
Appeal Decision

Site visit made on 26 April 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 12 June 2017

Appeal Ref: APP/X5990/C/16/3158598

The building(s) and associated land at The Garages, 286 Shirland Road, London, W9 3JH

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Behnam Bellini against an enforcement notice issued by Westminster City Council.
 - The notice was issued on 9 August 2016.
 - The breach of planning control as alleged in the notice is: Within the last 4 years and without planning permission the material change of use of the garages from use as a double garage (for the accommodation of vehicles) ancillary to the residential use of the building to use as a studio flat and the associated works involved in order to facilitate this use. The use is also in breach of Condition 3 of the planning permission granted 10th April 1996, which states "*The whole of the car parking accommodation shown on the drawings shall be provided and retained permanently for the accommodation of vehicles for the occupiers of residential accommodation in this development c22(b)*".
 - The requirements of the notice are:
 - a) Discontinue the use of the garages as a studio/single dwelling as identified in 'Plan A' and 'Photograph A' attached; and
 - b) Remove all internal and external fixtures, fittings, partitioning, panelling, plumbing works and materials installed which facilitate the unauthorised use and preclude the lawful use of the garage for the "*accommodation of vehicles for the occupiers of residential accommodation at 286 Shirland Road*". Examples of the works to be removed are shown in red in photographs B-D attached to this notice.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the ground set out in s174(2)(b) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by:

- (i) In paragraph 3, deletion of "Within the last 4 years and" and deletion in entirety of the second sentence beginning "The use is also in breach of Condition 3 ...". Thus the allegation will read:

"Without planning permission the material change of use of the garages from use as a double garage (for the accommodation of vehicles) ancillary to the residential use of the building to use as a studio flat and the associated works involved in order to facilitate this use."

- (ii) In paragraph 4, insertion at the beginning of the paragraph, of "It appears to the Council that the above breach of planning control has occurred within the last four years".
- (iii) In paragraph 4, deletion of "in breach of Condition 3 of planning permission dated 10th April 1996 Ref:(96/00112/FULL – PE/TP167)".

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the enforcement notice

- 2. Before proceeding to determine the appeal I must ensure the notice is in good order.
- 3. In addition to alleging a material change of use, paragraph 3 of the notice also refers to a breach of a condition which requires the garages to remain available for parking in connection with the use of the main property as flats. The Council has confirmed that the reference to the breach of condition is for information purposes and that the notice is not intended to attack a second breach.
- 4. It is important that the allegation within the notice is clear and concise as legal culpability arises from any failure to comply. Clarity would be added to the notice by the deletion, in paragraph 3, of the reference to the breach of condition.
- 5. In order to provide consistency between the allegation and the reasons for issuing the notice it is also necessary to delete reference to the breach of condition in paragraph 4.
- 6. Additionally, the phrase "Within the last 4 years" where it appears in paragraph 3 is not descriptive of the breach itself and is more concerned with the Council's reasons for taking action. I shall delete this phrase from paragraph 3 and insert reference to the four year time period within paragraph 4.¹
- 7. I shall correct the notice in respect of the above matters under the available powers of s176(1)(a) of the Act. I am satisfied that no injustice will arise to either party in me so doing.

Other preliminary matters

- 8. An accompanied site visit had been arranged. The appellant did not attend. I undertook an inspection unaccompanied from the street. From what I saw of the site and surroundings, and from the appeal evidence submitted by the parties (which includes photographs), I am satisfied that I have sufficient information to reach a decision.
- 9. Whilst the appeal is proceeding on ground (b)², essentially the appellant's case is that the change of use occurred more than four years before the enforcement notice was issued. Such arguments would normally be dealt with

¹ The Planning Practice Guidance, in its section on "Ensuring effective enforcement", gives advice on the drafting of notices.

² An appeal on ground (b) is that the matter alleged has not occurred as a matter of fact.

under ground (d), that at the time the notice was issued it was too late to take enforcement action. I shall consider these arguments under the heading "*The implied appeal on ground (d)*".

10. Grounds (b) and (d) are amongst those known as the "legal grounds". In a legal ground of appeal there is no consideration of the development on its planning merits. The grounds strictly concern matters of evidential fact and planning law. Where there is unclear or contradictory evidence, the test of the evidence is one of balance of probability.³ The burden of proof is upon the appellant.

The appeal on ground (b)

11. Ground (b) essentially concerns whether the allegation, as it is described in paragraph 3 of the notice (as corrected), is factually correct.
12. The appellant's argument is that the change of use happened in 2007, prior to the commencement of his tenancy, and that the works undertaken in 2013 were refurbishment works and not works for the conversion to a dwellinghouse. These are matters which I shall consider under the implied appeal on ground (d). Irrespective of the issue concerning the date of the breach, however, there does not appear to be any dispute that the building at one time was garages and is now a studio flat.
13. According to the Council the appellant had previously said that the garages were used as a workshop or workshop with sleeping accommodation. If that had been the case, this could have implications for the wording of the allegation and the appeal on ground (b). However, the appellant has not pursued any argument in respect of a "workshop" use. The appellant's case, in this appeal, is simply that the property has a history of residential use. The Council's photographs of February 2016 indicate a residential use and do not show any evidence of a "workshop" element.
14. On the evidence, therefore, I find that the allegation of the material change of use from garages to a studio flat has occurred as a matter of fact. The appeal on ground (b) fails.

The implied appeal on ground (d)

15. Under s171B(2) of the Act, where there has been a breach consisting in the change of use of a building to use as a single dwellinghouse, no enforcement action may be taken after the end of a period of four years beginning with the date of the breach. Therefore, for there to be any prospect of a successful appeal on this ground the appellant must show, on balance of probability, that the material change of use occurred on or before 9 August 2012, that being the date four years before the issuing of the enforcement notice, and has continued for a period of at least four years.
16. The appellant claims that the property has been in residential use since 2007. Amongst the evidence is a copy of a lease dated 1 February 2007 between the appellant (who is named as tenant) and Ali Reza Ravanshad (named as

³ Balance of probability concerns "likelihood". In other words, it means that the assertion being made is more likely than not to be true.

landlord) which states the permitted use to be "as a single private dwelling". A plan shows a live-work space, shower/WC and kitchenette.

17. I have considered seriously the appellant's assertion as to the date of the change of use, not least because it is made in the form of a statutory declaration which is a legal document governed by statutory provisions. However, I must also take into account all of the other evidence. I acknowledge that the lease permits use as a single private dwelling, but what is stated as the permitted use in a lease is not necessarily the same as the use that actually occurred on the ground.
18. It is unclear as to when, exactly, the garages were built but there is a drawing of a proposed garage building which accompanied an application in 1996⁴ which broadly reflects the size and footprint of the subject building.
19. The building is shown in dated photographs taken in 2008 (after the change of use is said by the appellant to have occurred). The photographs show a brick built garage building, two garage doors to the front and a slightly inclined corrugated roof. A sign to the front of the building states "No Parking, garage – in constant use". There does not appear to have been any glazed rooflights. Although the photographs show only the building's exterior, there is nothing that can be drawn from them to indicate that the building was being lived in or that its use was anything other than as a garage at that time.
20. There is a further photograph, dated May 2012, which shows little (if any) change to the external appearance of the building.⁵ From the photograph the building still appears, externally, to be a garage. I give substantial weight to these dated photographs because they are an actual record of what was seen on the ground at specific dates.
21. An interested party has supplied photographs said to have been taken in September 2013 and, thus, less than four years before the issuing of the notice. These photographs (being a visual record) also carry weight in my decision. Some work may have been underway to the roof of the building at that time. However, the up-and-over garage doors (which were partially open), and the "no parking" sign, were still in situ giving the appearance of a building that, until that time, had been used as a garage rather than as a residence.
22. I acknowledge that, until October 2013, there are no photographs showing the interior of the building leaving open to question what it contained inside. However, the burden of proof is upon the appellant to reconcile the evidence with what he says was occurring. No satisfactory explanation has been given for why the building had the appearance of a garage (with up and over garage doors, corrugated roof and no natural lighting for example) and why a sign displayed on the building said it was a garage in constant use if, as is claimed, its actual use was as a dwelling.
23. There is a statutory declaration from Cristinel Fodor, director of the building company that carried out works at the property in 2013. Mr Fodor's evidence

⁴ The 1996 application proposed the use of the main building as three self contained flats with two garage parking spaces. A condition of planning permission required the parking spaces to be permanently retained for the occupiers.

⁵ The condition of the roof of the building is not clearly visible in the 2012 photograph.

is that, when he visited the property in September 2013, it was already a living space with kitchen, toilet and shower. However, the appellant has not explained how Mr Fodor's evidence can be reconciled with the September 2013 photographs which, although showing only the exterior, give a strong indication that the building was a garage.

24. Even if, as Mr Fodor says, there were living facilities contained within the building in September 2013 it does not necessarily follow that such facilities were in situ and that the property was in use as a dwellinghouse on or before 9 August 2012 i.e. at least four years before the issuing of the notice. Whilst Mr Fodor's evidence corroborates that of the appellant, insofar as the circumstances in September and October 2013 are concerned, it adds nothing to the appellant's argument that the breach occurred in 2007 and that the four year immunity period has run its course.
25. I have considered the witness statement of Ali Reza Ravanshad (freeholder) who says that the appellant has been a tenant since 2007. Whilst that may be the case, it does not necessarily mean that the building was used for residential purposes since that date.
26. Mr Ravanshad's evidence is silent on the matter of how the building was used over the time period from 2007 to the time when the works were carried out in 2013, except to say that the works were to upgrade (rather than convert) the property as it was already a residential unit. However, Mr Ravanshad has given no evidence on when the living facilities (e.g. kitchen and shower/WC) were first installed, when the building first became a residential unit and over what time period(s) it has been so used. The statement adds little, therefore, to what the appellant must prove on balance of probability if the appeal is to succeed on ground (d).
27. According to the Council no Council Tax has been paid over the relevant period, there is no record of occupation on the Electoral Roll and no permission has been sought under the Building Regulations. The appellant has offered no explanation for these omissions even though there is a burden of proof upon him. Neither has the appellant supported his assertion with copies of utility bills or other documentary evidence which may have helped to show that he was living there.
28. I also take into account that the building is prominently positioned to the road frontage and overlooked at quite close quarters by neighbouring properties. It is improbable, in these circumstances, that a residential use would have gone undetected until 2013 had it commenced in 2007.
29. I have carefully considered all the evidence, including the photographic evidence of the extent of works carried out in 2013. However, on the balance of the evidence I cannot conclude that the change of use occurred four years or more before the issuing of the enforcement notice; or that the use had continued for a period of at least four years prior to the issuing of the notice. The burden of proof that is upon the appellant has not been satisfactorily discharged. I find, on balance of probability, that the enforcement notice was issued in time. The implied appeal on ground (d) fails.

Other matter

30. Notwithstanding the appellant's claims, on the evidence it is more likely that the 2013 works were undertaken to facilitate the material change of use of the property rather than to renew facilities within an existing dwelling. I am satisfied, therefore, that the steps of the notice do no more than necessary to remedy the breach and are not excessive.

Conclusion

31. For all the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Susan Wraith

Inspector