



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 7 August 2020

Appeal Ref: APP/V5570/C/19/3240819

Land at Unit 1, 3 Lever Street, London EC1V 3QU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Sulaman Hussain against an enforcement notice issued by the Council of the London Borough of Islington.
- The enforcement notice was issued on 7 October 2019.
- The breach of planning control as alleged in the notice is without planning permission, the use of the premises for temporary sleeping/short term let accommodation (sui generis).
- The requirements of the notice are:
 1. Cease the use of the premises for temporary sleeping accommodation/short term letting.
 2. Remove any online advertisements for [the] property as a temporary sleeping accommodation/short term let use.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Planning Inspectorate initially made arrangements for this appeal to be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined in the absence of a site visit without causing prejudice to any party. This is because sufficient evidence has been submitted to understand the nature of the site given the points in dispute. The parties were contacted on 22 July 2020 and it was agreed that, as the appointed Inspector, I could proceed to a decision on this basis.
2. The appeal has been made on ground (b) only, that the matters stated in the notice have not occurred as a matter of fact. However, the appellant's arguments are mainly based on the premise that the matters alleged do not constitute a breach of planning control, which relates to ground (c). It is, therefore, appropriate for me to also consider a ground (c) appeal in this case. I am satisfied that this would not cause prejudice to the Council, as this issue was recognised and the Council has responded fully to all arguments made.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as

'legal' grounds of appeal is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

4. The appeal premises is an extended three-storey building, located at the end of a terrace. I understand that the whole building was previously known as No 3a Lever Street. This address now relates to a ground floor shop unit, with the upper floors of the property referred to as Unit 1, 3 Lever Street, London EC1V 3QU, as identified in the notice. For the avoidance of doubt, the shop is excluded from the notice and so the appeal is concerned only with the upper floors.
5. The statutory purpose behind the enforcement notice is to remedy the breach of planning control. Accordingly, the first requirement is to cease the unauthorised use, which would remedy the breach. However, the second requirement goes further and requires the removal of any online advertisements in connection with the alleged use. If the use were to cease then it could not be advertised in any event, hence this requirement is excessive and should be deleted. I consider that I can make this correction without injustice, as the purpose behind the notice would be unaffected.

The appeal on ground (b)

6. The Council's enforcement officer visited the premises on 11 June 2019. It was noted that the property was arranged over three floors. The first floor contained a WC, shower and two bedrooms. The second floor contained a WC, shower, large lounge area and one bedroom. The third floor comprised a kitchen and lounge/diner, with two small rooms located off the main room. Five external key holders by the front door, which the Council officer reported were present on 23 January 2019, had been removed and it was claimed that the property was being used as a single residence. The appellant has not disputed the Council's description of the premises, nor the photographs provided by the Council in support of its appeal statement.
7. In relation to the alleged breach, the Council's evidence includes screenshots from accommodation websites advertising/reviewing double rooms at the property in 2019 and 2020. The address and/or the location of the property advertised, and the photographs provided on the websites, correspond with the Council's description and photographs of the appeal premises. This strongly suggests it has been used for temporary sleeping accommodation/short term letting, as alleged, prior to the service of the notice.
8. The appellant has provided very limited information to support their argument. Crucially, the Council's evidence to the contrary is acknowledged, which does not support a finding that the alleged breach has not occurred as a matter of fact. Consequently, the appeal on ground (b) must fail.

The appeal on ground (c)

9. Under section 57(1) of the 1990 Act as amended, *planning permission is required for the carrying out of any development of land*. Section 55(1) of the 1990 Act as amended says that "*development,*" *means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*. Therefore, it is necessary to consider whether an unauthorised material change of use, which would require planning permission, has occurred.
10. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously. To make this judgement, it is necessary to establish the planning unit and consider its current and previous uses. The planning unit in this case is the premises at Unit 1, 3 Lever Street, which comprises the building's upper floors, as described above. However, the parties are not in agreement with regard to the previous use.
11. The Council states that the last known authorised use of the premises was offices. A change of use from offices to temporary sleeping accommodation / short term letting would result in a significant difference in the character of activity associated with the respective uses. In particular, short term letting would involve various people occupying the individual rooms at the premises and staying overnight. An office use would more likely be occupied as a communal place of work during regular daytime hours. Such a change would have planning consequences and would amount to a material change of use for the purposes of s55(1), for which express planning permission would be required. There is no evidence of any such permission.
12. The appellant claims that the previous use of the premises was residential, and the alleged use would not constitute a material change of use due to the provisions of Section 44 of the Deregulation Act 2015. I have, therefore, examined the planning history insofar as it has been provided.
13. I understand that planning permission was granted in 1986 for the change of use of the whole of No 3 Lever Street from light industrial to recording and rehearsal studios with musical instrument repairs and ancillary offices, lounge and kitchen and sanitary facilities (Ref 860639). However, it is unclear whether or not this permission was implemented.
14. Planning permission was then granted on 28 July 1999 (Ref 991111) for the change of use of the 1st and 2nd floors of the appeal premises to two self-contained flats. A further planning permission was granted on 27 November 2000 for the construction of a roof extension to create a third floor. The application included the retention of a shop at ground floor level and alterations to the shopfront (Ref P001934). The floorspace created on the third floor was to be used in connection with the office use on the upper floors of the building, which suggests the previous residential permission was not implemented. An appeal was dismissed on 18 July 2012 relating to the change of use of Unit 4, No 3 Lever Street from B1 to C3 residential (live/work units). The Council points out that within the appeal decision, the Inspector commented that the remainder of No 3 Lever Street appeared to be in commercial use. This also suggests the residential permission had not been implemented.

15. A subsequent planning permission to change the use of the office space to a beauty therapy training college was granted on 31 May 2002 (Ref P020992) but, again, it is not clear whether this permission was implemented.
16. Notwithstanding this history, the appellant maintains that the whole of the appeal premises has been in residential use for the last 10 years. Council Tax records have been provided that relate to the appeal property and were addressed to the appellant at that address. These date from 10 November 2015 and extend to 6 March 2020. The Council accepts that the property appears to have been used for residential purposes, pointing out that the premises has been on the council tax list as one residential unit with effect from 28 October 2005. However, there is no Lawful Development Certificate.
17. As set out above, planning permission was granted for the residential use of the upper floors in 1999, but it is not clear that this permission was properly implemented. The only evidence I have is the Council Tax listing dating from 2005 and some related documents including a 12 month Tenancy Agreement, dated 28 December 2017. In any event, the premises has a third floor, presumably built pursuant to the 2000 permission, which was for office space as opposed to residential. I note that the appellant has submitted a notice of approval to grant a licence to use the property as a house in multiple occupation for a maximum of six people (dated 20 July 2020). There is no evidence that the licence had been issued.
18. In order to show the use of the premises as a single dwellinghouse was immune from enforcement action, and therefore lawful¹, the appellant would need to show that it has been used and occupied as such for a continuous period of four years². The evidence in relation to this matter is imprecise and incomplete. Given this background, the previous use of the premises remains uncertain. Even if I were to accept the appellant's argument that the previous lawful use is residential, this would still constitute a material change of use to short-term let due to the transient nature of the occupants and related off-site effects.
19. For completeness, I have considered the appellant's arguments concerning Section 44 of the Deregulation Act 2015, which relates to the short-term use of London accommodation. This provision amended Section 25(1) of the Greater London Council (General Powers) Act 1973 – provision of temporary sleeping accommodation to constitute a material change of use - by introducing an exception. Section 44(3) states *the use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use*, subject to two conditions. The first is that the total number of nights of use as temporary sleeping accommodation does not exceed 90 in the same calendar year. The appellant has not shown this to be the case and the Council's evidence suggests otherwise. Had the appellant shown the previous use of the premises to be residential for the purposes of the Deregulation Act, the specified condition would not be met. Hence, the provision would not apply to the appeal premises.

¹ Section 191(2) of the 1990 Act says that uses are lawful at any time if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

² Section 171B(2) of the 1990 Act as amended provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

20. In summary, I find that the use of the premises for temporary sleeping/short term let accommodation would constitute a material change of use for which express planning permission would be required. There is no evidence of any such permission. The appellant has not shown on the balance of probability that the matters alleged do not constitute a breach of planning control and the appeal on ground (c) must fail.

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

22. It is directed that the enforcement notice is corrected by the deletion of requirement (ii) in schedule 4 of the notice. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Debbie Moore

Inspector