
Appeal Decision

Site visit made on 8 September 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2020

Appeal Ref: APP/A5840/C/19/3237162

Flat 10, Harrison Court, 61A Rye Hill Park, London SE15 3JN

- 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 Mr Rob Plank against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice was issued on 15 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the Unit (as defined above), from a storeroom ancillary to the use of the Building as a block of flats, to a self-contained flat.
- The requirements of the notice are:
 - (i) Cease the use of the Unit as residential accommodation.
 - (ii) Restore the Unit to its condition before the Breach occurred, including the removal of all fixtures, fittings and particulars connected to the use of the unit as residential accommodation.
Install the cycle facilities required pursuant to OG/AP/1212 and which are shown for indication purposes only on the drawing annexed hereto and labelled 001D;
 - (iii) Remove from the site all rubbish and debris resulting from the works in requirements (i) and (ii).
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. It was not possible to arrange admission to the flat for the site visit. I was only able to see the front of the building from the street. Consequently, I have based my decision on the written evidence provided by the appellant and Council.

The Appeal on Ground (d)

2. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it.
3. The Council confirm that the use of Flat 10 as a single dwellinghouse would become lawful were it to have continued for a period of 4 years beginning with

the date on which the use had started. The enforcement notice was issued on 15 August 2019.

4. The appellant states that he has been landlord of Flat 10 since 2008 in his affidavit, although other documents suggest that it wasn't occupied until 2009. No evidence has been submitted to corroborate that use until 2014. An Energy Performance Certificate has been supplied dated 12 February 2014. Assured Shorthold Tenancy agreements have been supplied showing that the flat has been occupied by different tenants from 28 February 2014.
5. This evidence is precise and unambiguous. It indicates that the use of Flat 10 commenced at the latest on 28 February 2014, such that it had taken place for a period of over four years prior to the date of issue of the notice.
6. The Council state that no application was made for naming or numbering the flat and there is no Building Control record as confirmation to show when the works were completed. I understand that no lease is listed by the Land Registry and on Rightmove for a Flat 10 at this property. However, the appellant is the freeholder so it is unclear whether a lease would need to be registered.
7. The Council state that the flat was not registered for Council Tax until 2018. Council Tax Officers were informed it was occupied from 28 April 2018, although it is unclear by whom they were notified. I note this date coincides with the beginning of a tenancy agreement.
8. Taking all of the above into account, on the balance of probability I consider that the dwellinghouse had become lawful prior to the date of issue of the notice.
9. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.

Formal Decision

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

AJ Steen

INSPECTOR