Appeal Decision

Site visit made on 19 October 2020

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

an Inspector appointed by the Secretary of State

Decision date: 26 October 2020

Appeal A: APP/A5840/C/20/3247431
Appeal B: APP/A5840/C/20/3247433
2A Howden Street, London SE15 4LB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Harry Lovell against an enforcement notice issued by the Council of the London Borough of Southwark. Appeal B is made by Mr Jack Lovell.
- The enforcement notice was issued on 13 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the Building from a photographic studio (Class B1) to a self-contained dwellinghouse (Class C3).
- The requirements of the notice are:
    - i. Cease the use of the Building as residential accommodation.
    - ii. Restore the Building to its condition before the breach occurred, including the removal of all fixtures, fittings and particulars connected to the use of the Building as residential accommodation.
    - iii. Remove the kitchen facilities from the Building (including, for the avoidance of doubt, hob, kitchen sink, oven, kitchen worktops and kitchen cupboards, kitchen wall tiling and sockets and switches at work top level.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(b) of the 1990 Act as amended.

Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Reasons

2. In ‘legal’ grounds of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. The appellant’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.

3. In order to succeed in an appeal on ground (b), the appellants must show that the matters alleged have not occurred as a matter of fact.

4. The appeal building is a single-storey structure sited on land that was formerly part of an adjoining property. I saw that the premises contains a shower room with WC, a fully equipped kitchen and a small mezzanine floor. The building was in use as an office with ancillary storage at the time of my site visit.

5. The appellants simply state that the property was not let as a dwellinghouse and, upon the landlord's inspection, there was no evidence to suggest that it had. A signed six-month commercial lease has been supplied, commencing June 2018, which details the permitted use of the premises as offices.

6. The Council lists the planning history of the premises. Planning permission was granted for the erection of a single storey photographic studio in 2011[1]. A building was subsequently constructed, albeit the Council argues it was not built in accordance with the approved plans in terms of its dimensions. Planning permission was then refused for the change of use of the building to residential in 2017[2]. The accompanying application form indicated the change of use had already occurred. However, the officer who conducted the site visit for that application noted a kitchen had been installed but it was not apparent that the premises was being used for residential purposes.

7. In 2018, planning permission was granted for the demolition of the existing building and the construction of a one-bedroom dwellinghouse[3]. The application form in that instance indicated the building was vacant. A subsequent prior approval application for the change of use of the property from offices to residential was refused in 2019[4]. The Council reports that the building was vacant at the time of the site visit in November 2019.

8. I understand that the property was registered for Council Tax on 3 April 2019, and prior to that date it had been registered for Business Rates. Council Tax has been paid since the date the property was registered.

9. The Council's claims that the property could facilitate a residential use and the planning history suggests this is the likely intention. It is assumed that a residential use commenced when the property was registered for Council Tax.

10. It is correct that the building contains all the facilities for day-to-day private domestic existence and it could accommodate a residential use. Although the Council's evidence is not extensive, the appellants' counter arguments are very limited. There is no written explanation of the Council Tax registration, and the Tenancy Agreement is not supported by any details such as whether it was extended or terminated. Crucially, the appellants have not sought to explain how the building has been used and occupied. As such, the balance of the evidence lies with the Council.

11. I saw that the building was in use as offices at the time of my visit, but the critical period is the date the notice was issued and the period leading up to that date. On the basis of what I have before me, the appellants have not shown that the matters alleged have not occurred as a matter of fact.

Conclusion

12. For the reasons given above I consider that the appeals should not succeed.

Debbie Moore

Inspector

[1] Ref. 11/AP/1026 dated 25 May 2011.
[2] Ref 17/AP/1971.
[3] Ref 18/AP/2135.
[4] Ref 19/AP/1493.