵ Page 92 of the appellant's statement

⁶ Page 97 of the appellant statement.

18. Appendix 2 of the appellant's statement includes correspondence from maintenance contractors, service providers, and letting agencies which she considers provide evidence of use as flats for more than 4 years.
19. The building quote for from K Burgeson dated 23 October 2012 indicates some renovation works were likely to have taken place in 2012 which included new kitchen cupboards, extractor hoods and entrance doors. In addition, an email from Best Insurance dated 17 July 2017, refers to the property as 3 one bed self-contained flats and 2 studios. These both suggest that the conversion of the single dwelling to flats may have begun from 2012 and that 5 flats existed in July 2017.
20. However, on 7 January 2019 the appellant applied for a selective rental licence application⁷, required in some areas of Ealing where all or part of the house is rented). In response to a question asking "how is the property used" the appellant responded stating "*Part used for family. 3 studios for rental.*" This response contradicts the appellant's claim that the property was converted to five flats in 2012. It is further contradicted by the appellant's comments to the Council Tax Officer on 27 August 2019 where she estimated that 3 of the 5 flats were first occupied after the date of 9 September 2018⁸.
21. The new works invoice from MB Electrical dated 7 and 14 January 2019 refers to the property as a "HMO covering 5 apartments". This is ambiguous as it refers to both an HMO and 5 apartments. In any case, the date for both of these electrical invoices is after the pertinent date of the 9 September 2018. As such, these invoices do not support the appellant's claim that the change of use to five flats occurred at least 4 years before the notice was issued.
22. The marketing report from Rightmove admin created on 30 October 2017 refers to the whole property as 6 Hoylake Road and does not mention separate flats. History of payments made to Openrent also identifies the property as a whole as 6 Hoylake Road, and not separate flats.
23. OpenRent enquiries, for a 'Studio Flat' does not provide clarity on which flat/part of the building it relates to. Another OpenRent enquiry states that the '1 bed garden flat' is let, and that this enquiry was made 3 years ago. However, no substantive evidence of this letting has been provided and therefore does not demonstrate that this flat was occupied for a continuous 4-year period or more.
24. Email correspondence has been submitted between the appellant and various letting agents which demonstrates that certain parts of the building were being advertised for rent from 2011 onwards. However, as with the TAs, the correspondence refers to single studios or one bed flats only. Therefore, it is unclear which parts of the building these related to, and no further description or floor plans have been submitted to assist in explaining this. For example, one of the emails refers to flat 1 and flat 3, and another email refers to studio A, but the flats within the building remain unnumbered and unlabelled.
25. Another email refers to an offer agreed for tenants, James and Laura Ponder for a 12-month tenancy from 9 October 2017. Whilst this illustrates that a top floor flat may have been occupied for 12 months, it is not clear which top floor flat this relates to (there are currently two at first floor level). In any case,

⁷ Appendix 5 of the Council's statement.

⁸ Appendix 4 of the Council's statement.

occupancy for a 12-month period is not sufficient to demonstrate occupation of this residential unit for at least 4 years.

26. The front page of an inventory has also been submitted entitled "Flat 1, 6 Hoylake Road". However, given that only the front page has been submitted it is not possible to identify what part of the building this relates to. For the reasons given, I place little reliance on the correspondence from maintenance contractors, service providers, and letting agents to show when the use as self-contained flats commenced.

Conclusion on ground (d)

27. It is well established in planning law that the onus rests with the appellant to make out his or her case. However, the appellant's evidence is far from precise or unambiguous and is internally inconsistent. The TA's, supporting emails, correspondence from maintenance contractors, service providers, and letting agencies were the principal documents relied upon to corroborate the appellant's account but, for the reasons given, these carry very little weight in support of her case. The appellant's own evidence is insufficient to demonstrate her case on the balance of probability and the Council's evidence from previous inspections made, the selective licence application and the HMO licence reduce that probability further.
28. I conclude that the appellant has failed to prove on the balance of probability that the use of any part of the appeal building changed to use as a self-contained flat on or before 9 September 2018.
29. The ground (d) appeal therefore fails.

Conclusion

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

R Satheesan

INSPECTOR