



Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal Ref: APP/A5840/C/20/3251368

Unit 6, St James Industrial Mews, 276A St James Road, London SE1 5JX

- 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 Aharon Dodi against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice is dated 18 March 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the conversion and subdivision of the property in to two self-contained dwellings within the C3 use class (unauthorised use).
 - The requirements of the notice are: 1) Cease the unauthorised use of the property as two self-contained dwellings within C3 use class; 2) Restore the property to its condition before the change of use of the property to form two self-contained dwellings occurred, including the removal of all fixtures, fittings and particulars connected to the unauthorised use of the property as residential accommodation (including, for the avoidance of doubt any hob(s), kitchen sink(s), microwave/combo ovens and supporting shelves, kitchen work tops and kitchen cupboards, kitchen wall tiling and sockets and switches at work top level); 3) Remove from the property any material and debris resulting from compliance with the requirements 1) and 2) above to an authorised place of disposal.
 - The period for compliance with the requirements is twelve 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.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of all the text in the allegation and the substitution of it by the following text: *'Without planning permission, the material change of use, conversion and subdivision of the property in to two self-contained dwellings within the C3 use class (unauthorised use)'*. Subject to this amendment, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The determination of this appeal relates only to ground (f), which is a matter of mitigation. As I was able to assess the case from the written evidence alone, it was not necessary for me to carry out a site inspection.

The enforcement notice

3. With regard to the wording of the notice, it alleges the 'conversion and subdivision of the property'. The allegation is imprecise, whereas to reflect the

definition of the term 'development' in s55(1) of the Act, it should state a 'material change of use of the land'. I am satisfied that this correction does not cause any injustice, or make the notice more onerous.

The appeal on ground (f)

4. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
5. The appeal site was previously a garage associated with a nearby cleaning business. The Council have provided a summary of the planning history of the site, which includes a number of permissions for its conversion. The history shows that the principle for the conversion of the premises for residential use has been established. However, the Council confirm that the layout of the appeal site remains as two flats on the ground floor. The conversion therefore does not reflect any of the plans approved by the Council.
6. On 29 September 2017, planning permission was granted for 'erection of a first floor extension with rear roof terrace and two storey side infill extension to provide a one bedroom unit on the ground floor and a two bedroom unit on the first floor' (ref: 17/AP/0779). The gist of the appellant's case is that this planning permission remains valid, and its implementation should form a requirement of the enforcement notice by way of an alternative to the steps set out above.
7. This is on the basis that it allows Unit 6, which is the subject of the enforcement notice, to be converted into a one-bedroom flat. However, a number of matters arise. Firstly, permission 17/AP/0779 expired on 29 September 2020, and there is no evidence that it has been renewed or that work has begun that would have kept it extant.
8. Secondly, even if it could be shown that the permission remained extant, the purpose of the enforcement notice is to remedy the breach, and it should go no further than is necessary to achieve this purpose. In this case, the requirements of the notice are sufficient to remedy the breach by ceasing the unauthorised change of use and removing the physical works that have facilitated it.
9. To require the implementation of the 2017 permission would go beyond the purpose of the notice. It seems likely that requiring such work to be done would result in a change to the previous condition of the land, and there is no statutory power to require an appellant to undertake anything other than a reversion to the condition the building was in before the breach took place.
10. I am therefore satisfied that including the appellant's suggested requirement would amount to a positive requirement to possibly alter the previous condition of the building. This would be excessive and thus inappropriate, and so the appeal on ground (f) fails.

Conclusion

11. For the reasons above, the appeal is dismissed, and the enforcement notice, as varied, is upheld.

Elaine Gray INSPECTOR