
Appeal Decision

by P N Jarratt BA DipTP MRTPI

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

Decision date: 21 April 2020

Appeal Ref: APP/N5660/C/19/3220291

9 Streatham Hill, London, SW2 4SP

- 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 Cyril Jones against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice, numbered 18/00185/3COU, was issued on 30 November 2018.
 - The breach of planning control as alleged in the notice is the conversion of the lower ground floor flat to 4 self-contained bedsit flats; the conversion of the upper ground floor flat to 4 self-contained bedsit flats; and the conversion of the first floor flat to 4 self-contained bedsit flats ('the 12 unauthorised bedsit flats').
 - The requirements of the notice are:
 - a) Cease the use of each of the 12 unauthorised bedsit flats;
 - b) Remove all internal doors, partitions, kitchen units, appliances, bathrooms, electrical water and gas services including boilers and meters, that facilitate the unauthorised use of the premises as 12 unauthorised bedsit flats;
 - c) Remove all associated waste and debris resulting 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 grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Procedural matter

2. As the appeal has been made on grounds (d) and (g), with the principal matter of dispute between the parties being the dates that the unauthorised conversion to 12 bedsit flats took place, a site visit is unnecessary as I have been able to determine the appeal on the submitted evidence.

The appeal property

3. The appeal property is a 5 storey period detached house in residential use. Planning permission was granted in 1986 for the conversion of the property into 5 flats, with one on each floor. In 2009, permission was granted to divide the existing second floor flat into 2 self-contained flats. The lawful use for the appeal property represented by these permissions is for six flats.

The appeal on ground (d)

4. An appeal on this ground is that at the time that the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. It is necessary for the appellant to demonstrate that the conversion of the 12 unauthorised bedsit flats occurred four or more years before 30 November 2014 (the relevant date), in order to be immune from enforcement action under s 171B(2), and that the use has continued uninterrupted over that period. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
5. The appellant has submitted evidence in respect of each of the 12 unauthorised bedsit flats. For each flat (Units 1, 2, 3 and 4 of 9A, 9B and 9C) some four separate statutory declarations have been submitted, these being from Cyril Jones, director of Maurice Laurent Ltd the company that owns the property; from Dean Carter, director of Moving Inn Ltd, letting agents; Shaun Mellius, repairs and maintenance manager FCPS; and, Natalee Haynes, Inventory Clerk. Each declaration states that either 9A, 9B or 9C has continuously and uninterruptedly been used as four self-contained flats since April 2013; each of the four flats has always had exclusive use of amenities to include toilet, washing facilities and cooking facilities. Reference is made to the Land Registry Title Number and each flat is separately identified on plans attached to the declarations.
6. Two further statutory declarations are made by the tenants of two of the flats. Alison Sexton of Unit 3, 9B states she has had continuous uninterrupted use of the unit as her principal residential home since 30 April 2013 and this is supported by a copy of an assured shorthold tenancy agreement of the same date. Richard Castellon Mejia and Maria Coromonto Reyes jointly declare that they have had continuous use of Unit 2, 9C since 20 April 2013 and enclose a copy of the tenancy agreement with a commencement date of 20 April 2013. I note that the declaration refers to the agreement commencing on 30 April 2013 but I do not attach much weight to this which appears to be the result of a draughting error.
7. The submitted evidence for each flat is substantial and well-documented, which in addition to the declarations and copies of the tenancy agreements, includes copies of inventories, deposit certificates, electricity payments, email communications, and repair and maintenance invoices. On the basis of the submitted tenancy agreements, and supported by the various invoices, the occupation of the flats was from the following dates:

No 9A Unit 1, 30 March 2013; Unit 2, 29 November 2014; Unit 3, 16 April 2013; Unit 4, 11 August 2014.

No 9B Unit 1, 20 April 2013; Unit 2, 30 March 2013; Unit 3, 16 April 2013; Unit 4, 9 June 2014.

No 9C Unit 1, 13 August 2014, Unit 2, 20 April 2013; Unit 3, 27 April 2013; Unit 4, 30 March 2013.
8. There is nothing to suggest that there were material periods of non-occupancy that would have indicated that the continuity of the use had been broken.
9. At the time that the Council prepared their statement of case, they had not received the evidence from the appellant to support the appeal on ground (d)

but indicated that they would normally expect to have received Council Tax receipts, rent receipts, utility bills and other evidence in support of the appeal. Following receipt of the evidence the Council considered that whilst this evidence seems compelling, the assured shorthold tenancy agreements do not have bank details of rental payments and identification details of the tenants. Additionally no Council Tax payments were made, no building control records, electoral register entries or utility bills which corroborate the evidence submitted.

10. In respect of the agreements, I note that the signatures of the tenants submitting statutory declarations appear to be the same as on the tenancy agreements and I have no reason to doubt the authenticity of them. It is also accepted in case law that it is not necessary for the appellant's own evidence to be corroborated by independent evidence in order for it to be accepted¹.
11. I note that the registration dates for No 9A Units 1-4 and for 9C Units 1-4 Council Tax registration dates only came into effect on 19 April 2018. Additionally examination of the Electoral Roll does not indicate that the unauthorised flats came into use at the time claimed by the appellant. Unusually, although the appellant has provided a substantial amount of evidence, he provides no analysis or commentary about how it supports the ground (g) appeal. Notwithstanding the appellant's approach to his appeal, I attach considerable weight to the submitted statutory declarations and tenancy agreements.
12. I find therefore that sufficient and robust evidence has been submitted to demonstrate on the balance of probabilities that the 12 unauthorised bedsit flats at the appeal property were converted and brought into use as self-contained flats prior to the relevant date and they are therefore lawful through the passage of time.
13. The appeal on this ground succeeds.

Conclusion

14. 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 ground (g) does not need to be considered.

P N Jarratt

Inspector

¹ FW Gabbittas v SSE and Newham LBC [1985] JPL 630