The Planning Inspectorate

Appeal Decision

Inquiry Held on 5 September 2018

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 24 September 2018

Appeal Ref: APP/Y5420/C/17/3179258

45 Crowland Road, London N15 6UL

- 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 Moses Schwartz against an enforcement notice issued by the London Borough of Haringey.
- The enforcement notice was issued on 30 May 2017.
- The breach of planning control as alleged in the notice is the material change of use of a single family dwelling house to 2 self contained flats.
- The requirements of the notice are 1. Cease the use of the property as self-contained flats; 2. Remove from the property all but one of the kitchens, doorbells and any internal dividing doorways and partitioning facilitating the use of the property as self contained flats; 3. Remove from the property all but one supply of electricity, gas and water; 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural matters

2. At the opening of the Inquiry the Appellant withdrew his ground (a), (b) and (c) appeals. Verbal evidence at the Inquiry on ground (d) was given under oath.

3. An application for costs has been made by the London Borough of Haringey against Mr M Schwartz. This application is the subject of a separate Decision.

The ground (d) appeal

4. For the ground (d) appeal to succeed the Appellant must provide sufficient precise and unambiguous evidence to demonstrate that, on the balance of probabilities, the change of use alleged in the notice subsisted uninterrupted for the four year period prior to the date of issue of the enforcement notice. The use must therefore have commenced before 30 May 2013, the critical date.

5. The Appellant maintains that the appeal property was converted to two self-contained flats, one at each floor level, before the critical date. He concedes, however, that the ground floor flat is not immune from enforcement action because, during the four year period, it was converted to two studio flats and then reconverted back to a single flat.

6. The Appellant maintains, with reliance on *Van Dyck v Secretary of State [1993] 1 EGLR 186*, that the first floor flat remained a single dwellinghouse during

the four year period and is therefore immune from enforcement action. Initially, however, it is necessary to consider whether the appeal property was, on the balance of probabilities, in use as two self-contained flats on the critical date.

7. The Appellant relies on a tenancy agreement dated 8 December 2012 for a 'ground floor flat' for the period 8 December 2012 to 8 December 2013, between the Appellant, as Landlord, and Mr K Kovalski. The implication being that if the ground floor was a flat in December 2012 then the first floor must also have been a flat. The Appellant maintains that Mr Kovalski must have left the ground floor flat at some point before June 2013 because a Notice made under Section 21 of the Housing Act 1998, relating to a 'ground floor flat' at 45 Crowland Road, was enclosed with a letter dated 24 June 2013 to Mr M Stenra.

8. The Appellant maintains that it was Mr M Oruk who occupied a first floor flat from 1 August 2010 until some time in 2016. But the tenancy agreement for Mr Oruk is for '45 Crowland Road' and does not refer to a first floor flat at this property. Evidence submitted by the Council indicates that Council tax was paid for an undivided house from 1 August 2010, the date of Mr Oruk's tenancy agreement, up to 8 September 2013. Housing benefit was paid for Mr Oruk but evidence relating to these payments does not refer to his occupation of a first floor flat and other evidence of his residency does not refer to his occupancy of a flat.

9. Three documents from 2009 and 2010 refer to a 'first floor flat'. These are invoices for painting work and the purchase of a bed, and rent collection for a one month period. These do not indicate that the property was subdivided into two self-contained flats at that time or on the critical date. It is significant, in fact, that there is no evidence relating to the subdivision of the property and when this occurred. There are, in this regard, no invoices or documents relating to the installation of kitchen or bathroom facilities, and there is no documentary evidence on the supply of, or payment for, utility services.

10. Mr Schwartz, the Appellant, giving evidence at the Inquiry on the subject of when the property was converted to two flats, was vague. He couldn't recall when this occurred or what facilities were installed. Mr Moore, previously a Director of London Management and Rentals Ltd (LMR), a company appointed to manage the appeal property, could provide no assistance on this matter. He has provided a Statutory Declaration in which he stated that LMR managed the property up to April 2014. But at the Inquiry he stated, alternatively, that they were involved from 2013 but appointed to manage the property between 2014 and 2016.

11. Furthermore, he stated that he had no knowledge of Mr Schwartz until 2016 and that during the period of LMR's management he dealt with a Mr Gluck. However, LMR arranged the tenancy of the ground floor flat on 9 September 2013 which identified Mr Schwartz as the Landlord and Mr Moore accepted at the Inquiry that he signed the agreement on behalf of Mr Schwartz. Another tenancy agreement names the Landlord as 'M Schwartz c/o LMR' and is signed by Mr Moore, and a 'Notice Requiring Possession' issued by LMR identifies Mr Schwartz as the Landlord in the same way.

12. It was Mr Gluck who was responsible for organising the sub-division of the ground floor to two studio flats in late 2013. Mr Moore stated that LRM were instructed to provide money for the conversion works by the Solicitors of Lencity Ltd on 11 September 2013. He accepted at the Inquiry that the sole owner of Lencity Ltd is the Appellant, Mr Schwartz. It is surprising therefore that, as

mentioned above, Mr Moore claims that he had no knowledge of Mr Schwartz until 2016. Mr Moore's evidence is contradictory and less than convincing.

13. Mr Schwartz claims not to have had any knowledge of the conversion of the ground floor of the appeal property to two studio flats. This is a surprising claim given that it was the Solicitors of his company, Lencity Ltd, who instructed LRM to provide money for the conversion works. Evidence from Mr Gluck would have been instructive but this has not been forthcoming. The circumstances of the conversion of the ground floor and his vague recollections of the chronology and nature of works at the property to create two flats, casts doubt on the credibility of Mr Schwartz's evidence.

14. The appeal property had only one electricity supply before 2015. There is no documentary evidence on the payment of utility services or on how, before 2015, electricity payments were subdivided between the occupants of the claimed two flats, and possibly, for a period, three residential units. The property was registered for Council Tax as a single dwelling up to 8 September 2013. Mr Oruk resided at the property but all documents relating to his residency do not refer to his occupation of a flat rather than the whole property. Evidence on the sub-division or not of the property on the critical date is contradictory.

15. There is no evidence to indicate that Mr Kovalski took up occupancy of a ground floor flat in December 2012 or, if he did, that the flat was self-contained and included all facilities for independent living. In the absence of such evidence very little weight can be afforded to the tenancy agreement for his occupancy. Similarly, Mr Stenra was required to leave the property by a notice issued in June 2013 but there is no evidence to indicate that he occupied a self-contained flat at the property. Evidence indicates that Mr Oruk resided at the property between 2010 and 2016 but not, necessarily, in a self-contained single floor flat.

16. Witness statements by residents of Crowland Road do not provide any evidence of the sub-division or occupation of the property on the critical date or during the four year period. The evidence provided by Mr Moore is contradictory and unconvincing, and the evidence of the Appellant is vague and less than credible. There is insufficient precise and unambiguous evidence to indicate, even on the balance of probabilities, that the appeal property was in use as two self-contained flats on 30 May 2013. It is not necessary, therefore, to consider the implications of *Van Dyck v Secretary of State.* The ground (d) appeal thus fails.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr H Lederman	Barrister
He called	
Mr M Schwarz	Appellant
Mr D Moore	Former property manager for the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr E Grant	Barrister
He called	
Mr A MacPherson BA(Hons) MA	Planning Enforcement Officer

DOCUMENTS

1 Letter of notification of the Inquiry and list of those notified.

2 Statement of Common Ground.

3 Council's Appendix LBH34.

4 Council's Appendices LBH28-32.

5 Appellant's Opening Summary and bundle of documents.

6 Council's Closing Submissions.

7 Appellant's Closing Submissions.

8 Council's Application for Costs.

9 Appellant's Response to the Application for Costs.

10 Council's Reply to the Appellant's Response to the Application for Costs.