
Appeal Decision

Inquiry held and site visit made on 17 August 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non Practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2016

Appeal Ref: APP/N5660/C/15/3141362

The Cricketers, 17 Kennington Oval, London, SE11 5SG

- 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 1990 Act").
- The appeal is made by RSL (Slough) Limited ("the Appellants") against an Enforcement Notice issued by the Council of the London Borough of Lambeth ("the Council") on 16 November 2015.
- The Council's reference is 12/00447/3COU.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, the unauthorised change of use of the public house (use class A4) to residential flats (use class C3) comprising 2 at ground floor level and 4 at first floor level.
- The requirements of the Enforcement Notice are: a) Cease the use of each of the unauthorised residential flats and remove all partitioning, divisions, means of enclosure, kitchen units and appliances which facilitate the unauthorised use. b) Remove all associated waste, debris, materials and equipment from the premises resulting from compliance with the above step.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(d) & (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the Enforcement Notice upheld.

Procedural Matters

1. Oral evidence at the Inquiry was given on oath or by affirmation.
2. The Appellants:
 - a) Withdrew their Ground (c) appeal at the Inquiry.
 - b) Withdrew their Ground (d) appeal in respect of Flat 6 during the Inquiry.
 - c) Added a Ground (g) appeal at the Inquiry.
3. The appeal is made in the name of RSL (Slough) Limited. Whilst there are three directors of RSL (Slough) Limited Ravinder Laly confirmed that he was primarily responsible for the actions of RSL (Slough) Limited.
4. The onus of proving the Ground (d) appeal rests with the Appellants. They have to show that the residential use of each flat commenced on or before 16 November 2011 and that the use continued without any significant break through to the date when the Enforcement Notice was issued i.e. 16 November 2015. I will refer to this period as "the relevant period"

Application for costs

5. At the Hearing an application for costs was made by the Council against the Appellants. This application will be the subject of a separate Decision.

Relevant Background Matters

6. There are six flats at The Cricketers. Four of the flats (Flats 1 to 4) are on the first floor. Flats 5 and 6 are on the ground floor. Access to Flats 1 to 5 is gained via a door in the rear elevation of The Cricketers. Access to Flat 6 is gained via a separate door in the side elevation of The Cricketers. The former commercial part of The Cricketers, which is on the ground floor, is empty and unused. There is no access between the former commercial area of The Cricketers and the flats.
7. The commercial use of The Cricketers as a Public House ceased at some point during 2003.
8. The Appellants bought The Cricketers in June 2010. There were squatters in occupation. The vendor's agreed in the sale documentation to provide vacant possession before completion of the purchase took place. I understand that the Appellants finally obtained vacant possession in about September 2010.
9. The Appellants suggested that there were first floor flats within The Cricketers prior to their ownership and that all they have done is to refurbish those flats. There is no evidence that the residential use of The Cricketers, prior to its purchase by the Appellants, was anything other than part of the lawful use of The Cricketers as a Public House with ancillary residential use.
10. Ravinder Laly explained to the Inquiry that:
 - a) Flats 1 to 4 were upgraded to their current standard in July/August 2010.
 - b) The kitchen units and bathroom facilities within the flats 1 to 4 were replaced.
 - c) Flat 5 & 6 on the ground floor were created in about April 2011 so as to deter any further squatters from occupying The Cricketers.
11. My Comment: No invoices for the purchase of these items or payment for the labour of fitting them were provided.
12. The Appellants provided a copy of part of a Tenancy Agreement in respect of Flat 1. The Tenancy Agreement was between Ravinder Laly (Landlord) and Dorota Pietruszczk (Tenant). The landlord's agent was stated to be Next Door Properties Limited ("Next Door"). The tenancy stated that it commenced on 6 December 2010 and was for a period of 12-months. The Tenancy Agreement contains a break clause which can be triggered after a specified period by giving a two-month notice.
13. The Appellants claimed that Dorota Pietruszczk has remained in occupation of Flat 1 on a periodic tenancy.
14. The Appellants did not provide evidence of:
 - a) Occupation by Dorota Pietruszczk throughout any of the relevant period e.g. by calling her as a witness or the production of a sworn statement or evidence from a representative of Next Door.

- b) References from any previous landlords or employers of Dorota Pietruszczk.
 - c) Copies of a passport, driving licence or other means of identification of Dorota Pietruszczk.
 - d) Rent payments.
 - e) The payment of the deposit.
15. The Appellants provided a copy of the Tenancy Agreement in respect of Flat 2. The Tenancy Agreement was between Ravinder Laly (Landlord) and Dean McCallion (Tenant). The landlord's agent was stated to be Next Door. The tenancy stated that it commenced on 12 February 2011 and was for a period of 12-months. The Tenancy Agreement contains a break clause which could be triggered after a specified period by giving a two-month notice.
16. Ravinder Laly explained to the Inquiry that Dean McCallion left Flat 2 on 14 September 2013 and that Flat 2 was then occupied by:
- a) Mr Edison between 10 October 2013 and 11 January 2015. No Tenancy Agreement was provided to substantiate this claim.
 - b) Fransesco from 11 February 2015 onwards. No Tenancy Agreement was provided to substantiate this claim.
17. The Appellants did not provide evidence of:
- a) Occupation of Flat 2 by Dean McCallion, Mr Edison or Fransesco throughout any of the relevant period.
 - b) References for any of the tenants from previous landlords or employers.
 - c) Copies of any passports, driving licences or other means of identification from any of the tenants.
 - d) Rent payments by any of the tenants.
 - e) Payment of deposits by any of the tenants.
 - f) Repayments of deposits to Dean McCallion or Mr Edison.
18. The Appellants provided a copy of the Tenancy Agreement in respect of Flat 3. The Tenancy Agreement was between Ravinder Laly (Landlord) and Ashley Wright (Tenant). The landlord's agent was stated to be Next Door. The tenancy stated that it commenced on 9 December 2010 and was for a period of 12-months. The Tenancy Agreement contains a break clause which could be triggered after a specified period by giving two-months notice.
19. Ravinder Laly explained to the Inquiry that:
- a) Ashley Wright's tenancy was terminated on 20 October 2011.
 - c) Christopher Jones occupied Flat 3 between 23 October 2011 and 10 August 2012. No Tenancy Agreement was provided to substantiate this claim.
 - b) Miss Luca occupied Flat 3 between 11 August 2012 and 31 May 2013. No Tenancy Agreement was provided to substantiate this claim.

- c) Samuel Michael & Emily Pruse occupied Flat 3 between 10 June 2013 and 10 July 2015. No Tenancy Agreement was provided to substantiate this claim.
- d) Dimitrios Makris has occupied Flat 3 since 12 July 2015. No Tenancy Agreement was provided to substantiate this claim.

20. The Appellants did not provide evidence of:

- a) Occupation by Ashley Wright, Christopher Jones, Miss Luca, Samuel Michael, Emily Pruse, or Dimitrios Makris throughout any part of the relevant period.
- b) References for any of the tenants from previous landlords or employers.
- c) Copies of any passports, driving licences or other means of identification from any of the tenants.
- d) Rent payments by any of the tenants.
- e) Payment of deposits by any of the tenants.
- f) Repayments of deposits to Ashley Wright, Christopher Jones, Miss Luca Samuel Michael or Emily Pruse.

21. The Appellants provided a copy of part of the Tenancy Agreement in respect of Flat 4. The Tenancy Agreement was between Ravinder Laly (Landlord) and Florence England & Sophie Spence (Tenants). The landlord's agent was stated to be Next Door. The Tenancy Agreement stated that it commenced on 20 October 2012 (after the beginning of the relevant period) and was for a period of 12-months. The Tenancy Agreement contains a break clause after a specified period which could be triggered by giving two-months notice.

22. Ravinder Laly explained to the Inquiry that:

- a) Inderpal Laly (his son) occupied Flat 4 between 1 October 2011 and 10 October 2012. There was no Tenancy Agreement in respect of Inderpal Laly's occupation of Flat 4.
- b) Florence England & Sophie Spence remained in occupation of Flat 4 until 20 July 2013.
- c) Richard & Sarah Rainsford occupied Flat 4 between 24 August 2013 and 23 November 2014. No Tenancy Agreement was provided to substantiate this claim.
- d) Mina Nishimura & James Michael Bruck occupied Flat 4 between 24 November 2014 and 13 September 2015. No Tenancy Agreement was provided to substantiate this claim.
- e) Mina Nishimura & So Kim La have occupied Flat 4 since 13 September 2015. No Tenancy Agreement was provided to substantiate this claim.

23. The Appellants did not provide evidence of:

- a) Occupation by Inderpal Laly, Florence England, Sophie Spence, Richard Rainsford, Sarah Rainsford, Mina Nishimura, James Michael Bruck or So Kim La throughout any part of the relevant period.

- b) References for any of the tenants from previous landlords or employers.
 - c) Copies of any passports, driving licences or other means of identification from any of the tenants.
 - d) Rent payments by any of the tenants.
 - e) Payment of deposits by any of the tenants.
 - f) Repayments of deposits to Florence England, Sophie Spence, Richard Rainsford, Sarah Rainsford or James Michael Bruck.
24. The Appellants provided a copy of the Tenancy Agreement in respect of Flat 5. The Tenancy Agreement was between Ravinder Laly & Mrs Laly (Landlord) and Parah Bhangu (Tenant). The tenancy stated that it commenced on 1 August 2011 and was for a period of 12-months.
25. Ravinder Laly explained to the Inquiry that:
- a) Parah Bhangu's tenancy was terminated on 10 December 2011.
 - b) Adenike Olivia Deane-Pratt occupied Flat 5 between 13 December 2011 and 17 May 2012. No Tenancy Agreement was provided to substantiate this claim.
 - c) Christopher Jones occupied Flat 5 between 2 June 2012 and 28 February 2014. No Tenancy Agreement was provided to substantiate this claim.
 - d) Daniel Mason & Alisah Nirma occupied Flat 5 between 9 September 2014 and 7 January 2016.
26. The Appellants did not provide evidence of:
- a) Occupation by Parah Bhangu, Adenike Olivia Deane-Pratt, Christopher Jones, Daniel Mason or Alisah Nirma throughout any part of the relevant period.
 - b) References for any of the tenants from previous landlords or employers.
 - c) Copies of any passports, driving licences or other means of identification for any of the tenants.
 - d) Rent payments by any of the tenants.
 - e) Payment of deposits by any of the tenants.
 - f) Repayments of deposits to Parah Bhangu, Adenike Olivia Deane-Pratt, Christopher Jones, Daniel Mason or Alisah Nirma.
27. On 29 November 2012 the Council wrote to the Appellants about the possible conversion of The Cricketers to flats or bedsits. To assist Council Officers in coming to a conclusion as to whether there had been a breach of planning control they wanted to inspect the inside of The Cricketers. The Appellants were informed that Council Officers would be attending The Cricketers between 10:30 and 11:00 on 6 December ("the First Notice of Intended Entry").
28. The Appellants wrote to the Council a letter dated 7 December 2012 (which was only received by the Council on 18 December 2012) claiming or stating that:

a) The Council's First Notice of Intended Entry was received on 6 December 2012 and therefore the Appellants could not attend The Cricketers as requested by the Council.

b) *"On the notice you state we have converted the building into flats. This is not true. No conversion has taken place into flats but are currently talking to architects with a view to developing the premises".*

My Comment: The Appellants' evidence at the Inquiry was that there were five flats within The Cricketers which were all in occupation as at the date of the Appellants' letter.

c) Further on in the letter the Appellants states, *"The first floor residential part has been decorated and no alterations to the layout has been made. Domestic Rate for the first floor is being paid as they are being occupied".*

My Comment: The Council Tax Officer for the Council explained in an e-mail dated 16 October 2015 to Ms Tampin (the Council's Senior Planning Enforcement Officer) that Ravinder Laly was registered for Council Tax purposes and had been since the 28 February 2013. As at the date of the Appellant's letter there was no separate Council Tax liability in respect of Flats 1 to 4 at The Cricketers. Such liability only commenced as from the 1 April 2015.

d) Further on in the letter the Appellants state, *"The ground floor is still uninhabitable (sic) and nothing has been done, it is empty and in disrepair".*

My Comment: The Appellants' oral evidence at the Inquiry was that Flat 5 (which is on the ground floor) was occupied as at the date of this letter.

e) Finally, in this letter the Appellants state that should the Council still require access to The Cricketers then they should get in touch.

29. On 4 April 2013 Ravinder Laly sought "Pre-Application Advice" from the Council. An e-mail from the Appellant's architect was sent to the Council in relation to this matter which states, *"Currently, on the site, is a derelict two storey public house which is boarded up, in disrepair and subject to vandalism."*

My Comment: According to the Appellants' evidence at the Inquiry five of the six flats were occupied at the time this e-mail was sent. No explanation as to this discrepancy was provided by the Appellants.

30. In February and June 2015 the Council's Environmental Health Officer carried out inspections of The Cricketers.

31. On 2 July 2015 the Council served on the Appellants another Notice of Intended Entry ("the Second Notice of Intended Entry") relating to their concerns about the conversion of The Cricketers to flats. Council Officers asked for entry to be provided on the 13 July 2015 at some point between 11:00 and 11:30.

32. On 22 July 2015 the Council served on the Appellants yet another Notice of Intended Entry ("the Third Notice of Intended Entry") relating to their concerns about the conversion of The Cricketers to flats. Council Officers asked for entry to be provided on the 27 July 2015 at some point between 11:00 and 11:30.

33. No entry to The Cricketers was provided to Council Officers pursuant to the Second or Third Notices of Intended entry.
34. On 14 July 2015 and during the course of an exchange of e-mails with the Appellants Ms Tampin stated that she would like to view the interior of The Cricketers to determine the current use and how the Council would proceed if planning permission for the re-development of The Cricketers was not sought or obtained. Ms Tampin explained her concern related to the unauthorised change of use of The Cricketers to residential flats. The Appellants replied stating, *"The pub is closed and derilect (sic). We have not converted pub into flats"*.
- My Comment: The Appellants evidence to the Inquiry was that there were six flats within The Cricketers at this time.
35. On 27 July 2015 Ms Tampin again explained the Council's concern regarding the unauthorised conversion of The Cricketers to flats. She asked that if the Appellants had not submitted an application for the re-development of The Cricketers by the 31 July 2015 could the Appellants suggest a convenient time within the next seven days to carry out a joint site visit. Failing that she explained that the Council would apply for a warrant in order to gain access to The Cricketers.
36. The Appellants replied on the same date and stated, amongst other things, that *"No planning law has been compromised I can assure you"*.
37. Ms Tampin explained that if there had not been any contravention of planning legislation this could be reviewed at a site visit. In reply the Appellants stated, *"The upstairs is as it was with individual bedsit complying with health and safety requirements"*.
38. On 10 August 2015 the tenant of Flat 6 provided Ms Tampin with access to that flat but she was unable to access Flats 1 to 5.
39. On 5 October 2015 the Council served a Planning Contravention Notice (PCN) on the Appellants. I have had regard to the questions asked of the Appellants in the PCN and in my view if these questions had been answered it would have fully disclosed to breach of planning control alleged in the Enforcement Notice. The PCN should have been completed and returned to the Council in late October 2015. No reply to the PCN was provided by the Appellants. When asked why there was no response to the PCN Ravinder Laly stated that he had more important things to do.

Reasons - Ground (d) that at the time the Enforcement Notice was issued, it was too late to take enforcement action against the matters stated

40. The Appellants argument is that the use of Flats 1 to 5 all started prior to and continued throughout the relevant period.
41. The Appellants have to show, amongst other things, sufficient evidence to prove their Ground (d) claim. I have explained above the gaps in the evidence regarding the actual use of each flat throughout the relevant period. I have also explained what additional types of evidence I would expect to find in support of an application of the use of Flats 1 to 5. I also consider, for the same reasons, that the Appellant's evidence is imprecise and ambiguous. There are many contradictions between the evidence provided to the Inquiry

- and that produced whilst the Council were investigating the breach of planning control.
42. Ravinder Laly explained to the Inquiry that he had met all of the occupiers of all of the flats but in my assessment that does not prove on the balance of probabilities that the flats were occupied throughout the relevant period.
43. I am aware that the Council's Environmental Health Officer inspected the premises on 25 February 2015 and was aware that The Cricketers had at least five residential units within it. However, that does not assist in establishing the residential use of The Cricketers throughout the whole of the relevant period.
44. The Council were able to obtain information off the internet which shows Flat 4 being available to rent as at July 2015. However, the evidence provided to the Inquiry by the Appellant was that this Flat was let for the entire year to Mina Nishimura & So Kim La.
45. I have also had regard to Ravinder Laly's claim that he offered to Ms Tampin to bring evidence of all the tenancies for all of the flats at The Cricketers to the Council's Offices. Ms Tampin stated that she had no recollection of such an offer and none of her evidence to the Inquiry was challenged by the Appellants.
46. I therefore conclude, for the reasons explained above, that at the time the Enforcement Notice was issued, it was not too late to take enforcement action against the matters stated. Accordingly, the appeal on Ground (d) fails.

Reasons - Ground (g) that the time given to comply with the Enforcement Notice is too short

47. The Appellants consider that they need a period of 15 months to secure compliance with the Enforcement Notice. The basis of this claim is so that the tenants of the flats are not disadvantaged.
48. The Council explained that what has happened at The Cricketers amounts to a serious breach of planning control which results in the occupiers of some of the flats living in residential accommodation that fails to meet the relevant planning requirements for such accommodation and that residential use should be brought to an early end.
49. There is no evidence:
- a) From any of the occupiers of the flats that they require more than the six month period specified in the Enforcement Notice so as to find alternative accommodation.
 - b) That the Appellants require any additional time to secure compliance with the Enforcement Notice. The copies of the Assured Shorthold Tenancies which were provided to the Inquiry allows the Appellants to give two-month notice to the tenants that they require possession of the flats.
50. I am aware that there can be circumstances where obtaining possession of residential properties can be delayed due the legal processes that need to be carried out. The Council confirmed that if the Appellants had such problems with any of the flats and were able to prove this by production of documentation they would consider using their powers to extend the compliance period.

51. I therefore conclude that the time given to comply with the Enforcement Notice is not too short. Accordingly, the appeal on Ground (g) fails.

Overall Conclusion

52. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decision

53. The appeal is dismissed and the Enforcement Notice upheld.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANTS

Mike Washbourne BSc(Hons), MRICS of Porta Planning
He called:

Ravinder Laly – Director of RSL (Slough) Limited

FOR THE LONDON BOROUGH OF LAMBETH

Nicholas Ostrowski of Counsel
Instructed by the Solicitor to the Council
He called:

Clare Tampin BA(Hons), MA, MRTPI – Senior Planning Enforcement Officer

DOCUMENTS

1. Written Submission dated February 2016 by the residents of 14-16 Kennington Oval.
2. Written Submission dated 17 August 2016 by the residents of 14-16 Kennington Oval.
3. Schedule of Tenancy Agreements for Flats 1 to 6 submitted by the Appellants.