



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2020

Appeal A, Ref: APP/A5840/C/20/3249752

Appeal B, Ref: APP/A5840/C/20/3249753

Appeal C, Ref: APP/A5840/C/20/3249754

Appeal D, Ref: APP/A5840/C/20/3249755

Appeal E, Ref: APP/A5840/C/20/3249756

23 Oswin Street, London SE11 4TF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Alec Kingham (Appeal A), Mr Mark Hughes (Appeal B), Ms Sally Akiwumi (Appeal C), Mr Akibayeyo (Appeal D) and Co.Acqua Plus Developments Ltd (Appeal E) against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 14 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the carrying out of unauthorised development by the material change of use of the property from a single residential dwelling house to five self-contained residential units.
 - The requirements of the notice are
 - (i) Cease the use of the property as multiple units of accommodation.
 - (ii) Remove from the property all facilities and partitions relating to the use of the property as multiple units of accommodation.
Or and in the alternative to requirements (i) and (ii) above
 - (iii) Implement in full and complete the approved layout of the property as 3 units of residential accommodation in accordance with approved drawing numbers 04/21/2014E and 05/21/2014D of planning permission reference number 19/AP/0713 dated the 27 January 2020.
 - (iv) The three flats approved under reference number 19/AP/0713 shall each have their own door and have no other internal door subdividing any of the flats unless explicitly required by a fire safety regulation or to control access to a single room.
 - (v) Each of the three flats shall have only one room within it that may be used for the storage and preparation of food and equipment necessary to store and prepare food; that room shall be the kitchen of each flat as annotated on the approved plans referred to above. The ground floor flat shall have no more than three rooms to be used for sleeping (bedrooms). The 1st floor flat no more than one room used for sleeping and the top flat no more than three rooms used for sleeping. No additional room will contain a bed, mattress, sofa bed or similar facility for sleeping.
 - (vi) Any refuse or rubbish generated by complying with these requirements shall be removed from the property and be properly disposed of.
 - The period for compliance with the requirements is 12 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Decision

It is directed that the enforcement notice be varied by the deletion of steps (iv), (v) and (vi) within paragraph 5 and that step (vii) be re-numbered as (iv). Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

The Ground (g) appeals

1. The appeal relates to a mid-terrace property with 6 floors currently laid out as five flats.
2. Prior to the issue of the notice the subject of this appeal, the Council issued a notice in 2009 alleging without planning permission, the change of use of the land from a single residential dwelling house to five self-contained residential units and the unlawful erection and installation of a parapet wall and access door, pursuant to the creation of a roof terrace at the first floor level rear elevation. A subsequent appeal against this notice was dismissed. In relation to the use, the requirement of the 2009 notice was to cease the unauthorised use.
3. The 2009 notice was not complied with. Before the notice the subject of this appeal was issued, the Council advise that the appellant became bankrupt; the upper floor flats were sold to new owners and thereafter, planning applications were submitted for various new layouts within the property. On the 27 January 2020 the appellants' application to convert the property into three flats was given planning permission (Ref: 19/AP/0713, 'the 2020 permission'). Condition No 2 states that the development shall be begun (my emphasis) before the end of one year from the date of the permission.
4. The notice the subject of this appeal therefore sets out the requirements in the alternative, which are either to cease the use of the property as multiple units of accommodation and remove the facilities that enable multiple use or, to implement the 2020 permission.
5. The appeals have been lodged on ground (g) appeal, that the time given to comply with the requirements of the notice is too short. They are therefore limited in scope to a consideration of the time necessary to carry out those requirements. The notice requires the works be carried out in 12 months but in lodging the appeals the appellants do not specify what they would consider to be a more reasonable compliance period.
6. As there are no appeals on any other grounds, it has been virtually inevitable since the appeals were lodged on the 26 March 2020 that the unauthorised use of the property would either have to cease or the 2020 permission be implemented. The appellants seem to be under the impression¹ that they need to comply with both steps in the notice whereas it is clear that they are set out in the alternative. By making these limited appeals the appellants have already delayed the date when the notice will come into effect, knowing that its requirements will be upheld. During this time there has been nothing to prevent the appellants from making preparations to comply with the requirements while waiting for the appeals to be determined.

¹ Paragraph 6.05 Statement of Case

7. In essence, the appellants submit that more time is needed for the following reasons:
 - That the timescales in the notice and the 2020 permission conflict;
 - That the property is occupied and it will take time to obtain vacant possession; and
 - That compliance involves substantial preparation and physical work.
8. With regard to the conflict in the timescales, in my view it is not that they conflict but rather that they have different requirements. The 2020 permission requires that works to convert the property into three flats shall be begun before the 27 January 2021. The notice required the implementation of the 2020 permission in full by 27 March 2021.
9. It is not clear whether the appellants are concerned that the 2020 permission will expire before the compliance period ends in the notice. However, a planning permission can be implemented, and thus it can be kept alive, by the carrying out of a material operation comprised in the development. It has been open to the appellants to do that as soon as one of the flats was vacated. Now that the appellants have lodged their appeals, the compliance period in the notice will only come into effect from the date of this decision letter.
10. With regard to the occupation of the flats, the appellants state that all of the five flats are currently occupied by tenants with tenancy agreements. However, the Council state that their Council Tax records indicate Flats B and E have become vacant and Flats A and D are occupied by students, who, in theory, would have vacated the units by last summer. In addition, they state that the whole property was offered for sale with vacant possession, save for one flat, at an auction in September 2020. The outcome of this event is unknown. Nevertheless, it was open to the appellants to start work in the other flats whilst vacant possession was obtained for the remaining flat.
11. With regard to the operational development, whilst the country has been coping with the effects of a global pandemic, the Government has prioritised and supported the continued operation of the building industry. The Government has also extended its protection of private tenants and six months is now needed to issue a notice of intent to seek possession. It is my view that in the absence of any substantiated evidence, there is no reason why steps cannot be taken to gain full possession of the remaining occupied flat within 12 months.
12. Although the appellants refer to the need to obtain quotes and agree contractual terms, these activities relate to the time before the works can commence. The conversion works are described as being substantial but the appellants provide no details. However, they do state that they will take between 5-6 months.
13. I concur and on the basis of the information before me, it seems that the conversion works amount to changing the plumbing and wiring to facilitate the new flats; removing partitions, kitchens and bathrooms; fitting new kitchens and bathrooms and decorating. These works are largely internal other than the fitting out of two roof terraces. No extensions are to be demolished and no new extensions are to be built so the vagaries of the weather would not affect the carrying out of the work.

14. In conclusion, I have taken into account the time that may be needed to seek vacant possession and the appellants' own estimates for carrying out the conversion works. As such, I find that 12 months is a reasonable period for compliance, even allowing for the changes that have been introduced to everyday life brought about by Covid-19.
15. Notwithstanding my findings on ground (g), it is necessary though to vary the notice as some of the steps required to comply with the notice are excessive. In this case it is sufficient in the alternative to state that the 2020 permission shall be implemented in full, in accordance with the approved plans. Steps (iv), (v) and (vi) exceed what is necessary to remedy the breach of planning control and, as there would be no injustice caused to either party, they should be deleted.

Conclusion

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

D Fleming

INSPECTOR