



Appeal Decision

Site visit made on 3 July 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2019

Appeal Ref: APP/N5660/C/18/3214452

17 Tarrington Close, London SW16 1LS

- 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 SJP Holdings Limited against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice, numbered 17/00697/3COU, was issued on 10 September 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a single dwellinghouse to 2 self-contained flats, one located at ground floor level and one located at first floor level.
 - The requirements of the notice are to:
 - a) Cease the use of each of the two unauthorised flats;
 - b) Remove from the premises all internal partitions and divisions; kitchen units and appliances; gas and electric metres; and any other fixtures and fittings that facilitate the use as 2 unauthorised flats; and
 - c) Remove all associated waste and debris arising from compliance with the above steps from the premises.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Reasons

2. The ground of appeal is that, at the date when the notice was issued, no enforcement action could be taken. Section 171B(2) of the Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In order to succeed, therefore, the Appellant needs to show that the breach has continued for a minimum period of four years with no material change thereafter. Four years before the notice was issued is 10 September 2014. The relevant test is that of "the balance of probability" and the onus is on the Appellant to make out its case.
3. In short, the Appellant says the subdivision of the original house into two flats (one on each floor) took place between July 2012 and September 2012¹ and each was subsequently let until vacation was required to enable extension of

¹ Appeal Statement of Case dated 19 October 2018 – page 2

the ground floor and refurbishment of the whole starting in May 2015.

Following those works the flats were again let and that continued to the date the notice was issued other than for short periods between tenancies. On the face of it, therefore, some 6 years use would have been achieved before the notice was issued.

4. To support the date of the initial conversion to flats, an invoice has been submitted. That, however, is dated 15 July 2012 and it is clear from its content that it is an invoice for the outstanding balance. I find it odd that an invoice for the outstanding balance should have been issued before the works were completed. Taken on its face, one would assume that the works had been completed before the date of that invoice, that is, before 15 July 2012. I also find it odd that the invoice should not include any materials.
5. The invoice, intimating that the conversion was complete by 15 July 2012, does not tally with the planning application dated 10 July 2012² for a single storey side and rear extension. The submitted existing and proposed ground floor plans dated June 2012 and date stamped as received by the Council on 9 July do not show a flat but rather depict a conventional layout for the ground floor of a house. It seems to me that the architects who drew up those plans would not have portrayed other than what was existing and what was proposed by their client at the time.
6. The letter dated 27 April 2018, which accompanied an application for a Lawful Development Certificate (LDC) for the two flats further muddies the waters. In the second paragraph on the first page it says the conversion took place prior to 15 July 2012 which would accord with the invoice, but in the second paragraph on page 2, where reference is made to the planning permission for the extension of the house granted on 29 August 2012, it says the subdivision took place after that date in September. Whilst the actual date in 2012 is not crucial to the assessment of a four-year period, the uncertainty points to a lack of precision and clarity in the Appellant's case. It appears as though the claimed date of conversion has been tailored depending on whether reference is being made to the invoice or to the application for planning permission.
7. That the ground floor flat was let to Mrs R Riaz from 1 October 2012 and the first floor to S and S Rizvi from 1 September 2012 is supported by a one-year assured tenancy agreement provided for each. This would indicate that the property was in use as two flats on those dates. The Appellant goes on to say that the tenancies were allowed to continue thereafter as statutory periodic tenancies until vacation was required for extension and refurbishment in 2015. However, the only evidence to support that is the statement from Mr Nawab.
8. Two statements, signed in the presence of a solicitor, have been submitted. One is from Mr Nawab, a director of the company which manages the flats, and one (to which I will return later) is from a former tenant of the top floor flat, Ms Sulte. Whilst these purport to be Statutory Declarations, they do not fall within that category as they do not include the form of words in the Schedule to the Statutory Declarations Act 1835. The statements do not, therefore, have the same status and authority as a properly prepared Statutory Declaration, although it would appear that the authors have signed them believing them to be such.

² Taken from the decision notice granting planning permission

9. The statement from Mr Nawab does not indicate how long he has been a director of the company that manages the flats. His evidence sets out the history of the property but does not indicate that he had any personal involvement with any of it. Other than saying that he is (currently) responsible for managing the occupation of the building and rental income from the flats, none of his statement is written in the first person. There is no indication that he had first-hand experience or first-hand knowledge of any of the matters set out therein.
10. His evidence is that Loudwater Construction was instructed to convert the property to two flats in July 2012 and that the work was completed in September 2015. I have already indicated the conflict that that has with the July invoice for the balance, and the planning application to extend the house. It also does not tally with the final comments made for the Appellant in this appeal where it is said that the conversion took place after 29 August³ (i.e. after planning permission was granted to extend the house).
11. The evidence of Mr Nawab that Mrs R Riaz occupied the ground floor and S and S Rizvi occupied the first floor from 2012 to 2015 does not correspond with information taken from the Electoral Register. The records do not identify the existence of two flats, but I recognise that this is not unheard of where flat conversions take place. However, whilst one "S Rizvi" is registered in 2012 and 2013, that name does not appear in 2014 or 2015. Two people with different surnames, one being S Rizvi, are registered in 2012, but they could have been a couple. R Riaz, who is said to have occupied the ground floor from 2012 to 2015 does not appear at all until 2015 (which could mean occupation after the extension and refurbishment). Nonetheless, I am aware that people do not always register when they should do and that the register is not always a reliable indicator of all occupiers at the property at any one time.
12. Of more concern, however, is the entry on the register of two people with the surname Irasakumar for the year 2014 and no other entry for that year. This directly contradicts Mr Nawab's account of occupation. The Appellant has been made aware of this inconsistency and yet has offered no explanation for it. I have been given no reason to discount it and find it to be persuasive evidence of occupation of the property other than as recounted by Mr Nawab.
13. Turning then to events from 2015 onwards, I am told that the single storey extension approved in 2012 was erected as part of the refurbishment of the whole property which began in May 2015. Thus, the whole of the ground floor for which a certificate is sought had not been in existence for more than four years before the enforcement notice was issued. Furthermore, the extension built seems to be materially different from that which was granted planning permission, both in terms of the ground floor layout and because the rear extension projects across the whole of the rear elevation of the original house rather than just over half as approved. However, as far as I am aware, no action was taken against the operational development undertaken.
14. At the time of refurbishment, the ground floor was vacant for some six months. As Counsel for the Appellant points out, "occupation" does not equate to "use" and a short break in occupation does not necessarily mean that a use has ceased. Neither occupation, nor physical state alone is determinative of use, but both are relevant. In this instance the relevant test would be whether, if

³ Letter dated 10 July 2019 – page 2, 5th full paragraph

the Council had visited during that six month period, it could have taken action against the use. I am not convinced that it would have been able to do so since both the bathroom and the kitchen for the much-enlarged ground floor are located in the extension. Any kitchen and bathroom in the much smaller pre-existing ground floor prior to extension would have been stripped out. Thus, as a matter of fact and degree, it seems to me that there must have been a time during extension and refurbishment when neither by physical state nor occupation would there have been use as a self-contained flat such that the Council could have taken action against the use. In effect, a small flat (assuming it had existed) was replaced by another much larger one. Continuity of use during that period of construction work has not been demonstrated on the balance of probability.

15. The ground floor was then occupied from 1 November 2015, when a tenancy agreement indicates that it was taken by Mrs R Riaz for a fixed term of one year. That corresponds to the entry on the Electoral Register. Following her vacation, it remained unoccupied for a period of about a month and a half, since when it has been occupied by various tenants nominated by a number of local housing authorities with minimal interruption between tenancies. Communication from those authorities has been provided as corroborative evidence and the signed statement from Ms Sulte (written in the first person) also recalls occupation of the ground floor flat by council tenants.
16. This is good evidence to demonstrate that the extended ground floor has been used as a flat following extension and refurbishment works in 2015. There is nothing inconsistent or contradictory to make that version of events less than likely. Whilst there might have been short periods of vacancy before the initial tenancy in November 2015 and between tenancies, these are to be expected and do not mean that the use had not commenced or had ceased. I believe that if the Council had visited during one of those vacant periods, it would not have been prevented from taking enforcement action against the use given that the flat would have been self-contained and provided with all facilities necessary for day to day living.
17. Similarly, following refurbishment, the first floor was occupied in July 2015 by Ms Sulte who was still living there on the date the enforcement notice was issued. In support, there is her signed statement setting out her first-hand involvement, a one-year tenancy agreement starting on 1 July 2015, and entry on the Electoral Register for the years 2016 and 2017.
18. In my view sufficient, unambiguous evidence has been provided to demonstrate, on the balance of probability, continuous use of the property as two flats following construction works in 2015 – that is for a period of about three years before the notice was issued. There is no contradictory evidence relating to this latter period. I am satisfied that, had the Council inspected the property at any time during this period, it would have been in a position to take action against the use as two flats whether they had been occupied at the time or whether it was during a break in occupancy.
19. Prior to the refurbishment in 2015, however, the picture is far from clear. The Appellant's version of events from 2012 to refurbishment in 2015 is not sufficiently precise and unambiguous. There is no clarity in the Appellant's evidence as to when in 2012 the change of use to two flats might have occurred. Mr Nawab's statement is not framed in the first person, does not

indicate how long he has been involved with the property (indeed no historic personal involvement is detailed) and it contains a number of inconsistencies with other documents which, whilst minor in nature, cast doubt upon the accuracy of the whole.⁴ Of particular concern is that it is directly contradicted by an entry in the Electoral Register which has not been addressed by the Appellant and which cannot simply be ignored.

20. The Council suggests that the property was not converted into flats until 2015. Other than for the two tenancy agreements dated 2012, there is nothing of substance to counter that suggestion. No reliance can be placed on an invoice seemingly issued before the works were done, the 2012 planning application was to extend the house, and Mr Nawab's statement is not written in the first person and appears inaccurate in places such that reliance on it must be reduced. Even accepting that there were two flats in 2012 as indicated by the tenancy agreements, there is nothing uncontradicted and of substance to demonstrate that that use continued from then on to 2015. Furthermore, I have found as a matter of fact and degree that any use of the pre-existing, much smaller extent of ground floor as a flat would have ceased when the extension was constructed and a larger flat formed.
21. For the reasons set out above I find that the Appellant has failed to demonstrate, on the balance of probability, that the property has been used as two flats for a continuous period of four years, with no material change thereafter, prior to the issue of the enforcement notice. The appeal on ground (d), therefore, fails. It has not been shown that it was too late to take enforcement action at the time the notice was issued.
22. In reaching my conclusion, I have taken into account that the property was registered as two flats for Council Tax purposes in June 2018 and that that was backdated to April 2013. But that retrospective adjustment is not reliable evidence that the property was in use as two flats from 2013 and the Council suggests that the change in the way the property was registered was prompted by the application for an LDC (subsequently refused). I have had regard to all other written representations made but there is nothing which leads me to a different conclusion.
23. For the reasons given above the appeal does not succeed.

B M Campbell

Inspector

⁴ Start date of occupation by Miss Boulter is not the same as that set out in the communication from Epsom and Ewell BC, end date of occupation by Ms Hansford is not the same as in the table provided for the Appellant, Ms Devlin's name has not been spelt correctly.