



Appeal Decision

Site visit made on 15 June 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2021

Appeal Ref: APP/X5210/C/20/3263707

Land at: Flat 181 Drury Lane, London WC2B 5QF

- 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 Stefan Nagel against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice was issued on 14 October 2020.
- The breach of planning control as alleged in the notice is: Without planning permission: The use of the Property as 'temporary sleeping accommodation' (as defined by Section 25 of the Greater London (General Powers) Act 1973 and as set out in the 'Explanatory Note' below) for more than 90 nights in the same calendar year in breach of Section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973.
- The requirements of the notice are: Discontinue the use of the premises as 'temporary sleeping accommodation' as defined at Section 25 of the Greater London Council (General Powers) Act 1973 except to the extent allowed by Section 25A (1) of that Act, which permits the use subject to Conditions, including Conditions set out at Section 25A (2) (a) and (b) which limit use as temporary sleeping accommodation to a maximum of 90 nights in any one calendar year.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. I have inserted a missing word into the breach of planning control alleged in the notice, using my powers of correction under section 176 of the 1990 Act.
2. On the appeal form and questionnaire, both main parties have stated it is not essential for me to enter the site to check measurements or other relevant facts. So taking this into account, and the fact that the appeal is made only on legal grounds, I have not entered the site.
3. As there is no appeal on ground (a), I am not able to take into account any planning merits, such as any effects of the appeal development. Nor am I able to take into account the conduct of the appellant, which has been referred to by the landlord for the appeal property.

Reasons

4. An appeal on ground (b) is that those matters stated in the notice have not occurred. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. These are both legal grounds of appeal. As such, the burden of proof is on the appellant (and not the Council)

to make out their case, to the standard of the balance of probabilities, ie whether something is more likely than not.

The ground (b) appeal

5. The appellant states that, to the best of his knowledge, he is not in breach of the planning regulations and that in the last 12 months (ie to 9 November 2020), on the occasions when he has allowed people to stay in his flat, the cumulative number of days has not, to the best of his recollection, exceeded 90 days per annum. But an appeal on ground (b) is whether the breach stated in the notice had occurred by the time the notice was issued, as a matter of fact. It makes no difference whether the breach has ceased since the notice was issued.
6. The Council has submitted a witness log, provided by a neighbouring occupier, covering the period from 6 March 2020 to 27 August 2020. This indicates that the property had been let for 153 nights. In addition, the Council has utilised a data scraping tool to collate information from Booking.com which estimates that the property was let for approximately 152 nights as of August 2020. This is substantially consistent with the witness log. These sources contradict the appellant's version of events.
7. The appellant has questioned the reliability of the data scraping tool. But even if I were to disregard the data scraping tool, the witness log indicates that the matter stated in the notice has occurred. The appellant notes that only two witnesses have been produced by the Council. But this does not matter given where the burden of proof lies in an appeal on legal grounds.
8. The appellant considers he should be entitled to know the name of the witness who prepared the witness log so he may challenge their account personally, stating that, for all the witness knows, it could have been the appellant and his friends visiting on each and every occasion. But I do not find this likely given the significant number of stays recorded in the log. In other words, it strikes me that it would be obvious to the witness if it were the appellant visiting on each occasion with friends. Moreover, in planning enforcement investigations witness/complainant identities are generally kept confidential so as not to deter people from providing information that may assist the local planning authority in enforcing planning control.
9. The Council says the property has been advertised across several short term letting platforms. I do not find it likely that the property would be advertised in this way and not be let at all (particularly as the evidence provided indicates guests have left reviews of their stay). No booking information has been provided by the appellant to counter the data submitted by the Council, to indicate the property has been let for less than 90 nights. The appellant has stated that sometimes family members and friends occupy the flat. But I am not satisfied this explains the amount of letting identified in the Council's evidence.
10. The appellant's landlord has indicated that guests of the property have been work colleagues of the appellant. But based on the information provided, I am

not satisfied this makes any difference given the way that temporary sleeping accommodation¹ is defined in the 1973 Act.

11. Taking into account all of the above points, I find it more likely than not that the breach of planning control alleged in the notice has occurred. Accordingly, the appeal on ground (b) fails.

The ground (c) appeal

12. In an appeal on ground (c), the matters stated in the notice may not constitute a breach of planning control if what is alleged in the notice is not "development", as defined by section 55 of the 1990 Act, or if planning permission exists for what is alleged in the notice.
13. Section 55 of the 1990 Act states that "development" includes the making of any material change in the use of any buildings or other land. For the purposes of defining what constitutes development, section 25(1) of the Greater London Council (General Powers) Act 1973 states that the use as temporary sleeping accommodation of any residential premises in Greater London involves a material change of use of the premises and of each part thereof which is so used. So there is no doubt that the use of the appeal property as temporary sleeping accommodation constitutes "development".
14. There is no evidence that planning permission exists for the appeal development. Accordingly, the appeal on ground (c) fails.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

16. It is directed that the enforcement notice is corrected by the insertion of the word "Council" after the first mention of "Greater London" in the breach of planning control alleged. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

L Perkins

INSPECTOR

¹ "Use as temporary sleeping accommodation" means use as sleeping accommodation which is occupied by the same person for less than ninety consecutive nights and which is provided (with or without other services) for a consideration arising either – (i) by way of trade for money or money's worth; or (ii) by reason of the employment of the occupant; whether or not the relationship of landlord and tenant is thereby created.