



Appeal Decisions

Site visit made on 22 January 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal A: APP/C5690/C/19/3220979

Appeal B: APP/C5690/C/19/3220980

Land and Premises on the first floor of the premises which is described as Flat 5, 8 Wells Park Road, London SE26 6JB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Amit Mass (Appeal A) and Mass Investments UK Ltd (Appeal B) against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 13 December 2018.
 - The breach of planning control as alleged in the notice is Without planning permission, the sub-division and making of a material change of use of the first floor of the premises from use as one self-contained flat to use as two self-contained flats.
 - The requirements of the notice are 1.a. Cease the use of the first floor of the premises as more than one self-contained flat; 2. Reinstate the layout of the first floor of the premises to a single flat by; a. Removing all bathroom fixtures and fittings from one of the flats situated on the first floor of the premises; b. Removing all kitchen fixtures and fittings from one of the flats situated on the first floor of the premises; c. Removing partitions installed to subdivide the first floor of the premises into two self-contained flats; 3. Remove all materials, debris, waste and equipment resulting from compliance with requirement 2 above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
 - **Summary of Decision: The appeals are dismissed and the enforcement notice is upheld, with a variation.**
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Preliminary Matter

1. Since the appeals on ground (a), that planning permission should be granted, have lapsed, the appellants' representations that the flats are not insufficient in size or inferior in quality are not matters before me for consideration.

The appeals on ground (d)

2. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellant to show, on the balance of probability, that the use of the appeal site as two flats had commenced at least 4 years before the notice was issued, that is by 13 December 2014, and had continued in such use

over a four-year period. It must be shown that there has not been any significant interruption in the use in order to demonstrate the necessary continuity.

3. The appeal premises relate to two upper floor flats. It was apparent from my visit that the flats are accessed from a communal, central staircase and landing. The landing leads to a lockable main entrance door, beyond which are separate locked doors serving each of the self-contained flats. Within the grounds of appeal the appellant states that the units can be used as two one-bedroom flats or as one 3-bedroom flat with two bathrooms and two kitchens. I have no reason to disagree with this assessment, as the aforementioned lockable main entrance door could act as the entrance to a larger single flat.
4. The appellants' state that the flats have been rented to SK Housing Ltd since 15 March 2013, and in accordance with a tenancy agreement the units are sub-let by that company to tenants as one or two flats. It was apparent that at the time of my visit the flats were available for use by separate households.
5. However, even if the appeal site was used as two separate flats for the first time, and the physical layout was changed accordingly, more than four years before the notice was issued, there is no information before me to indicate that the property has been continuously occupied in this way, and without any material interruption, over the relevant 4-year immunity period, since the unauthorised use commenced.
6. Indeed even if the accommodation had been continuously occupied, which is uncertain, by the appellants' own admission it may at times over the immunity period have been in use as a single flat only. If this was the case then any subsequent change of use to two flats from a single flat use would have represented a new chapter in the planning history of the site, at which time the 'four-year' immunity period would be restarted.
7. Accordingly, I am unable to conclude, on the balance of probability, that the change of use alleged in the notice is immune from enforcement due to the passage of time. The ground (d) appeals therefore fail.

Conclusion

8. The appellant has not appealed under ground (f), that is that the steps required by the notice to be taken are excessive. The requirements of the notice include removing one of the two bathrooms. However, I consider that for a single property to continue to have access to two bathrooms would not be uncommon, and this attribute would not in itself result in an independent unit of accommodation. This specific requirement of the notice, therefore, goes beyond what is necessary to remedy the breach as described, and should be omitted. I am satisfied that I am able to vary the notice accordingly without causing injustice to the parties.
9. Subject to this variation, for the reasons given above I consider that the appeals should not succeed.

Formal Decision

10. It is directed that the enforcement notice be varied by deleting the following wording in paragraph 5: -

“a. Removing all bathroom fixtures and fittings from one of the flats situated on the first floor of the premises”

11. Subject to this variation, the appeals are dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR