



Appeal Decision

Inquiry Held on 12 September and 2 October 2017

Site visit made on 2 October 2017

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 12 December 2017

Appeal Ref: APP/N5660/C/16/3159452

21 Chapel Road, London SE27 0TP

- 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 E Amouzandeh against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The breach of planning control as alleged in the notice is:
'Breach a) Without planning permission, the erection of a timber fence on the west boundary at the rear of the premises;
Breach b) Without planning permission, the material change of use of the rear part of the ground floor and the whole of the first, second and third floors of the premises, from offices (use class B1) to 14 self-contained flats (in use class C3).'
- The requirements of the notice are:
 - a) Remove the unauthorised fence from the rear of the premises;
 - b) Cease the use of each of the 14 unauthorised flats and remove all internal doors, partitions, kitchen units, appliances, bathrooms and all other fixtures and fittings that facilitate the unauthorised use;
 - c) Disconnect and remove all electrical, water and gas services, including boilers and meters that facilitate the unauthorised use;
 - d) Remove all associated waste and debris resulting from compliance with above steps from the premises.
- The period for compliance with the requirements is nine 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 corrections and variations

Preliminary Matters

1. All evidence at the Inquiry was given under oath or affirmation.
2. The appellant in his evidence inferred a ground (g) appeal in relation to the fence. Following clarification of the appellant's position it is clear that he considers that the time for compliance of 9 months to remove the fence is too short and that he states a 12 month compliance period would be required. As the Council were able to respond to this point at the Inquiry I am satisfied that there would be no prejudice in dealing with the matter as a ground (g) appeal.

The Notice

3. The allegation refers to the timber fence on the west boundary at the rear of the premises. The Statement of Common Ground (SoCG) confirms that the

fence is located on the east boundary at the rear of the premises. I will correct the allegation to refer to the fence on the east boundary at the rear of the premises and I will also vary requirement a) to reflect this correction.

4. Requirement (b) seeks to cease the use of the rear part of the ground floor, the whole of the first, second and third floors for the unauthorised residential use and then goes on to require elements of the flats to be removed. Requirement (c) also seeks to have services removed. To provide clarity and to avoid repetition within the requirements in relation to removal of items that facilitate the use I will vary requirement (b) to only require the use of the rear part of the ground floor and the whole of the first, second and third floors to cease and vary requirement (c) to remove all internal doors, partitions, kitchen units, appliances, bathrooms, electrical, water and gas services, including boilers and meters that have facilitated the residential use of the property.
5. These corrections and variations would not result in any injustice or prejudice to either party.

Appeal on ground (d)

6. In appealing on ground (d), the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities that the development was lawful through the passage of time at the date when the enforcement notice was issued. The appellant is not pursuing a ground (d) argument in relation to the erection of the timber fence.
7. In relation to the material change of use of the rear part of the ground floor, and the first and second floors as 14 self-contained flats (within Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO)) must have continued throughout a four year period to the extent that enforcement action could be taken against it at any time during that period. The material date in this case is 10 August 2012 i.e. four years before the enforcement notice was issued.
8. In *Impey v SSE & Lake District SPB* [1981] JPL 363 and [1984] P&CR 157 it was held that in assessing when the change of use of a premises to residential development had taken place the physical state of the premises is very important, but it is not decisive and the actual use or intended use or attempted use is important but not decisive and that these matters have to be looked at in the round. The appellant considers that when the flats were completed, and not yet occupied, that the change of use had occurred.
9. The SoCG confirms that the parties agree that 10 of the 14 unauthorised flats have not been occupied and used continuously for four years prior to the date of the issue of the enforcement notice. What is not agreed is whether the material change of use of Flat 6, Flat 8, Flat 12 and Flat 13 had taken place four years before the enforcement notice was issued and continued uninterrupted in that period. The SoCG is signed and dated by both parties.
10. However, the appellant stated at the Inquiry that he is pursuing the ground (d) appeal in relation to Flats 3, 4, 6, 8, 11, 12, 13 and 14. This differs significantly from the SoCG. However, it is accepted by the appellant that the use of Flats 1, 2 and 5 as self-contained flats within Class C3 of the UCO are not immune from enforcement action through the passage of time.

Purchase and start of conversion works

11. The appellant completed purchase of the building in June 2012. He states that he was allowed by the previous owner to commence work on the conversion of the building following an exchange of contracts in May 2012. This statement, in my view, is vague as no clear start date for the works have been stated and it is not clear when in May works are purported to have started or what those works were. Furthermore, there are no building control records or other documentary evidence to demonstrate when in May 2012 works were meant to have begun or evidence from the previous owner in relation to allowing such works to be started.
12. The planning application form (Exhibit 7 of Council evidence) for the conversion of the upper floors (1st, 2nd, 3rd floors) into 9 residential apartments (each with 2 bedrooms) dated 23 November 2013 is signed as being factually correct to the best of the agent's knowledge. It is stated in the form that that the building works associated with the development being applied for began on 1 January 2013.
13. The invoices from Howden's show materials were purchased by AA Construction (London) Limited but not whether or not those materials were for the conversion works at the appeal site. The invoices are dated before the exchange of the contracts for the purchase of the appeal property by the appellant. Furthermore, there is no delivery address for the items purchased. The oral evidence from the appellant made clear that AA Construction (London) Limited was a contractor. There was no substantiated evidence to demonstrate that the appeal site was the only job that was being carried out at the time the works are purported to have taken place. Thus, I cannot conclude, on the oral or documentary evidence, on the balance of probabilities, that the materials purchased from Howden's were directly related to the conversion of the appeal building to flats. Even if the materials were for use in the conversion of the appeal property the invoices do not support when those conversion works took place.
14. The appellant accepted he did not have first-hand knowledge of when the conversion works were carried out. He asserted that the works started at the top of the building on the third floor (Flats 11 to 14 for the purposes of this decision). The appellant stated these works were completed at the end of July 2012. He went on to state that the second floor flats (Flats 7 to 10) were completed by the end of August 2012, after the material date. And those on the first floor (Flats 3-6) were completed by the end of September 2012, again after the material date. The flats on the ground floor (Flats 1 and 2) were stated to not have been completed until the end of December 2012, as the area where these flats are was utilised for storage during the building works. However, he also made a comment that other flats were completed out of sequence but no indication was forthcoming as to which flats these were or whether there was any further evidence to support this statement.

Letting of Flats

15. The appellant submitted photographs of an unidentified flat at the appeal site. These were stated to be taken by the sister in law of the appellant and the images have the date 10 July 2012 on the screen shots. The person who took the photographs did not give evidence to the Inquiry. At the site visit, I

confirmed with those present that these photographs appeared to be of Flat 1 on the ground floor.

16. The evidence of the appellant is that the ground floor flats were not completed until December 2012 because the ground floor area was used for storage. There is nothing to demonstrate any other area was used for storage for the works continuing at that time on the first and second floor as well as the ground floor. I therefore find unresolved conflicts between the stated date of the photographs of Flat 1 with the oral evidence of the appellant about when works were undertaken and in what order.
17. The Director of Moving Inn, a lettings agency that occupied the ground floor at the time of the conversion works, stated he remembered 'very well' when the works took place. He stated that they began in May 2012 and that he began marketing the properties and let the first flat at some point in the middle or towards the end of July 2012. He gave evidence that he was personally showing 2 or 3 people around per week and other lettings negotiators were showing more people around in this time. However, there was no explanation of who was shown round and who the first tenant was and in which flat. His evidence lacks precision. The evidence from this witness was imprecise with vague assertions as to 'showing people around by the end of July 2012' and no evidence of letting literature produced at the time by his company or any clarification of what flats he was referring to as being let at that time of his visits to the property was provided.
18. In addition there is a letter dated 30 July 2012 from Moving Inn Estate Agents which includes an invoice dated 28 July 2012 in respect of Flat 12. The Director of Moving Inn's oral evidence was that he had seen the third and second floor flats and these were complete on 30 July 2012. This evidence conflicts with the appellant's oral evidence of when the flats on the second floor were complete.
19. The Director of Concept Estate Agents confirmed he attended the building in July 2012 to carry out a rental valuation. He stated he went to some of the completed flats and confirmed some had been let. However, there was no explanation of who occupied which flats or which flats he considered were completed and ready for occupation at that time. His evidence therefore lacks precision.

Flat 13

20. The Tenancy Agreement (TA) for Flat 13 is dated 13 July 2012. This flat is on the third floor and has two bedrooms. The TA shows that a tenancy agreement was entered into but there is no evidence to demonstrate when the stated tenant moved in and occupied the property or evidence relating to when Flat 13 was completed and ready for occupation other than a general assertion by the appellant that works were completed on the third floor at the end of July 2012.
21. The electoral roll records the first resident of this flat from October 2013. Council tax first registration for the flat is from 14 September 2012. Both dates are after the material date.

Flat 12

22. In relation to Flat 12, on the third floor, there is a Zoopla request dated 18 July 2012. I also have a TA for Flat 12. The TA shows that a tenancy agreement was entered into but there is no evidence to demonstrate when the stated tenant moved in and occupied the property or evidence relating to when Flat 12 was completed and ready for occupation.
23. There is a covering letter from Moving Inn confirming the start of the tenancy on 28 July 2012, an invoice from Moving Inn dated 28 July 2012 for £734.06, a standing order mandate for £1200 monthly payment to Moving Inn dated 28 July 2012 with the first payment starting on 28 August 2012, and a bank statement from the stated tenant showing payment of £1200 to Moving Inn Ltd was made on 28 August 2012.
24. The payment of £734.06 was not explained but was not the rent for Flat 12 which was stated to be £1200. The sum of £734.06 appears to be an agent's fee plus VAT. This documentary evidence tends to support a start of the tenancy after the first payment of rent on 28 August 2012, which is after the material date. There is no evidence of rent payment of £1200 for the period of 28 July to 27 August 2012, albeit the TA states the tenancy started on 28 July 2012. There is no evidence of the tenant actually moving in to Flat 12 and taking up occupation from 28 July 2012. The bank record entry for Flat 12 dated 28 August 2012 at appendix 3 of the appellant's statement dated 1 April 2017 is for a sum of £1157.83 and this does not support a rent of £1200 per month.
25. The Affidavit of the Director of Concept Estate Agents states that Flat 12 was occupied on 30 July 2012. However, this contradicts the TA which is dated 28 July 2012 and the information on standing order payments being made on 28 August 2012.
26. The tenant for Flat 12 does not appear on the electoral roll in 2012 or 2013. The tenant and one other are shown in the 2014 roll as having been deleted from their entry in respect of Flat 12 in October 2013. I therefore accept that it is likely that this tenant was living in Flat 12 at some point before October 2013. The original complaint to the Council about residential use of the appeal property is dated 7 October 2012 and refers to residential conversion for the past 2 months which would support residential occupation, in the property in early 2012 and possibly related to Flat 12.
27. The Council Tax record for Flat 12 shows first registration on 14 September 2012 and thus does not support the first occupation of this Flat in July or August 2012.
28. The tenant of Flat 12 gave no statement and did not appear at the Inquiry to give oral evidence.
29. I consider that the evidence of first occupation of Flat 12 is imprecise and ambiguous. Moreover, the evidence of when the flat was completed and ready for occupation but not yet occupied is vague and relies on general assertions that the top floor flats were ready for occupation at the end of July 2012. I therefore find, on the balance of probabilities that the material change of use of Flat 12 to a self-contained flat did not occur before the material date.

Flat 8

30. The TA agreement for Flat 8 is dated 10 July 2012. Flat 8 is on the second floor. The TA shows that an agreement was entered into but there is no evidence to demonstrate when the stated tenant moved in and occupied the property or evidence relating to when Flat 8 was completed and ready for occupation other than a general assertion by the appellant that works were completed on the second floor at the end of August 2012.
31. The first Council Tax registration of Flat 8 is on 14 September 2012.

Flat 6

32. An Affidavit from a person stating that he lived at Flat 6 and that his tenancy started on 1 August 2012 has been provided. The TA for Flat 6 is dated 1 August 2012. However, the Affidavit does not state when he moved in or the facilities of the flat or when the flat was finished and fit for habitation. This tenant did not attend the Inquiry and therefore the statements could not be tested or clarified.
33. The first Council Tax registration of Flat 6 is on 1 December 2012.

Flat 4

34. The tenant in Flat 4 stated he viewed the flat in early September 2012, and it was unfurnished but ready to occupy. He has continued to be a tenant of Flat 4 ever since and that is not disputed. Clearly even the viewing of Flat 4 was after the material date and there is nothing to demonstrate when Flat 4 was completed with all the facilities for occupation.

Flat 3

35. The tenant in Flat 3 gave oral evidence that she viewed a number of flats, including Flat 3, one or two months before moving into Flat 3 on 5 October 2012. She has continued to be a tenant of Flat 3 ever since and that that is not disputed. The date of viewing the flat is imprecise and ambiguous and despite being questioned about it there is nothing to demonstrate that the tenant of Flat 3 saw either that flat or other flats as being completed before the material date.

Other Evidence

36. Electrical Installation Certificates are consecutively numbered from 02596877 to 0259690. Certificates 02596877 to 0259682 were dated 13 July 2012 and related to Flats 14 to 9 inclusive; Certificate 0259686 was dated 13 July 2012 and related to Flat 5; the remaining certificates related to Flats 1 to 4 inclusive and Flats 6 and 7. Therefore while they are consecutively numbered they were dated on two separate dates and Flat 5 is an earlier date than the Certificates either side for Flats 4 and 6. This could not be explained and the appellant in oral evidence accepted that these certificates could not be relied upon for the ground, first or second floor flats in support of when works were undertaken.
37. In relation to Business Rates the appeal property ceased to be liable for Business Rates on 17 September 2012. The period from 8 June 2012 to 17 September 2012 was stated to be in dispute with the rating authority, as the owner had indicated that the premises were "*uninhabitable under construction advised prop prev listed as empty*". While the appellant does not remember

having any conversations with the Valuation Office Agency (VOA) as set out in the Council's Exhibit 13 it is clear that no Council Tax or Business Rates were paid from when the appellant purchased the property until it was assessed for Council Tax and thus residential use.

38. The VOA wrote to the appellant on 28 September 2012 requesting to visit certain flats¹ in the appeal property to survey it for Council Tax purposes. Subsequent letters dated 8 October 2012 demonstrate that Flat 2ND FLR 7, 9 and 10 and FLAT 3RD FLR 11 and 12 were registered for Council Tax purposes from 14 September 2012, although Flat 11 is later recorded in a table provided by the Council as being registered from 27 August 2012. This supports the appellant's evidence that at this time these Flats within the appeal property had been converted into flats. Flats 3, 4, 5 and 6 were registered for Council Tax purposes from 1 December 2012 and Flats 1 and 2 were registered for Council Tax Purposes from 1 March 2013. I concur with the Council that this pattern of registrations does suggest conversion works were done broadly from the top floor of the building to the ground floor, as registrations broadly follow that sequence albeit floors 2 and 3 were slightly mixed. The documentary evidence from the VOA tends to support a later completion of the flats than the appellant asserts.

Conclusions

39. The issue between the parties is when the material change of use to residential for Flats 3, 4, 6, 8, 11, 12, 13 and 14 took place. For the reasons set out above I find that on the balance of probabilities that none of these flats were either ready for occupation or occupied as residential flats prior to the material date of 10 August 2012. As such the appeal on ground (d) fails.

Appeal on ground (g)

40. This ground of appeal is that the time given to comply with the notice is too short. The Council have given nine months for compliance. The appellant seeks a period of twelve months for compliance.
41. The appellant states that the fence was only erected following complaints of illegal dumping and that it should be permitted to remain until such time as the re-use of the adjoining site is commenced.
42. The Council did not resist an increase in the compliance period to twelve months. In its view this would allow time for a planning application for a suitable fence to be submitted and determined.
43. I accept that the appellant would like the eastern boundary of his property to be fenced. I also accept that this may well mean a planning application would be necessary. However, I do not consider that there is any justification to extend the period of compliance to allow for the commencement of the re-use of the adjoining site.
44. In my view, 9 months would be more than adequate for a planning application for an alternative means of enclosure on the eastern boundary to be submitted and determined, as well as the approved fence erected. As such, I consider that the period of compliance is reasonable in the circumstances of this case and for the reasons given the appeal on ground (g) fails.

¹ FLAT 2ND FLR 7, FLAT 2ND FLOOR 8, Flat 2nd Floor 9

Formal decision

45. It is directed that the enforcement notice be corrected by the deletion of 'west' and the substitution thereto of the word 'east' in paragraph 3;

And varied by:

- by the insertion of 'eastern boundary at the' between 'from the' and 'rear of' in paragraph 5 a);
- by the deletion of the words 'and remove all internal doors, partitions, kitchen units, appliances, bathrooms and all other fixtures and fittings that facilitate the unauthorised use' from paragraph 5 b); and
- by the deletion of the words 'Disconnect and remove all electrical, water and gas services, including boilers and meters that facilitate the unauthorised use' and the substitution thereto of the words 'Remove all internal doors, partitions, kitchen units, appliances, bathrooms electrical water and gas services including boilers and meters, that have facilitated the residential use of the property' in paragraph 5 c);

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

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr J Parker	Of Counsel, instructed by Mr Patel of Peter Pendleton Associates
Mr E Amouzandeh	
Mr D Carter	Appellant
Mr A Azam	Director, Moving Inn Estate Agents
Miss D Ellis	Director, Concept Estate Agents
Mr P Ferreira	Occupier, Flat 3 Occupier, Flat 4

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Atkinson	Of Counsel, instructed by Head of Law, London Borough of Lambeth
Mr R McGinn	
BSc (Hons) Dip TP	Principal Planning Enforcement Officer, Council of London Borough of Lambeth

DOCUMENTS

- 1 Addition to Exhibit 13 submitted by the Council
- 2 Peter Pendleton Associates Design and Access Statement dated 12 November 2013 submitted by the Council
- 3 Affidavit of Areeb Azam dated 18 January 2017 submitted by the appellant
- 4 VOA letters submitted by the Council
- 5 Email dated 11 September 2017 including a complaint to the Council dated 8 September 2017 about the use of the appeal property submitted by the Council
- 6 Email dated 9 October submitted by the Council