

Case Name: *Bansal v Secretary of State for Housing, Communities And Local Government & Anor* [2021] EWHC 1604 (Admin) (15 June 2021)

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Commentary:

This was an unsuccessful challenge to a dismissed appeal against an enforcement notice in respect of the unauthorised conversion of a two-storey semi-detached house into two flats.

It was agreed that it was for the appellant to show that a material change of use of the house to two self-contained flats took place at least 4 years before the issue of the enforcement notice and that the use was continuous for 4 years thereafter and had not subsequently been lost.

The appellant's first ground of challenge was that it was irrational for the inspector to fail to conclude that the ground floor had been used as a self-contained flat for the requisite period of four years given his findings in relation to the use of the first floor for the same period, particularly in the light of section 55(3)(a) of the Town and Country Planning Act 1990 (the "Act") which provides that the use as two or more separate dwelling houses of any building previously used as a single dwelling house involves a material change in the use of the building, and of each part of it which is used. The appellant argued that since the first floor was in use as a self-contained flat the original single dwelling house use had ceased and so unless the ground floor had been taken over by a new non-residential use, the ground floor necessarily became a separate residential unit.

The appellant's second ground was that, in assessing whether a change of use from a single dwelling house to two separate dwelling houses was ongoing for the purposes of section 171B(2) of the Act, the inspector failed to take account of a material consideration in the form of the physical works which had taken place to create the two separate flats. It argued that the inspector unlawfully limited his assessment to whether both flats had been occupied rather than considering the broader concept of use which is informed by physical works.

The court was satisfied that both flats had been occupied by tenants in April 2015 and so a material change of use had taken place more than four years before service of the enforcement notice. However, it held that the inspector had reached rational conclusions on the evidence before him in finding that the appellant had not established a continuous residential use of the ground floor flat. Further, he was clearly aware of the physical works of conversion which had been carried out: there was photographic evidence before him of the physical state of both flats, and he referred to the horizontal sub-division of the property in his decision. However, he was required to consider not just the building's availability for residential use following the physical works, but whether it was actually put to such use.

Case summary prepared by Safiyah Islam