The Planning Inspectorate

Appeal Decision

Inquiry held and site visit made on 3 September 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 10 October 2019

Appeal Ref: APP/U5930/C/18/3198272
249 High Road, Leytonstone, London, E11 4HH

- 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 1990 Act").
- The appeal is made by Chesswell Limited ("the Appellants") against an Enforcement Notice issued by the Council of the London Borough of Waltham Forest ("the Council").
- The Enforcement Notice, numbered 075298, was issued on 21 February 2018.
- The breach of planning control as alleged in the Enforcement Notice is:
  1. Without planning permission, the building works to convert the existing self-contained flat located on the first and second floor levels into five one bedroomed self-contained flats.
  2. Without planning permission the material change of use of the existing self-contained flat located on the first and second floor levels into five one bedroomed self-contained flats.
- The requirements of the Enforcement Notice are:
  a) Cease the residential use of each of the unauthorised five flats.
  b) Reinstate the first floor and second floor of the flat to one single flat by:
    i. Removing all internal partitions & divisions that facilitate the use of the first floor of the Property as three flats.
    ii. Removing all internal partitions & divisions that facilitates the use of the second floor of the Property as two flats.
    iii. Removing two kitchens from the first floor and one kitchen from the second floor of the Property.
    iv. Removing from the first floor and second floor of the Property all boiler/heating equipment, electric & gas meter and fixtures and fittings that facilitates the unauthorised change of use.
  c) Remove from the premises all resultant debris and paraphernalia as a result of the above requirements.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(c), (d), (f) & (g) of the 1990 Act.

Summary of Decision: The appeal is allowed, and the Enforcement Notice is quashed.

Application for costs

1. An application for costs was made by the Appellants against the Council. This application will be the subject of a separate Costs Decision.

Procedural Matters

2. All evidence at the Inquiry was given on oath or by affirmation.

Relevant History

3. From the Land Registry documents, it appears as though one of the previous owners of No. 249 were the Prudential Assurance Company Limited ("the Prudential"). The Prudential appear to have owned the Appeal Site between March 1893 and June 1978.

4. In September 2005 James Lewis and Company (Surveyors & Valuers) prepared a Certificate of Valuation ("the 2005 Valuation Report") for the Nationwide Building Society in respect of No. 249.

5. The 2005 Valuation Report explains that No. 249 comprised:

   a) A retail shop with basement storage.

   b) A self-contained rear warehouse at ground floor level.

   c) Five self-contained residential studio apartments on the first and second floors.

6. The 2005 Valuation Report explains that there were three studio apartments on the first floor and two studio apartments on the second floor of No. 249. Each apartment benefitted from:

   a) A bathroom (described as a shower room).

   b) A galley kitchenette.

   c) Water, gas and electricity supplies.

7. The 2005 Valuation Report states that:

   a) The studio apartments were in poor order and required full refurbishment and redecoration.

   b) The current rents achieved for the studio apartments are well supported.

8. I understand why the Appellants were unable:

   a) To verify why the 2005 Valuation Report was commissioned.

   b) To ascertain who commissioned the 2005 Valuation Report.

   c) To confirm who the author of the 2005 Valuation Report was.

9. However, James Lewis and Company were contacted, and they confirmed that:

   a) They no longer have records going back to 2005.

   b) The 2005 Valuation Report was in the form that they used in 2005.

10. On the balance of probabilities, I accept that the 2005 Valuation Report is a genuine document that can be relied on in relation to the use of the upper floors at No. 249 as five flats. However, it is not possible to be absolutely certain as to when the use of the five flats began although it is obvious that it was at some time prior to September 2005.

Reasons - Ground (d) that at the time the Enforcement Notice was issued, it was too late to take enforcement action against the matters stated.

11. The onus of proving this ground of appeal falls on the Appellants. They have to prove on the balance of probabilities that at the time the Enforcement Notice was issued, it was too late to take enforcement action against the matters stated in the Enforcement Notice.

12. The Council confirmed that Council Tax had been paid for one flat at No. 249 between 23 December 1997 and 25 March 2014. This clearly does not reflect the actual use of the upper floors within that time period because there were five flats at No. 249 (for the reasons explained above). In my experience it is not unusual for people to fail to register, for Council Tax purposes, the sub-division of larger properties into smaller units.

13. The Land Registry provided historic Office Copy Entries for No. 249 as at 14 January 2003. This gave details as to one of the previous owners of No. 249, namely George William Fitt ("Mr. Fitt").

14. I have been provided with copies of Invoices from Prelet Furniture Limited for the sale of various items for the use in the Flats numbered 1 to 5 at No. 249. The first invoice is dated 13 August 2002 and the last was dated 8 February 2012 ("the Prelet Invoices").

15. It is clear to me from the 2005 Valuation Report that the use of the first and second floor as five flats had been in use for some time given the description of their decorative order. Considering the Prelet Invoices and the 2005 Valuation Report the use of those five flats appears to me to have commenced by at least 13 August 2002.

16. The Appellants produced a Statutory Declaration dated 30 April 2015 from Willy Nkunku ("the 2015 Statutory Declaration"). The 2015 Statutory Declaration explains that:

    a) Willy Nkunku resided in Flat 2 between May 2007 to February 2012.

    b) There were five flats within No. 249.

    c) All the flats were occupied.

17. I understand that Willy Nkunku was not registered to vote at No. 249 in the years 2007 to 2012. I understand that it is an offence not to register and that such a failure can lead to criminal proceedings. Despite this I am aware that people often choose not to register their entitlement to vote as required by law. However, there is no evidence before me that the form requiring details of persons eligible to vote was either sent to Willy Nkunku or to anyone else living in Flat 2 at No. 249 during his period of occupation.

18. As explained below the Appellants completed the purchase of No. 249 in about April 2014 but it is clear that they exercised some control prior to that date in as much as they registered five flats for Council Tax purposes in March 2014.

19. The Appellants claim that:

    a) When they purchased No. 249, there were five flats (three at first floor level and two at second floor level).

b) There were no sitting tenants in the flats at the time of their purchase.

c) They did not carry out any structural alterations to the flats at No. 249 and have not done so since.

d) They have let all five flats since they became the owners of No. 249.

20. The Council's Planning Enforcement service were alerted to a possible change of use at No. 249 when five flats were registered for Council Tax purposes in March 2014.

Evidence that there were not five flats at No. 249

21. I have dealt with the issue of Council Tax above.

22. A local resident wrote to the Planning Inspectorate in about April 2019. The resident explained that:

a) Until December 2013 there was one flat at first floor level and a second flat on the second floor and that the flats shared a bathroom and kitchen.

My comment: No information was given as to how this resident knew what the internal layout of No. 249 was like. Further, it seems highly unlikely that the five flats were altered after February 2012 to two flats by December 2013 only for five flats to be reinstated by March 2014.

b) In December 2013 the Appellants removed the front fascia making an extra room when they rebuilt the fascia at a different level.

My comment: This evidence is inconsistent with the Land Registry documentation which indicates that the Appellants acquired No. 249 in April 2014 and photographic evidence of the fascia taken in 2005 and 2016.

23. Mr. Fitt e-mailed the Council on the date of the Inquiry. He claimed:

a) That he purchased No. 249 on 11 June 1978.

b) That he sold No. 249 in approximately May 2014.

c) That the upper part of No. 249 was used as a single flat for one family or friends.

My comment: This is at odds with the evidence contained in the 2005 Valuation Report and the 2015 Statutory Declaration.

24. Mr. Fitt e-mailed the Appellants on the date of the Inquiry. He initially re-stated that the upper part of No. 249 was used as one unit for a family. He also explained that the upper part of No. 249 was never sublet. He explained that this was his knowledge, but he was living in Spain and a manager was running the butchers shop. He also stated that he thought that for a lot of time No. 249 was empty.

25. Mr Fitt then e-mailed the Appellants (of his own volition) and stated that he had just remembered that No. 249 was boarded to make single units. Finally, he confirmed that he had problems with his memory due to his age and the length of time that had passed since these events.

26. I do not consider that any significant weight can be given to Mr Fitt's e-mails due to their contradictory nature and his memory problems.

27. I am also aware that a local shopkeeper wrote to the Council and claimed:

    a) That the appellants gutted out No. 249 during 2014.

    My comments: No explanation was given as to how the shopkeeper knew this.

    b) That the residential accommodation prior to the gutting out comprised a three bedroom flat and that this was replaced by five bedsits.

    My comments: There is no explanation as to how the shopkeeper knew the accommodation provided a three bedroom flat. This evidence is contrary to the Appellants evidence which was given on affirmation and open to cross-examination.

    c) That another neighbour had written evidence and pictures of the changes made at No. 249.

    d) *My comments*: That evidence was not provided.

28. In March 2015 a Council Officer inspected No. 249. He noted that five new electricity meters had been installed probably either in March or June 2014. He photographed the five meters.

29. Mr Green was unable to confirm the date when the meters were installed but suggested that such changes would have been part and parcel of the general refurbishment of the flats by the Appellants following their acquisition.

30. I was informed that the Council had contacted the electricity supplier for No. 249 in August 2019. They confirmed that:

    a) There is only one registered residential supply serving No. 249.

    b) The customer's name for the residential supply was a Limited Company.

    c) The photos of the meters taken in March 2015 appeared to be private meters.

31. Mr Green was unable to explain how electricity costs for No. 249 were apportioned between the occupiers of the five flats.

Overall Conclusion – Ground (d)

32. I have had regard to all of the evidence. I am satisfied that prior to the Appellants acquisition of No. 249 the first and second floors were used as five flats for more than four years. Whilst the flats were not occupied at the date of the Appellants' acquisition there is no doubt that the five flats existed and there is no evidence that the residential use of those flats had been abandoned.

33. For the reasons given above I conclude that the appeal should succeed on Ground (d). Accordingly, the Enforcement Notice will be quashed. In these circumstances the appeal under the other grounds of appeal set out in Section 174(2) to the 1990 Act do not need to be considered.

Formal Decision

34. The appeal is allowed, and the Enforcement Notice is quashed.

Tim Belcher **– Inspector**

APPEARANCES

FOR THE APPELLANTS

Daisy Noble of Counsel
Instructed by GC Planning Partnership Limited
She called:

Jack Green Director of Chesswell Limited

Paul Chaston MPlan, MRTPI of GC Planning Partnership Limited

Steve Connell BA(Hons), DipTP, MRTPI of GC Planning Partnership Limited

FOR LONDON BOROUGH OF WALTHAM FOREST

Ben Du Feu of Counsel
Instructed by the Borough Council's Solicitor
He called:

Zia Sarkar BA (Hons), DipTP Planning Enforcement Officer

INTERESTED PARTIES

DOCUMENTS

Document 1	–	Enforcement Notice issued on 6 February 2018 – 249A High Road, Leytonstone, London, E11 4HH.
Document 2	–	Council letter dated 13 August 2019 to Mr Fitt.
Document 3	–	Mr Fitt's e-mail dated 3 September 2019 to Zia Sarkar.
Document 4	–	Mr Mozes's e-mail to Mr Fitt dated 3 September 2019 and Mr Fitt's replies.
Document 5	–	Certificate of Incorporation of a Private Limited - Company & Confirmation Statement – Prelet Furniture Limited.
Document 6	–	Google Document showing address for Prelet Furniture Limited.
Document 7	–	Find A Solicitor webpage from Law Society relating to Raphael Bude – Partner at Bude Storz.
Document 8	–	Letter from Bude Storz dated 2 September 2019.
Document 9	–	Unsigned & undated Officers Recommendation Report.
Document 10	–	Planning permission 22/72 – 131 & 131A Newport Road.
Document 11	–	Planning permission 122/72 – 148 Hoe Street, E17.
Document 12	–	Planning permission 1122/72 – Land at the rear of Sutherland House, Sutherland Road.
Document 13	–	Advertisement Consent A22/72 – Hall Lane, E4.
Document 14	–	Letter from E. A. Bishop relating to Application 22/73 – withdrawing application for alterations to 14 Chandos Avenue, E17.
Document 15	–	Advertisement Consent A22/73 – 330 Hoe Street, E17.
Document 16	–	Planning permission 122/73 – Land off (illegible) Way, near Church Road, E10

Document 17 – Land Registry – Historical copy of Register of Title for 249 High Road.