The Planning Inspectorate

Appeal Decision

Inquiry held on 6 December 2016

Site visit made on 6 December 2016

by P N Jarratt BA DipTP MRTPI

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

Decision date: 14 December 2016

Appeal Ref: APP/A5840/C/16/3146761
14 Waghorn Street, Peckham, London, SE15 4JZ

- 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 D Singh Properties Ltd against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice, numbered 14/EN/0081, was issued on 16 February 2016.
- The breach of planning control as alleged in the notice is the material change of use of the property from a single dwelling house to multiple self-contained dwellings, each within use class C3, consisting of two self-contained dwellings on the ground floor and three self-contained dwellings on the first floor.
- The requirements of the notice are:
  1) Cease the use of the property as more than one self-contained dwelling;
  2) Restore the property to its condition before the breach occurred, including the removal of all fixtures, fittings and partitions connected to the use of the property as more than one self-contained dwelling;
  3) Remove all of the kitchens from the property except for one (which for the avoidance of doubt shall include the removal of the worktops, sinks, hobs, microwave, ovens, kitchen shelves, worktops and cupboards, wall tiles, fridges, splashbacks and electricity sockets (at worktop level) and switches (at work top level));
  4) Remove all of the bathrooms from the property except for up to two bathrooms (which for the avoidance of doubt shall include the removal of showers, hand basins, toilets, plumbing and electricity connections, partition walls and doors);
  5) Remove all the electricity meters and consumer units that do not serve the property as a single dwelling house;
  6) Remove the locks from the entrance door to each unauthorised flat; and
  7) Remove from the property any material and debris arising from compliance with the requirements of 1 to 6 above.
- The period for compliance with the requirements is 6 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.
- **Summary of decision: notice corrected, appeal dismissed and notice upheld**

Preliminary Matters

1. Although no statement of common ground had been submitted, at the start of the inquiry the Council submitted updated occupancy tables for each flat (Document 1) based on the information now available, which draws on the appellant's own evidence, and information from Lambeth, Southwark and Lewisham Councils who have at some time placed people in the appeal

property. The appellant accepted that this represented as complete a record as was possible to achieve.

2. All oral evidence was given on oath.

3. A proof of evidence was submitted by Kheng Chau, Planning Lawyer for the Council. However, as the appellant's advocate advised that he would did not wish to cross examine the witness, Mr Chau's evidence was taken as read.

The appeal site and enforcement history

4. The appeal site is a two storey end of terrace property in an area of similar residential properties. The property consists of 5 self-contained flats, each with lockable numbered doors onto the common parts. Flat 1 on the front ground floor has one room with a kitchenette and shower room. Flat 5 at the rear on the ground floor has a room with a separate kitchen and a shower room. Flat 2 is on the half landing at the rear and consists of a room, kitchenette and shower room. Flats 3 and 4 are on the first floor front and rear respectively each consisting of a room, kitchenette and shower room.

5. It was noted that the flat numbering system has been changed at some point so there was some confusion in the evidence over who was occupying a particular flat at any point in time. For example Flat 3 on the floor plan at Appendix A of the appellant's statement of case is referred to as flat 4 by Mr Thomas and flat 5 by Mr Kotian. This refers to the ground floor rear flat which is numbered 5 on the door.

6. A planning enforcement investigation regarding a report of 4 flats at the appeal property and change of use to an HMO was closed in December 2014 as it was superceded by the investigations leading up to the serving of the current enforcement notice. This was triggered by a Valuation Office schedule detailing the banding of Rooms 1-5 as individual units for Council Tax purposes with effective dates between 25 April 2013 and 7 September 2013.

7. Communications from the Council to the letting agent regarding a breach of planning control were not always responded to and Planning Contravention Notices of May 2014 and November 2015 failed to receive responses.

The Allegation

8. The breach is set out in full in the banner heading above and relates to a material change of use from a single dwelling to multiple self-contained dwellings. In preparing evidence for the inquiry, the Council identified that there had been other changes of use at the property to and from C3, and *sui generis* temporary sleeping accommodation. Although the Council is satisfied that the notice should be upheld in the current form, they refer to my power to correct any error or defect in the notice subject to there being no prejudice arising.

9. Section 25 of the Greater London Council (General Powers) Act 1973, relating to the provision of temporary sleeping accommodation constituting a material change of use, was amended by the Deregulation Act 2015 bringing in Section 25A. This excludes s25 from operating if two conditions are met. One relates to Council Tax but is not relevant to this case. The second condition is that the sum of the number of nights of use as temporary sleeping accommodation, and the number of nights (if any) of each previous use of the premises as

temporary sleeping accommodation in the same calendar year, does not exceed ninety. It does not matter if any previous use was by the same person. The commencement day is 26 May 2015.

10. It is evident from my consideration of the ground (d) appeal below that the facts show a change in the nature of residential occupation over a period of time and that the property has been used for C3 use and for temporary sleeping accommodation at different times in different flats. This conclusion is based on the appellant's own evidence of occupation records which were not available to the Council prior to the issue of the notice. Perhaps had the appellant been more responsive to the Planning Contravention Notices, the allegation could have been expressed differently.

11. Under s 176 (1) I have the power to correct the notice if I am satisfied that the correction will not cause injustice to the appellant. As the correction stems from the appellant's own evidence, I do not consider that any injustice will be caused. Accordingly I propose to correct the allegation in the notice to "the material change of use of the property from a single dwelling house to a mixed use of up to five self-contained dwellings, within use class C3, and *sui generis* temporary sleeping accommodation."

The appeal on ground (d)

12. Under oath, Mr Singh, the appellant stated that the appeal property was purchased in 2003. It was refurbished as 5 self-contained dwellings in 2004 by tradesmen appointed by him, the layout has not changed and there have always been 5 units. However, no evidence has been presented that supports this claim such as invoices, receipts or other documents. Nor is there any other evidence in the documentation submitted by the appellant that indicates what these works consisted of. The date also contradicts the date of 2008 for the existence of the self-contained flats in the Statement of Case.

13. Mr Singh appears to have had little subsequent involvement in the management of the property, leaving this to his management staff. Pritam Kotian, in giving evidence as Office Manager of D Singh Properties Ltd, has only been managing the properties since July 2016. Whilst he was able to provide details of the occupancy of the flats from office records, he had no personal knowledge of the background to the allegations.

14. Mr Singh and Mr Kotian refer to administrative errors in the documentation submitted for the appeal and a reliance on previous staff members of the appellant's company to provide evidence for the inquiry.

15. Some five statutory declarations have been submitted. Sooter Alengaan Lonappan says that he has worked as a maintenance engineer since 2010 where people were staying in 5 self-contained flats. Gordon McKee has been temporarily housed by Southwark Council in flat 2 since 8 January 2016 and is aware that there are 5 flats. Similarly Miss Pinnock of flat 5 has been temporarily housed since 8 April 2016, Nasro Moalim of flat 1 since 18 November 2015 and Kataarzyna Akinminosun of flat 3 since 2 June 2016. Other than Mr Lonappan, none of the tenants have knowledge of the property for the period relevant to this appeal. Furthermore the declarations of the four tenants do not follow the wording as required under the Statutory Declarations Act 1835 and none of the declarations properly identify the counter signatory as a properly qualified commissioner for oaths. As Mr Lonappan was not giving

verbal evidence on behalf of the appellant, his evidence was unable to be tested, particularly on his own understanding of a 'self-contained flat' and when sub-division took place. I therefore attach reduced weight to his declaration.

16. Mr Alexis Thomas gave evidence to the inquiry in which he confirmed that the appeal property was in use as 5 self-contained studio flats since March 2011 when he took up his post as Senior Temporary (allocation) Team Manager with Lambeth Council. The Council had exclusive use of the building from 2008-2012 as a 'bed and breakfast annexe' with nightly charged accommodation to provide interim accommodation for mothers with young children. He visited the occupant of flat 3 (now identified as flat 2), Ms Diallo in May 2013 and also inspected flats 1 and 4, all of which were self-contained studio flats with kitchenette and en-suite shower rooms. However I note that there is a disparity in the flat numbers used by Mr Thomas with those shown in the appellant's Appendix A of his statement of case.

17. The Licence Agreement at Appendix B of the statement of case refers only to 4 self-contained studio units: 1 to 4. In respect of the lack of reference to the larger ground floor flat, Mr Thomas stated that this was identified separately in Lambeth's system and that it had a stand-alone license (although a copy of this was not submitted to the inquiry). Additionally, Mr Kotian's bundle indicates that Ms Diallo did not occupy the accommodation until after the date Mr Thomas visited the property.

18. Although an electric and gas certificate have been obtained by the Council, these do not refer to individual flats but to the whole building, as did a building notice of August 2008 (Council's appendices ML12, ML13 and ML14). Furthermore, the Licence agreement at Schedule 3 of Appendix 2 of the appellant's statement lists the furnishings 'to be provided within the premises'. Reference to curtains and beds is in the plural but there is reference to a cooker, fridge (or fridge/freezer) table and chairs, three piece suite/sofa/easy chairs. This suggests that there were four rooms for occupation and a common kitchen/sitting room which would reflect the layout of the property.

19. Revenue records of Southwark Council indicate that Rooms 1, 2, 3 and 4 were brought onto the Rating List between April and July 2013 and that Room 5 (ground floor rear) had been empty for more than 2 years. This is inconsistent with the appellant's case and Mr Singh denied he had provided such information.

20. A Council's revenues and benefits inspector attempted to inspect the property in August 2014 but following failure to access the property noted on his report that he recalled the property being an HMO from past visits.

21. Given the lack of evidence provided by the appellant to indicate when the property was converted into 5 separate self-contained dwellings, I shall consider the occupancy record although in view of the agreement of the parties to the accuracy of the information, it is necessary to look only at the duration of the periods of occupation.

22. The appellant contends that the provisions of s25A can have effect on all decisions made on or after 26 May 2015. In this case the updated table of occupation (Document 1) shows that in the relevant period between February 2012 and February 2016, there is no period of 'temporary sleeping accommodation' use that exceeds 90 days in any calendar year. However, I

am not persuaded that this is the correct application of s25A. The legislation is silent as to retrospective application and therefore this means there is no retrospective application. The table of occupation shows that prior to May 2015 the property has been used at different times for C3 accommodation and as temporary sleeping accommodation, representing a material change of use given effect by s25 (as applied in *Fairstate*[1]).

23. The ambiguity over flat numbers and Mr Kotian's evidence that often the end dates on the booking forms were foreshortened orally by the various councils means that it is impossible to say what rooms were occupied for what length of tenancy and when, but it is clear that the C3 use has not been demonstrated to be continuous over the relevant period.

24. In closing Mr Stemp, on behalf of the appellant, argues in the alternative that there is no material alteration to how an occupant uses the dwellings over the period 2008 to date and that the building has always been in the same broad 'mix' of C3/temporary sleeping accommodation. Whilst a broad mix may have been carried out for some time, it is unclear from the evidence when this 'mix' may have resulted in a material change of use; when the ground floor rear flat was created (Flat 5 and referred to as Flat 3 by Mr Stemp and listed on Document 1) in view of the absence of details of occupants prior to July 2013; and, no comment is made to the application of time limits for enforcement action set out in s171B so far as the sui generis use is concerned.

25. In an appeal on legal grounds, the onus of proof is on the appellant and the standard of proof is on the balance of probabilities. In this case, the evidence is incomplete, contradictory and confusing. The appellant has not demonstrated on the balance of probabilities that the alleged material change of use, as now corrected, occurred prior to 16 February 2012 and the appeal on this ground fails.

The appeal on ground (g)

26. The appellant considers that a period of 12 months would be necessary to carry out the steps required in the notice. Mr Thomas explained that his Council needs to go through formal notice procedures. The occupants have their own rights and there is a need to find suitable local accommodation.

27. However, I note that people in temporary accommodation have no protection although if the Council owes a full housing duty, then a 28 day notice period and a specific offer of alternative accommodation is required.

28. I consider that a 6 month compliance period is reasonable and provides adequate time for the occupants to be given notice, and for the steps required by the notice to be carried out. Mr Lambert on behalf of the Council pointed out that the Council has the power to extend the period of compliance if the circumstances justified such action.

29. The appeal on this ground fails.

Conclusion

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

[1] Fairstate v First SoS and Westminster CC [2005] EWCA Civ 283

Formal Decision

31. I direct that the enforcement notice be corrected by the deletion of the words "the material change of use of the property from a single dwelling house to multiple self-contained dwellings, each within use class C3, consisting of two self-contained dwellings on the ground floor and three self-contained dwellings on the first floor" and their replacement with the words "the material change of use of the property from a single dwelling house to a mixed use of up to five self-contained dwellings, within use class C3, and *sui generis* temporary sleeping accommodation." Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT: Scott Stemp of Counsel, instructed by Mercer Planning Consultants

He called

Alexis Thomas	Senior Temporary Accommodations (allocation) Team Manager, Lambeth Council
Dave Singh	D Singh Properties Ltd
Pritam Kotian	Office Manager of D Singh Properties Ltd

FOR THE LOCAL PLANNING AUTHORITY: Ms Stephanie Hall of Counsel, instructed by Legal Services

She called
Matthew Lambert Dip TP

INTERESTED PERSONS:
None

DOCUMENTS

1 Updated Occupancy Tables (Council)
2 Opening submissions on behalf of the LPA
3 Closing note on behalf of the appellant
4 Closing submissions on behalf of the LPA