
Appeal Decision

Site visit made on 28 January 2020

by Iwan Lloyd BA BTP MRTPI

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

Decision date: 27 February 2020

Appeal Ref: APP/H5960/C/19/3235026

Land at Unit 10, 162 Tooting High Street, London SW17 0RT

- 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 Mrs Esther Gurvits Assethold Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice, numbered 2017/0083/ENF, was issued on 24/06/2019.
 - The breach of planning control as alleged in the notice is without planning permission and within the past ten years a material change of use from a residential management office ancillary to a block of residential flats (use class C3) to use as an office as a business (use class B1) not ancillary to the block of residential flats.
 - The requirements of the notice are to 'You are required to cease the use of Unit 10 as an office (Use Class B1) and remove all furniture, fixtures, fittings and equipment which have been installed to support the use of Unit 10 as an office'.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
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Procedural matter

1. Assethold Limited is a leaseholder of the building and has appealed the notice on the basis that the period of compliance is too short (ground g appeal). In doing so, it has raised the matter that the title owners of the building Caledonian Holdings Limited were not served the notice, and that Assethold Limited cannot comply with the notice to cease its occupation by a tenant since it is not the title owner of the building. The appellant Assethold Limited has sought to safeguard its position as a leaseholder to appeal the notice and the Council has accepted that it would not seek to enforce the notice against the appellant. In the light of the above, this is a hidden ground (e) appeal submission which I shall consider further below.

Decision

2. The enforcement notice is quashed.

The hidden ground e submission

3. The notice is appended with a list of the parties that were served and these include the Company Secretary and Director of Assethold Limited and the owner and any occupier of Unit 10, 162 Tooting High Street.
4. From the email communication between the Council's legal representative and the appellant's agent dated 8/08/2019, the Council's legal adviser sought out

the views of the case officer to see whether the notice should be withdrawn and re-served on Caledonian Holdings Limited, although the adviser points out that the notice was served on the owner and any occupier and believes that effective service has been carried out. The Council did also serve a Requisition for Information on Assethold Limited but had not received a response.

5. In a follow-up email on 9/08/2019 the Council legal adviser was advised by the Council that Caledonian Holdings Limited had appealed on grounds (a) and (g) and confirmed the same to the appellant's agent and that it would not seek compliance of the notice against the appellant.
6. The only appellant in relation to the appeal is Assethold Limited, there is no ground (a) pleaded and no fee has been paid. Whilst, the notice lists the owner and any occupier of Unit 10 as being served in this case, I am not persuaded that this would be anything other than the notice posted through the letter box. The requisition for information had not been returned which might have revealed the owner(s) of the building but the notice was served in any event. I am not satisfied that the owner has been served the notice in relation to the requirement of section 172(2)(a). Caledonian Holdings Limited has not appealed the notice and its interests as owner has been prejudiced where it could have appealed the notice on different grounds.
7. I shall therefore quash the notice on the basis that it has not been properly served on everyone with an interest in the land. The ground (g) appeal does not fall to be considered.

Iwan Lloyd

INSPECTOR