



Appeal Decision

Site visit made on 20 July 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2020

Appeal Ref: APP/X5990/C/18/3209852

The building(s) and associated land at 123-125 Gloucester Place, London W1U 6JZ

- 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 Act).
 - The appeal is made by Mrs Eva Agathangelou of Cello Trading Ltd against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice was issued on 19 July 2018.
 - The breach of planning control as alleged in the notice is without the requisite planning permission and within the last 4 years, the material change of use of the land edged in red on the attached Plan B from storage space (B8 use class) to independent residential accommodation (C3 use class).
 - The requirements of the notice are:
 - a) Cease using the land outlined in red on the attached Plan B (at basement level of the property) as residential accommodation: and
 - b) Remove all kitchens and cooking facilities from the land edged in red on the attached Plan B; and
 - c) Remove all bathrooms and bathroom facilities from the land edged in red on the attached Plan B; and
 - d) Remove any partition walls facilitating the unauthorised residential use and restore the floor plan layout to its former condition and layout as shown in the attached Plan B; and
 - e) Remove any and all waste material and debris resulting from compliance with the above requirements from the land edged in red on the attached Plan A.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal 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.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the deletion at section 5) b) of the word "kitchens" and the substitution of the word "kitchen";
 - deletion of requirement 5) c) stating "remove all bathrooms and bathroom facilities from the land edged in red on the attached Plan B"; and
 - deletion of requirement 5) d) stating "remove any partition walls facilitating the unauthorised residential use and restore the floor plan layout to its former condition and layout as shown in the attached Plan B".

2. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appeal had originally been entered on grounds (b), (c), (d) and (f). However, the appellant subsequently confirmed that it should proceed only by way of ground (f).
4. Requirements b), c) and d) of the notice require removal of items, in summary, "kitchens and cooking facilities", "bathrooms" and "partition walls" respectively. These are incorrectly stated in the plural but there are only one of each. The notice needs to be corrected at least to make it clearer and doing so does not expand the scope of the notice and no injustice would be caused in doing so. I can undertake such corrections where necessary under the powers set out in S176(a) of the Act.

The Appeal on ground (f)

5. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The onus of proof is upon the appellant.
6. The notice requires amongst other things, the cessation of the use which is the breach of planning control. The clear purpose of the notice is therefore to remedy the breach of planning control and that would seemingly be achieved simply by ceasing the use as required by 5) a).
7. However the Council point out that in order to achieve the purpose of the notice in such cases, as well as requiring the use to cease, a notice may include requirements to remove works which have been carried out solely to facilitate the unauthorised development. I have been referred explicitly to the Somak Travel¹ case where a staircase was found to be integral to the material change of use from residential to an office.
8. It is agreed that the internal works in this case the kitchen, the bathroom and the partition wall would not in themselves require planning permission. The appellant states that these features were installed as part of the use of the basement as an office which had been confirmed via the issuing of a Certificate of Lawful Development as not requiring planning permission when changing from the storage use.
9. However, some evidence from the Council and an interested party indicate that around the time of the issuing of the notice in July 2018, bedroom furniture was removed and office tables and chairs brought in. There is limited evidence of what use the building was put to before that but there is no dispute that at times it was used for storage and that at other times it was vacant.
10. There is also no dispute that the kitchen, cooking facilities, bathroom and partition wall were not installed until the late summer of 2014. The appellant company purchased the lease of the building in 2015. It is not clear on what evidential basis the opinion was given in the Planning Contravention Notice, completed in August 2018 by the appellant company that the current use of the premises was as "offices" or whether such use had been witnessed by them before purchase. The Certificate of Lawfulness had been issued for a proposed

¹ Somak Travel v SSE & Brent LBC [1987] JPL 630

use as an office rather than to confirm an existing use. There is some limited evidence of the premises being marketed for office use but the appellant has not provided convincing evidence of actual use.

11. I therefore consider that, on the balance of probabilities, the building seems unlikely to have been used as an office prior to the date of the notice. Furthermore, the physical alterations as described in requirements b), c) and d) seem likely to have been carried out to facilitate the residential use.
12. Whilst I have no appeal on ground (a) before me and so cannot consider the planning merits of the breach of planning control or any other alternative use, the enforcement regime is not meant to be punitive. It is reasonable in my view to consider whether it would be proportionate to require the complete removal of the internal features that may be just as useful to the continued use for storage or any valid alternative use as they would have been to the unauthorised use. It has been held that the minimum necessary to remedy the breach would normally be proportionate.
13. I found that the kitchen and cooking facilities are far more elaborate than would seem reasonably required for use only as part of the storage use or even if the modest office was a lawful fallback that could be implemented. However, the requirement to remove the bathroom would seem at face value to also seek the removal of the toilet and it is reasonable to retain that for use by people operating in the building whatever purpose it is put to. Furthermore, if people using the building travel using cycles or by foot modest shower facilities are also reasonable to retain. Retaining the bathroom but requiring the removal of the kitchen and cooking facilities would leave the building without the necessary attributes of the previous residential use and would prevent that unauthorised use from recommencing. I therefore consider that requirement b) should be retained but that c) should be deleted.
14. There is no evidence to indicate that the partition wall was integral to the unauthorised use or why its retention would enable the resumption of the unauthorised use. I consider that requirement d) should also be deleted.
15. I therefore find that the appeal on ground (f) should succeed only to the extent that I shall delete requirements (c) and (d).

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

A Harwood

INSPECTOR