
Appeal Decision

Inquiry held on 27 June 2017

Site visit made on 28 June 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/A5840/C/16/3153035 Land at 10 Chettle Close, London SE1 4EF

- 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 Europa Gold Limited against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice, Ref: 16/EN/0002, was issued on 6 June 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the use of the property as two self-contained flats, one located on ground floor and one located on the first floor.
- The requirements of the notice are to:
 - (i) Cease the use of the land as more than one unit of residential accommodation;
 - (ii) Return the use of the land to a single dwelling house within use class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended;
 - (iii) Remove the two internal lockable doors – one located at ground floor level at the bottom of the flight of stairs and the other located at first floor level at the top of the same flight of stairs;
 - (iv) Remove from the land all materials and debris resulting from compliance with requirement (iii);
 - (v) Remove a kitchen from the premises specifically:
 - (a) The hob and the oven;
 - (b) The kitchen sink;
 - (c) The microwave/combination oven and any supporting shelf;
 - (d) Any other cooking facilities;
 - (e) Plumbing and electricity connections to the cooking facilities;
 - (f) Kitchen worktops and kitchen cupboards;
 - (g) The wall tiling around the kitchen; and,
 - (h) The sockets and switches at kitchen worktop level.
 - (vi) Remove from the land all materials and debris resulting from compliance with requirement (v) above.
- The periods for compliance with the requirements are one month in respect of steps (i) to (iv) and three months in respect of steps (v) and (vi).
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended. The deemed planning application also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected and varied, is upheld.

Procedural Matters

1. All evidence to the Inquiry was given on oath.
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Matters Concerning the Notice

2. At the start of the Inquiry I drew attention to the fact that I did not consider that the second requirement of the notice, to return the use of the land to a single dwelling house within Use Class C3 of Town and Country Planning (Use Classes) Order 1987 as amended, was legitimate, having regard to the judgement in *Lipson & Lipson*¹. In that case, it had been found that an enforcement notice could not require the resumption of a former use.
3. The Council accepted that the notice was erroneous in this respect and should be corrected. The appellants agreed that such correction could be undertaken without causing injustice or prejudice. I shall, therefore, use the powers available to me under Section 176(1) of the Town and Country Planning Act 1990 (The Act) to delete the second requirement.

Background

4. The appeal property is a two-storey semi-detached house situated at the western end of Chettle Close, adjacent to Spurgeon Street, which forms the north-western boundary of its curtilage. Chettle Close comprises a staggered row of two-storey dwellings, and their gardens, accessed from a footway on their northern side.
5. I saw at my inspection that the appeal property is currently sub-divided so as to form a pair of two-bedroom flats, one on each floor. There are lockable doors at either end of the internal staircase, which rises from a small common hallway inside the main front door to the building. Each flat is laid out in the same way, with a small shower room/toilet, a kitchen/dining room and two bedrooms, both with a double bed and a wardrobe as the principal items of furniture.
6. The kitchens have a range of equipment built along the northern wall of each room, with a full length worktop, of about 3.5m in length, housing a sink unit and an electric hob, with extractor hood above. Beneath the worktop are a washing machine, fridge and electric oven, whilst each kitchen also has a microwave oven. Both flats have radiators for central heating purposes in each room.
7. Separate gas and electric meters serve the two flats, and I saw that there is a gas boiler in a small shed attached to the rear outside wall of the ground-floor flat. I have subsequently been informed that there is a similar boiler to serve the upstairs flat, housed in the loft, albeit that I did not see this at my inspection. Whether or not there are two boilers is, however, immaterial to the matters before me, as the property is clearly being used at the present time as two self-contained flats.
8. At the front of the property is a small garden area that has been sub-divided to provide two parking spaces, with concrete hardstanding, an area of artificial grass, and a small lawn of conventional grass. To the rear, accessed via a side gate with a keypad lock, are a small paved area and another section of artificial grass, to provide a passive recreation area of about 9m in width and 5.5m in depth from the rear wall of the main property. Beyond this area, a large flat-roofed outbuilding has been constructed, measuring about 6.1m in length,

¹ *Lipson & Lipson v Secretary of State for the Environment and Salford Metropolitan Borough Council* [1976] 33 P&CR 95.

5.1m in width and about 2.5m in height. This building was the subject of an enforcement notice in October 2014, but was subsequently granted planning permission, on 17 February 2015, following removal of the original pitched roof. I noted that the outbuilding is currently used for storage purposes, principally containing a variety of building materials, including window frames and doors, plasterboard and piping, and also a range of fixtures and fittings such as a washing machine, boiler, fridge, wash basin and toilet.

THE APPEAL ON GROUND (d)

9. The appeal on ground (d) is based upon the essential premise that the alleged material change of use of the appeal property to a single dwellinghouse did not take place at any time in 2015 as the very minor internal alterations undertaken in March 2015, and reversed on 29 June 2015, did not result in the stated breach of planning control. There was, therefore, no change of use from two self-contained flats to use as a single dwellinghouse, and no subsequent change back to the use alleged in the notice.
10. In this context, the appellants contend that the use of the appeal property as two self-contained flats began in 2005 and at no point since that date has it been used as a single dwellinghouse. Only limited internal works were undertaken in 2015 by the tenant of the first-floor flat, Mr Johnson, and such works were both reversible and then reversed, with such reversal carried out no more than four months after they were instigated. During this period, between March and June 2015, the tenancy agreement of the ground-floor flat continued, with the personal belongings of that tenant remaining in the flat. Although Mr Johnson undertook alterations in order that his mother could occupy the property, with him, as a single dwellinghouse, that occupation never occurred. Additionally, Mr Johnson's evidence was that he continued to use the first-floor kitchen, notwithstanding the works undertaken to conceal it.
11. The findings in *Welwyn Hatfield*² are acknowledged but it is submitted that the fact that the appeal property was never used as a single dwellinghouse must go into the factual matrix in consideration of the question of whether, as a matter of fact and degree, the alleged material change of use took place. In the appellants' submission it did not, and the established use of the property, as two-self-contained flats, begun in 2005, continued throughout.
12. The Council accept that the appeal property, a former single family dwellinghouse, was converted to two flats in 2005, and was so used until March 2015. However, in March 2015, the use of the property reverted to that of a single dwellinghouse, through the removal of the two internal lockable doors, and the boxing-in of the first floor kitchen, leaving only one functioning kitchen on the ground-floor. At that time, there was only one unit of accommodation, occupied by a single tenant with no physical separation between the two floors, a point accepted by the appellants' planning witness, having regard to the definition of a flat in Section 225C of The Act.
13. In June 2015, the use of the property changed from that of a single dwellinghouse to use as two separate dwellinghouses, through the reinstatement of the lockable doors on the ground and first floors, and the removal of the plasterboard partition in the upstairs kitchen. At this point, the property became two distinct self-contained units of accommodation, with each

² *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

having all of the facilities required for everyday living, occupied by separate and unrelated tenants. It is the Council's case, having regard to pertinent case law³, that a material change of use took place at that point, in June 2015, and is not immune from enforcement action through the passage of time, because an enforcement notice was served, on 6 June 2016, within the relevant four-year period.

14. I start my consideration of this ground of appeal by drawing attention to the fact that the burden of proof on a legal ground such as this lies with the appellants, having regard to national procedural guidance⁴, as referred to in the Planning Practice Guidance, and pertinent case law⁵, with the relevant test being on the balance of probabilities⁶.
15. In this appeal the main area of dispute is the question of whether a material change of use of the appeal property took place, in June 2015, from use as a single dwellinghouse to use as two self-contained flats, or whether a use as two such flats, started in 2005, continued uninterrupted. In order to consider this question it is necessary, therefore, to examine the factual situation having regard to the evidence presented at the Inquiry.
16. There is no dispute that the appeal property was originally built as a single dwellinghouse but was converted in 2005, without planning permission, to form two separate self-contained flats. A bundle of tenancy agreements, albeit unsigned office copies, have been submitted and a summary of the various occupiers for the period up to the current date was given in evidence by Mr Johnson, the current tenant and occupier of the first-floor flat. This was not disputed by the Council, save for the situation that occurred in the early part of 2015, and this is central to the determination of this ground of appeal.
17. In March 2015, the tenant of the first-floor flat, Mr Johnson, undertook works aimed at converting the property to use as a single dwellinghouse, in apparent anticipation of joint occupation with his mother, following the death of his father. He removed the lockable internal doors on the ground and first floors and installed plasterboard in the upstairs flat so as to hide the kitchen equipment and units, which were located along a single wall. I saw some evidence of the positioning of this plasterboard at my inspection, with marks on the walls at either end of the kitchen range being faintly visible.
18. Mr Johnson also informed the Valuation Office Agency (VOA), in a telephone call on 2 March 2015, that the property was in use as a single dwellinghouse, and this resulted in a visit from the Valuation Officer, Mr Kalli, on 12 March 2015. The Officer, who met Mr Johnson at the property, observed that a three-bedroom house had been achieved by removing the first floor kitchen and forming a bedroom⁷. The email exchange submitted by the Council also indicates that the VOA informed the Council of the merger of two flats to form one house on 13 March 2015.
19. The Council were, during the early part of 2015, preparing for an appeal that had been made against the enforcement notice issued on 23 October 2014 in respect of the alleged unauthorised erection of an outbuilding at the rear of the

³ Document 4.

⁴ Annexe E of Procedural Guide "Enforcement Notice Appeals – England", 23 March 2016, Planning Inspectorate.

⁵ *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

⁶ *Thrasyvoulou v Secretary of State for the Environment No 1* [1984] JPL a732.

⁷ Exhibit GB4 produced by Mr Blackburn.

property. The Council had also issued another enforcement notice relating to the construction of a hardstanding at the front of the property. The appeal against the former notice was withdrawn in early June 2015, and the Council then requested, in a letter dated 17 June 2015⁸, a site inspection, with access to the whole property. The purpose of the inspection was stated to be to check compliance with the planning permission and/or the planning enforcement notices. The reason for internal access was given as "to check that any outbuilding is being used ancillary to the main building".

20. Two Council Enforcement Officers visited the appeal property on 24 June 2015. Both gave evidence at the Inquiry stating that they observed that the property was laid out as a single family dwelling, with no internal divisions, contrasting with the view obtained at an earlier visit by Mr Blackburn in February 2014, when two flats had been observed. Both witnesses stated that, at their visit in June 2015, they had seen no evidence of a kitchen in the first floor flat, notwithstanding the oral testimony of Mr Johnson who said that he had continued to use the kitchen, and that it was not entirely boxed-in, as part of its concealment was through the employment of a wheeled-wardrobe which could be pushed aside to allow access to the kitchen equipment and fittings. I shall comment on this matter further in due course.
21. In December 2015, the Council Tax registration for the property reverted to that of two flats, prompting a further site inspection by the Council's enforcement officer on 27 January 2016. This inspection revealed that the internal flat doors had been re-fitted and Mr Blackburn was shown where the partition wall had been erected, one metre into the room, so as to conceal the first-floor kitchen units, sink and oven. That partition wall was no longer in place and the property was clearly in use as two self-contained flats at this point, with an almost identical layout for ground- and first-floors, as noted at my own site inspection.
22. The area of dispute between the parties, and the nub of this ground of appeal, therefore centres on the use of the appeal property between March and June 2015, as a continuing use of the property as two flats, started in 2005, would, in the appellants' submission, achieve immunity from enforcement action. In this respect, it is clear that action was taken by a tenant of the property, Mr Johnson, to persuade both the VOA and the Council that the property was in use as a single dwellinghouse. He removed the internal lockable doors and undertook works to conceal the upstairs kitchen. He also stated in evidence to the Inquiry that he made arrangements with the tenant of the ground-floor flat, Mr Masters, to vacate the property during this period and whilst he claims that some possessions were left there, nothing in support of such a claim, such as photographs or a Statutory Declaration from Mr Masters, has been provided. Additionally, no tenancy agreement for Mr Masters was produced, including any covering the period from March to June 2015, so any claim on this point is unsupported by documentary evidence. As for the partition to conceal the upstairs kitchen, Mr Johnson was clearly successful in his aim, as three officers, of the VOA and the Council, reached the conclusion that the property had only a kitchen on the ground floor and was being used as a single dwellinghouse when they visited it in March and June of 2015 following his unsolicited notification of a change in the status of the property for Council Tax purposes.

⁸ Exhibit GB7 produced by Mr Blackburn.

23. Mr Johnson's subsequent claim, made only at the Inquiry and not within any written evidence, grounds of appeal or pre-Inquiry statement of case, that he was still able to use, and did use, the kitchen is curious. There is no clear evidence of the partitioning that is alleged to have been installed, or of the wheeled wardrobe that Mr Johnson said was employed in a partial screening of the kitchen worktop and fittings. I saw two wardrobes in the first-floor flat at my inspection, both of similar style and dimensions. They were of about 1m in width, 2m in height and 0.60m in depth. They were moveable, but only with difficulty when weighted down by their contents. The worktop is about 60cm wide and 3.55m in length so a single wardrobe could only have concealed less than a third of that length. Additionally, it begs the question as to how the plasterboard was installed as there were marks on each wall at either end of the worktop but not at other points in the room, including along the ceiling or on the floor. On the balance of probabilities, and having regard to the fact that he admitted, in cross-examination, to having told lies to the Council thus requiring caution as to the veracity of his evidence, I have to conclude that it is more likely that the kitchen was not concealed in the manner belatedly claimed by Mr Johnson, and that it was more likely to have been completely boxed-in, not least because he had invited inspection to show use as a single dwellinghouse, and a partially concealed kitchen could have detracted from this objective.
24. In any event, however, this matter is not determinative. It is a matter of fact that the alterations made in March 2015 prevented the use of the property as two self-contained flats, because there was no physical sub-division then in place. Moreover, whether or not Mr Johnson's mother came to live at the property, and there is no evidence that she did, the ground-floor tenant vacated the premises, and Mr Johnson used the entire property himself for sole occupation. It is immaterial, in these circumstances, whether or not he used a kitchen on the first- or ground-floor. In the context of the judgement in *Welwyn Hatfield*, the property was set out and occupied as a single dwellinghouse, and neither the Council nor the VOA would have been able to conclude that it was in use as two self-contained flats at that time.
25. The reasons for the deception now being claimed may be related to a misguided attempt to show that the property was a single dwellinghouse in order to benefit from permitted development rights under Class E of Part 1 of Schedule 2 to GPDO. However, if that was the case, it is disingenuous for the appellants to now try and claim, for the purposes of this appeal, that no change of use actually took place, especially when physical alterations were undertaken and documented amendments to the property's status were requested of and made by the VOA as a consequence of those alterations. In any event, I am satisfied that the changes made were sufficient to facilitate use as a single dwellinghouse with any previous use as flats having been discontinued.
26. In all of these circumstances, I find that the appeal property was, on the balance of probabilities, in use as a single dwellinghouse between March 2015 and June 2015. That period is not insignificant, as contended by the appellants, as the Council would not have been able to take action against any other use during that period. The subsequent alterations, through sub-division of the property, to that of two self-contained flats, in June 2015, required a grant of planning permission by virtue of the provisions of Section 55(3) of The Act. As no such permission was either sought or obtained, a material change

of use without planning permission took place and the subsequent issue of an enforcement notice was made within the relevant time limit set out in Section 171B of The Act. The appeal on ground (d) therefore fails.

THE APPEAL ON GROUND (a)

27. The deemed planning application before me in this appeal is for the continued use of the appeal property as two self-contained flats. The appellants accept, however, that use as a pair of two-bedroom or two-person flats would contravene local and national planning policy and guidance in respect of space standards, thus their case is put forward on the basis that internal alterations could be made, and conditions applied to any grant of planning permission, so as to provide two one-bedroom one-person flats and this is accepted by the Council, albeit that they contend that this would still conflict with their adopted policy in respect of the retention of family-sized accommodation.
28. I am satisfied that it is permissible, having regard to relevant case law⁹, to consider, in the context of this appeal, the suggested changes to the existing physical arrangement of the appeal property, and the restrictive conditions agreed in principle between the parties. The physical alterations necessary to create the space required for such development in accordance with adopted policy and guidance, including the Technical Housing Standards¹⁰, could involve a simple rearrangement of partition walls within each flat and could, although not shown on any plans, be the subject of a scheme to be submitted for approval in pursuit of a condition on any grant of planning permission. This has the consequence, therefore, of narrowing the main issues which I originally identified at the start of the Inquiry and I consider that there is now a single main issue that needs to be considered, which I set out below.
29. On a further preliminary matter, it was submitted, on behalf of the appellants, that there was a legitimate fallback position that needs also to be considered in the context of the main issue, and I was referred to the judgement in *Evans*¹¹ as authority for such consideration. This relates to use of the appeal property as a House in Multiple Occupation (HMO) in the event that planning permission is not granted for use as two one-bedroom one-person flats, using the rights conferred by Class L of Part 3 of Schedule 2 to the GPDO. Having regard to the evidence given at the Inquiry, relating to comparative rent levels that could be obtained for various types of residential use, and enquiries made of a company that seeks to source accommodation for asylum seekers, I am satisfied that the fallback position put forward is germane to my deliberations on the main issue as set out below. I shall, therefore, take it into account.

Main Issue

30. Having regard to my above conclusions, the main issue in this appeal is the effect of the development on the Council's adopted housing policy and the objective of the retention of family-sized accommodation.

⁹ *Ioannou v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1432.

¹⁰ Technical housing standards – nationally described space standard, Department for Communities and Local Government, March 2015.

¹¹ *Evans v Secretary of State for Communities and Local Government* [2015] JPL 590.

Reasoning

31. The Development Plan for this area includes the saved policies of the Southwark Plan (SP), adopted in 2007, the Council's Core Strategy (CS), adopted in April 2011, and the London Plan 2016 (LP). The Council is currently undertaking consultation on a New Southwark Plan (NSP), but this is at a very early stage and the proposed policies therefore attract little weight in the context of this appeal.
32. Two saved policies in the SP are relevant to the main issue. Policy 4.3 *Mix of Dwellings* states that all major residential new-build development and conversions should provide a mix of dwelling sizes and types to cater for the range of housing needs of the area. It then sets out three criteria relating to the mix of dwellings, and finally states that permission will not be granted for the conversion of a single dwelling house of 130 square metres or less original net internal floorspace into two or more dwelling units. The appeal property falls into that category. Policy 3.11 *Efficient Use of Land* states that all developments should ensure that they maximise the efficient use of land whilst meeting six criteria, including ensuring a satisfactory standard of accommodation and amenity for future occupiers of the site.
33. In the LP, Policy 3.8 *Housing Choice* sets out the strategic aim that Londoners should have a genuine choice of homes that they can afford and which meet their requirements for different sizes and types of dwellings in the highest quality environments. It then deals with LDF preparation and planning decisions stating that, to inform local application of Policy 3.3¹² on housing supply and taking account of housing requirements identified at regional, sub-regional and local levels, Boroughs should work with the Mayor and local communities to identify the range of needs likely to arise within their areas and ensure that certain criteria are met.
34. The appellants' case is based upon the contention that there is no conflict with the Development Plan as a whole. Notwithstanding the accepted contravention of Policy 4.3, the Plan is not up to date, thus paragraphs 14 and 50 of National Planning Policy Framework (The Framework) come into play, especially as that Policy is restrictive and may well be changed following further consideration during consultation on the NSP. Moreover, the fallback position weighs in the planning balance against any breach of that policy. In this context, it is contended that it is likely that an HMO use would be instigated if planning permission is not given for use as two flats, so the family-sized unit of accommodation would be lost in any event. Furthermore, an HMO use would be more harmful as it would give rise to significantly more activity at the property than use as two single-person flats. Finally, little weight can be given to the loss of a family-sized unit of accommodation in the light of the judgement in *London Residuary Body*¹³ where it was found that the desirability of preserving an existing use of land is only a material consideration if there is a reasonable possibility that the existing use would be preserved if permission for a new use is refused.
35. Although the appellants suggest that the policies of the SP are out-of-date and should be given less weight in the context of paragraphs 14 and 50 of The Framework, I am satisfied that they are still in broad accord with current

¹² Policy 3.3 of the London Plan 2016 "Increasing Housing Supply".

¹³ *London Residuary Body v Lambeth LBC and others* [1990] 1 WLR 744.

national guidance and policy. The LP requires Boroughs to identify particular housing needs in their areas, and the Council submission that the 2014 Strategic Housing Market Assessment identified a continuing need for family homes in Southwark was not disputed. This in turn has led to a proposed Policy DM3 in the draft NSP which aims to continue the protection of existing family homes, using the same wording as in Policy 4.3 of the SP. Whilst the policy itself carries little weight, for the reasons given above, and the precise wording may change, the thrust of the Council's broad housing policy - the protection of family-sized accommodation in the light of a continuing identified need - remains the same and this accords with paragraph 50 of The Framework, and the first bullet point of that paragraph in particular. Additionally, for the avoidance of any doubt, there is no dispute that the Council currently meets the required five-year housing supply.

36. I consider, therefore, that the material change of use of the appeal property from use as a single dwellinghouse, suitable for family accommodation, to use as two self-contained flats conflicts with the Development Plan and Policy 4.3 of the SP in particular. Moreover, the loss of a property suitable for family housing would materially conflict with the stated objectives of the Council's housing policy and it is therefore necessary to consider the fallback position to determine whether this would provide a reason for allowing the continuation of the current use, albeit with the provisos outlined above to ensure alteration to single-person flats.
37. In this context, the appellants contend that they would convert the appeal property into an HMO if the current appeal is dismissed, as this would maximise its rental value. To this end, enquiries have already been made of a company that aims to house asylum seekers, although no contact has yet been made with the Council in respect of licensing conditions. Nevertheless, I accept that it may be that the property would be converted to use as an HMO, rather than revert to use as a single dwellinghouse, so the question that arises is whether an HMO use would be materially more harmful than use as two flats.
38. The Council rightly draw attention to Policy 3.11 of the SP which seeks efficient use of land, and it seems to me that use of a property built as a three-bedroom family dwelling for the occupation of two persons would be significantly less efficient, even than an HMO use, which could house up to five persons. A further adverse effect of the continued use as flats would be that the occupants of the first-floor flat would have no access to any private outdoor amenity space, as use of the very restricted remaining part of the enclosed rear garden would result in a loss of privacy through overlooking for the occupier of the ground-floor flat, a conclusion that I reached after due consideration of the actual layout of the site at my site inspection. Moreover, in this context, the appellants were unable to draw attention to any nearby public open space which might be available to occupiers, so use as two flats would not be a use without adverse effects on living conditions.
39. As for the claimed disadvantages of an HMO, the Council rightly point out that they cannot compel use of any property for family occupation, and can only seek to ensure that sufficient property suitable for such use is made available through the policies in their Local Plan. In areas where there is no restriction on a change of use permitted by the GPDO, HMO uses may take place, but such uses are not fundamentally harmful or they would not be legitimately permitted in the first place, and the accommodation of up to five persons, who

may or may not be related, could be considered to be a more efficient use of the appeal property than use to house only two people. HMO licensing could also serve to ensure harmonious integration of occupiers into the local community. Above all, use as an HMO would not prevent future owners from using the property as a single dwellinghouse, as planning permission would not be required for such a change of use, thus maintaining the overall housing policy objective.

40. Finally, I have considered the implications of the judgement in *London Residuary Body*, but I do not find them to be such as to outweigh the above conclusions. In particular it seems to me that the enforcement notice is not aimed at the preservation of an existing *use*, rather it seeks to prevent the physical alteration of a property, and consequent new use, which would result in the loss of any possibility of future use as family-sized accommodation, contrary to their adopted policy. An HMO use would not preclude such future use as there would be no need for planning permission for subsequent use as a single dwellinghouse.
41. In all of the above circumstances, my conclusion on the main issue is that the continued use of the appeal property, as altered and conditioned in the manner suggested, as two one-person flats would materially harm the objectives of the Council's housing policy. The use would conflict with the Development Plan as a whole, and with the aims of national planning policy in The Framework. The appeal on ground (a) therefore fails and planning permission will not be granted.

THE APPEAL ON GROUND (g)

42. The notice requires compliance with Steps (i) to (iv) within one month of the date of effect, and allows three months for the other two steps. The parties are agreed, however, that a three month period for all requirements would be more appropriate, having regard to the need for occupiers of the property to find alternative accommodation.
43. I note that no detailed information about current tenancies, or copies of the tenancy agreements for Messrs Johnson and Masters, have been provided but I agree that a period of three months is, in my experience, a relatively normal compliance period in cases involving the unauthorised change of use to two flats. The appeal on ground (g) therefore succeeds and the notice will be varied accordingly.

Other Matters

44. I have taken account of all other matters raised in evidence to the Inquiry and in the written representations, including those of a third party neighbour. However, they do not outweigh the conclusions I have reached in respect of the main grounds and issues of this appeal.

Conclusions

45. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

FORMAL DECISION

46. The enforcement notice is:

- a. Corrected by the deletion, in Section 5, of Step (ii) in its entirety, and the consequent renumbering of Steps (iii) to (vi) as Steps (ii) to (v). For the avoidance of any doubt the reference in former Step (iv), now Step (iii), to requirement (iii) shall read requirement (ii), and the reference in Step (vi), now Step (v), to requirement (v) shall read requirement (iv); and,
- b. Varied by the deletion of Section 6 in its entirety and the substitution therefor of the following period for compliance:

"TIME FOR COMPLIANCE

The period for compliance with the steps set out in Section 5 above is three months after the date of this decision".

47. Subject to these corrections and variations, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Martin Joyce

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Heather Sargent	of Counsel, instructed by Collins and Coward, Planning and Development Consultancy
She called:	
Mr Ray Johnson	Tenant of the first floor flat at the appeal property
Ms Martha Widger	Advisor to the appellants
Mr Ian Mark Coward	Director of Collins and Coward, Planning and Development Consultancy
BA(Hons) MA MRTPI	

FOR THE LOCAL PLANNING AUTHORITY:

Isabella Tafur	of Counsel, instructed by the London Borough of Southwark Council
She called:	
Mr Gavin Blackburn	Planning Enforcement Officer with the Council
DipPPP	
Ms Alison Brittain	Manger of the Planning Enforcement Team with the Council
BSc(Hons) BTP MRTPI	

ADDITIONAL DOCUMENTS PRODUCED AT THE INQUIRY

Document 1	Letter of notification of the Inquiry and list of those so notified.
Document 2	Bundle of policies and supplementary planning documents pertinent to the appeal, produced by the Council.
Document 3	Draft schedule of conditions in the event of planning permission, produced jointly by the main parties.
Document 4	Bundle of authorities produced in closing on behalf of the Council – <i>Thurrock Borough Council v Secretary of State for the Environment, Transport and the Regions and Terry Holding</i> [2001] EWHC Admin 128; <i>Hartley v Minister of Housing and Local Government and another</i> [1969] 1QB 413; <i>Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment</i> [1985] 1 AC 132; <i>Young v Secretary of State for the Environment and Bexley LBC</i> [1983] 2 AVC 662; <i>Panton & Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse District Council</i> [1999] 78 P&CR 186; <i>Fairstate Limited v The First Secretary of State and Westminster City Council</i> [2004] EWHC 1807 (Admin); and, <i>Fairstate Limited v The First Secretary of State and Westminster City Council</i> [2005] EWCA Civ 283.
Document 5	Bundle of authorities produced in closing on behalf of the appellants – <i>Evans v Secretary of State for Communities and Local Government</i> [2015] JPL 590; and, <i>London Residuary Body v Lambeth LBC and others</i> [1990] 1 WLR 744.