
Appeal Decision

Site visit made on 10 November 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2021

Appeal Ref: APP/N5660/C/19/3241093

5 Glenister Park Road, London SW16 5DS

- 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 Vincenzo Giordano against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice Ref. EN/16/00086/3COU was issued on 10 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a single dwellinghouse to five self-contained flats ('the five unauthorised flats').
 - The requirements of the notice are
 - a) Cease the use of each of the five unauthorised flats and remove all internal doors, walls, partitions, kitchen units, appliances, bathrooms, and all other fixtures and fittings that facilitate the unauthorised use, from the premises; and
 - b) Disconnect and remove all electrical, water and gas services, including boilers and metres that facilitate the unauthorised use, from the premises; and
 - c) Remove all associated waste and debris resulting from compliance with above steps.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174 (2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Applications for Costs

2. An application for costs was made by Mr Vincenzo Giordano against the Council of the London Borough of Lambeth and by the Council against Mr Vincenzo Giordano. These applications are the subject of separate Decisions.

Procedural Matters

3. The appellant's agent has confirmed that the correct spelling of his name is Vincenzo Giordano.
4. There is no appeal under ground (a), therefore the merits of the development do not fall to be considered by me and I have given no weight to the appellant's arguments in favour of the development which include the high demand for single room accommodation and accessibility of the site in terms of public transport.

Ground (b)

5. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
6. The relevant date is the date on which the notice was issued, which in this case was 10 October 2019. The submissions made by the Council include a site note dated 2 October 2019 which is accompanied by annotated photographs. Thus, the date of the Council's site visit is consistent with the date of the notice.
7. During my site visit I noted that the premises is occupied generally as described in the Council's site note, the key difference being that the blocked doorway between the rear ground floor unit and the kitchen has a more permanent appearance. The other four living spaces had their own shower rooms and facilities for food preparation and cooking behind locked doors.
8. The appellant says that the kitchen is shared by all residents and identifies the extent of it in his submissions. However, the area which he has identified includes a large part of the hall and provides access to the rear ground floor unit. In terms of food preparation space, the useable area is less than half that indicated by the appellant.
9. The facilities in the kitchen include one fridge, one microwave and a plug in hot plate with two plates. There is no full scale oven and grill and no communal eating area. In short, the kitchen does not provide any more facilities than are provided in the individual living spaces, except for the rear ground floor unit.
10. A communal washing machine is located in the hallway and can be used independently from the food preparation area in the kitchen.
11. With the exception of the rear ground floor unit, all of the other living units have all the facilities to provide for a day to day private domestic existence. The proximity and limited scale and facilities of the kitchen are such that it is unlikely that it is used other than by the occupiers of the rear ground floor unit. It provides no meaningful additional benefit to other occupiers over what is already available to them.
12. On the balance of probability, I think it more likely than not that, other than the occupiers of the rear ground floor unit, the residents of the premises do not use the kitchen. Thus, it effectively provides food preparation and cooking space for the occupiers of the rear ground floor unit only which means that the occupiers of that unit also have access to facilities which provide for day to day domestic existence.
13. The appellant argues that the sink area which is provided in each bedroom is not a kitchen, but that in any case the sink area could be removed. He also says that there is nothing to prevent occupiers from having their own fridge or microwave in their bedroom. He considers the property to be a House in Multiple Occupation (HMO) and a Class C4 Use and says that the property has a licence to be used as a 5 bedroomed HMO (the HMO licence).
14. Whether the food preparation area, sink, fridge and cooking facilities have been provided by the landlord or the tenants, they provide the facilities necessary for day to day private domestic existence. Furthermore, although a copy of the HMO licence is not before me, in itself this document does not establish the use

of the premises and in any event the use may have changed since the HMO licence was granted.

15. The appellant refers to the single hot water cylinder and boiler and broadband service/WiFi router and says that he pays for these and other services. This demonstrates the financial relationship between the landlord and the tenants and does not address the issue of the way in which the premises are being used.
16. The appellant describes the facilities in the rooms as adding to the amenity of residents in a similar way to the provision of tea making facilities in hotel bedrooms. However, the facilities available to the tenants go significantly beyond the provision of a kettle and allow residents to prepare all of their meals in their rooms. Consequently, this analogy does not hold true for the existing arrangements at the premises.
17. In his final comments, the appellant accepts that the main use of the kitchen is by the occupiers of the rear ground floor unit, which is consistent with my findings. However, he goes on to argue that evidence of use by one resident does not demonstrate a lack of access to others. Nevertheless, while there is a door from the hall to the kitchen this does not provide evidence of its use by other tenants, which is for the appellant to show in support of his case.
18. The Council has provided evidence to show that for Council Tax purposes the property is registered as five individual properties, being paid individually. It is argued that this demonstrates that 5 Glenister Park Road has been changed from a single dwelling to five individual properties. The Council's view is that normally there would be one Council Tax bill for an HMO.
19. The appellant does not dispute that each of the five rooms is billed separately but he says that this is an internal matter for the Council. He says that he pays all the bills on the property and there is no information from the Council to suggest otherwise. On this basis I do not find that the Council Tax information provided by the Council is a determinative factor in reaching a decision that the property has been converted to flats.
20. Drawing all of these strands together I find that the appellant has not provided evidence, on the balance of probability, that there has not been a material change of use of the premises to five self-contained flats. For the reasons set out above, the appeal under ground (b) fails.

Ground (c)

21. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is also the balance of probabilities.
22. The matters which are alleged in the notice are the material change of use of the premises from a single dwellinghouse to five self-contained flats and I have concluded under ground (b) that this change of use has occurred.
23. The appellant's case is that something else has happened and he argues that the property has been converted from a single dwelling to an HMO. He sets out why he considers that this change of use is permitted development. However,

this is not the breach of planning control which the notice seeks to address, nor is it the breach of planning control which has occurred.

24. On the basis of the lack of evidence to demonstrate, on the balance of probabilities, that the use of the premises as flats does not constitute a breach, the appeal on ground (c) fails.

Ground (d)

25. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is again the balance of probabilities.
26. This ground of appeal assumes that at some stage there has been a breach of planning control, but that it is immune from enforcement, having subsisted for a four-year period in the case of change of use to a flat which is a dwelling house.
27. The appellant's case is that the premises have been converted into an HMO and he has not provided any evidence to demonstrate that the premises has been used for five flats, essentially because he does not regard such a change of use as having occurred. He has also provided no information in respect of the length of time the alleged HMO has been in use, which would need to establish use for a 10 year period. Thus, even if it had been appropriate for me to amend the notice to relate to use as an HMO, the appeal under ground (d) would have failed on the basis of lack of evidence.
28. For the reasons set out above the appeal under ground (d) fails.

Ground (f)

29. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
30. The purposes of an enforcement notice are set out in Section 173 of the Town and Country Planning Act 1990 (the Act) and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use as five flats to cease and that works be carried out, I consider the purpose is to remedy the breach of planning control and this is confirmed by the Council.
31. The appellant argues that any internal works to the premises do not require planning permission and cannot be enforced. However, S173(5) of the Act gives the power to require alteration or removal of works for the purpose of remedying the breach and this power extends to works which on their own might not constitute development or permitted development. The requirements of the notice are enforceable in that regard.
32. The appellant is concerned that the requirements of the notice would result in him having to restore the internal partitions and staircases back to how they were prior to the refurbishment when a rear and loft extension were

undertaken. He also considers that the requirements are unclear and do not provide certainty. However, the requirements are limited to those which facilitate the use of each of the five flats and do not refer to the rear extension or the loft extension specifically.

33. The requirements of the notice are appropriately detailed and the proviso in requirements 5(a) and 5(b) that limits the disconnection and removal works to those associated with the unauthorised use allows the appellant to determine what needs to be removed prior to works being carried out. Furthermore S57(4) of the Act allows reversion to the last lawful use and if any works were carried out for some other lawful use prior to material change of use it would be unnecessary to require their removal to remedy the breach. This is a matter between the appellant and the Council.
34. The appellant says that he would be willing to receive suggestions in relation to the requirements to allow the appeal to be upheld. However, these comments are made in the context of his view that the use of the premises is currently an HMO, which I have concluded, on the basis of the evidence, is not the case.
35. The appellant also says that he has already offered to remove the sinks from the rooms. The removal of the sinks would make food preparation in the rooms more difficult and less hygienic. Nevertheless, the retention of cooking facilities would continue to afford residents of the flats with facilities to provide for a day to day private domestic existence. Thus, the removal of the sinks only would not remedy the breach of planning control.
36. Drawing all these points together I conclude that it has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that the requirements exceed what is necessary. For these reasons appeal fails on ground (f).

Ground (g)

37. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of six months is too short because it does not allow sufficient time for existing occupiers to find suitable, alternative accommodation, which has been made more challenging as a consequence of the Covid 19 pandemic. He also says that five people would be at risk of being made homeless and that the Council does not have an adequate supply of housing to meet those needs.
38. The appellant considers that the compliance period should be extended to up to two years. However, he provides no information to support his argument that it would take this amount of time for occupiers of the premises to find alternative accommodation. The Council does not consider that an extension of the compliance period of this duration is justified.
39. However, the Council refers to its powers under S173A of the Act which allow for the compliance period to be extended should this prove necessary. In my view this would be an appropriate way to address any uncertainty in relation to the pandemic and, should it prove necessary, any delays in the occupiers finding alternative accommodation. Nevertheless, these powers are discretionary and purely within the Council's gift.
40. As the building is occupied as residential accommodation, the notice would cause the loss of someone's home or other accommodation. Therefore, the

right set out under Article 8 of the Human Rights Act 1998 is engaged. However, save for the disruption that finding alternative accommodation would cause the residents there is no evidence before me to suggest that such accommodation could not be found within the six-month compliance period.

41. I find that the six-month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeal on ground (g) should fail.

Conclusion

42. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Sarah Dyer

Inspector