
Appeal Decision

Inquiry held on 8 November 2016

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 24 November 2016

Appeal Ref: APP/A5270/C/16/3144693
12 Denehurst Gardens, London, W3 9QY

- 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 Mr Habib Rehman against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, reference COM/2014/00797, was issued on 26 January 2016.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of the property into two self-contained residential units.
- The requirements of the notice are to:
 - a. Cease the use of the property as two self-contained residential flats, including the removal of kitchen facilities in one of the flats; and
 - b. Remove all internal partitions that facilitate the creation of multiple residential units; and
 - c. Remove all resultant debris.
- The period for compliance with the requirements is three 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.

Application for costs

1. At the Inquiry an application for costs was made by the Council against the Appellant. This application is the subject of a separate Decision.

Procedural Matter

2. Oral evidence was given to the Inquiry after the witnesses had either made an affirmation or taken the oath.

The Notice

3. The allegation refers to the conversion of the property, the reasons refer to a material change of use and the requirements refer to the use of the property. The requirements should reflect the allegation and the development that is referred to as a 'conversion' is a material change of use which is not solely confined to physical works. A letter to the Appellant¹ before the notice was issued made it clear that there had been a material change of use of the property and given that the reasons for the issuing the notice and the

¹ Dated 17 April 2015 – Appendix 2 to Mr Crawford's proof

requirements also refer to a material change of use and the use of the property I am satisfied that it was clear to the Appellant what he had done wrong and what he had to do to put it right.

4. Prior to the Inquiry, correspondence between the Appellant and the Council² indicated that it would be necessary for the Appellant to show that there had been a four year continuous use of the property as two self-contained flats and the Appellant produced a proof of evidence and appendices³ at the Inquiry which included, among other things, evidence in respect of the use of the property during this four year period.
5. In the circumstances I am satisfied that the Appellant will not be caused any prejudice by the correction of the notice⁴ and I will therefore correct the notice accordingly in order that the allegation refers to the statutory meaning of development⁵.

The appeal on ground (d)

6. In an appeal on ground (d) the Appellant has to prove on the balance of probability that at the time the notice was issued it was too late to take enforcement action against the matters stated in the notice. In this case this means that the Appellant has to prove that the material change of use of the property into two self-contained residential units took place on or before 26 January 2012, that is, four years before the notice was issued and that the property has been in continuous use as two self-contained residential units since that date.
7. The Appellant's case is, in effect, that in August 2008 the whole property was let to one tenant, Mrs Salameh, and in early 2011 she requested cooking facilities on the first floor and a partition so that her daughter could claim housing benefit. The Appellant obliged and carried out the work for an additional kitchen and partition. The tenant left in 2013, the property was refurbished and rented out again as two separate units.
8. The tenancy agreement to Siham Salameh is dated 13 July 2008⁶; it relates to the dwelling known as 12 Denehurst Gardens; it was for a term of 12 months; and the rent was £2,100 per month exclusive of Council Tax and other utilities and services. I do not have a full copy of the agreement and although the Appellant is stated to be the landlord his signature does not appear on the pages I have and the only signatures I have are Sarkis Agop Kouyoumdjian and Mrs Salameh. It also appeared from the Appellant's evidence that the actual rent paid by Mrs Salameh was less than that stated on the agreement as she paid £1,900 per month.
9. Mrs Salameh confirmed her tenancy in a letter/affidavit⁷ as did her daughter, Samar Salameh⁸. Both of them went on to say that Ms Samar had applied for housing benefit while continuing to stay in the same house. The claim was rejected because she did not have a separate kitchen and entrance and so

² Emails dated 17 and 20 October 2016 and the draft statement of common ground

³ Document 2

⁴ S.176(1) of the 1990 Act

⁵ S.55 of the 1990 Act

⁶ Appendix 4 to Mr Rehman's proof

⁷ Dated 10 February 2016 which became an affidavit sworn on 27 April 2016 (appendix 2 to Mr Rehman's proof)

⁸ Letter dated 14 February 2016 which became an affidavit sworn on 27 April 2016 (appendix 3 to Mr Rehman's proof)

Mrs Salameh asked the Appellant to provide another cooking facility on the first floor and a partition on the stairs and 'he immediately obliged'. Ms Salameh says that Mr Rehman 'urgently provided another kitchen facility upstairs and a partition'.

10. The oral evidence about the kitchen and partition was, however, somewhat different. The Appellant said that he only provided second hand kitchen units that came from his house and that he did not pay for anything. Ms Hachem, Mrs Salameh's younger daughter, said that the work was done by a builder who was a friend of Ms Salameh. The kitchen was put into the rear room on the first floor which Ms Salameh also used as a bedroom. Despite seeking clarification it was not clear to me where 'the partition' was and where it was located. It was, however, clear that there was a door at the top of the stairs.
11. Ms Salameh apparently did not pursue her claim for housing benefit and she moved out at the end of 2011. It is telling that she refers to 'living with her mother' and Mrs Salameh uses the words 'my daughter continued to live with me'.
12. Ms Hachem gave oral evidence to the Inquiry. She said that she lived in the five bedroomed house with her Mother, her three sisters and her brother and that her eldest sister Ms Salameh had two children. When the kitchen had been put in Ms Salameh had two rooms on the first floor – the back one with the kitchen and one for her children; Ms Hachem slept downstairs; and the rest of the family slept upstairs. Ms Hachem moved into the room with the kitchen in about March 2012 and she stayed there with her son, who was born in May 2012, until the whole family moved out in late 2013. Ms Hachem applied for housing benefit but she was not eligible because of her age. Ms Hachem said that the family had to move out because the property needed refurbishment. It is notable that neither Mrs Salameh nor Ms Salameh mention in their written evidence that Ms Hachem eventually took over the rear bedroom with the kitchen.
13. Ms Salameh moved into the current ground floor flat in about November 2015 and Ms Hachem moved into the first floor flat in about March 2016. She said that there was now one extra room upstairs and a new en-suite bathroom in one of the bedrooms; as it was only her and her son in the flat the kitchen did not have a bed in it. She also said that there was now one extra room and a new bathroom on the ground floor.
14. From the evidence it is apparent that some form of kitchen was put into the first floor at some time in 2011. However, Ms Hachem told the Inquiry that she relied on take-aways and did not cook and I question how extensive the cooking facilities were. It is also not clear how definite the partition was and whether the door at the top of the stairs had a lock or not. There was only one tenancy agreement for the whole of the property and Mrs Salameh paid the rent and other outgoings; there were no separate tenancies or utility bills for either Ms Salameh or Ms Hachem; and the separate gas and electricity meters for the two flats were not installed until after November 2013.
15. On the basis of the evidence it seems to me, as a matter of fact and degree, that the use of No 12 while it was occupied by the Salameh family was as a single family dwelling with members of the family occupying the whole of the property, albeit with limited separate arrangements for the privacy of Ms Salameh for a short period of time in 2011 and Ms Hachem for a longer

period of time in 2012 and 2013. I therefore find that there had been no material change of use from a single family dwelling to two separate independent residential units by the time the family vacated in about November 2013.

16. The property was empty while it was being refurbished from about November 2013 until about February/March 2014. The Appellant has provided a number of tenancy agreements which he says show occupation of the flats from this time onwards. Again I do not have full copies of the agreements but, even if such agreements could show actual occupation of the flats which they do not, they do not cover the requisite period of January 2012 onwards and it is apparent that the agreements do not provide an accurate account of the tenancies.
17. With regard to the ground floor flat⁹, the first agreement is for 12 months from 23 February 2014; the second is for one year from 6 April 2015; and the third is for one year from 22 August 2015. I appreciate that there is often a gap when one tenant leaves and a new tenant moves in, but it was the Appellant's own evidence that the second tenancy came to an end early because the tenant had to go back to China and the third tenancy was terminated when the Appellant found out about the sub-letting of the back room and Ms Hachem advised that Ms Salameh had moved in in about November 2015. No tenancy agreement for Ms Salameh has been provided.
18. With regard to the first floor flat¹⁰, the first agreement is from 8 March 2014 for a term of 12 months; the second is from 8 February 2015 for 12 months; and Ms Hachem moved in in about March 2016. No tenancy agreement for Ms Hachem has been provided.
19. There is some lack of clarity in the agreements as they refer to, among other things, a Flat X on the first agreement for the ground floor flat and the whole property, No 12, for the second agreement and there is no consistency whether Council Tax and utilities are paid for by the Appellant or the tenant and what amounts they are. The Appellant's evidence on these matters was confused and it appeared that until recently the gas and electricity were in his name despite there being separate meters for each flat and he collected reimbursement from the tenants for these utilities as well as Council Tax. I do, however, acknowledge that the Appellant has been represented by various Agents in respect of the lettings and that the agreements were, in all probability their responsibility, not the Appellant's.
20. Council Tax was not paid for the two separate flats until January 2016¹¹ when the Appellant advised the relevant department of the Council about the change of use of the property. Up until then Council Tax had been paid on the basis of the property being a single dwelling and the Appellant explained that this had been to save money and because he was unsure of any applicable procedure.
21. It is also a matter of record that the Electoral Register¹² shows No 12 as a single property until 2014 with Mrs and Ms Salameh identified as registered electors. Given the names of the various tenants since 2014 I find nothing unusual in the fact that there are no further archived Electoral Register records

⁹ Appendix 5 to Mr Rehman's proof

¹⁰ Appendix 6 to Mr Rehman's proof

¹¹ Appendix 11 to Mr Crawford's proof

¹² Appendix 13 to Mr Crawford's proof

for the property as it appears to me that the later tenants may not have been eligible to vote.

22. I therefore find that the Appellant has failed to prove on the balance of probability that the material change of use of the single family dwelling at 12 Denehurst Gardens into two self-contained residential units took place on or before 26 January 2012 and that the property has been continuously used as such since on or before that date.

23. The appeal on ground (d) fails.

Other Matters

24. In his grounds of appeal and in his proof the Appellant has raised matters, among other things, relating to his personal circumstances, the personal circumstances of the tenants, other properties in Denehurst Gardens being divided into flats and the planning merits of the change of use to two self-contained residential units. However, no appeal has been made on any ground other than ground (d) and therefore these matters cannot be taken into account in this decision.

Conclusions

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Decision

26. It is directed that the enforcement notice is corrected by the deletion of the word 'conversion' in part 3 and the substitution therefor of the words 'material change of use'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr H Rehman Appellant and advocate

He called

Ms Z Hachem Previous and current occupier of the property

FOR THE LOCAL PLANNING AUTHORITY

Mrs I Visagie Solicitor

She called

Mr A Crawford Senior Planning Enforcement Officer

BA GPEP(Hons) MRUP (Hons)

DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1 - Statement of Common Ground

Document 2 - Proof of evidence and 9 appendices submitted by Mr Rehman

Document 3 - Closing submissions on behalf of the Council