



Appeal Decision

Virtual Inquiry Held on 6 July 2021

Site visit made on 7 July 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th August 2021

Appeal Ref: APP/W2465/C/20/3263175

Land at 40 - 42 Cavendish Road, Leicester LE2 7PH

- 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 Amarjit Kullar on behalf of Sonatex Ltd against an enforcement notice issued by Leicester City Council.
- The enforcement notice was issued on 13 October 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use from house to 7 self-contained flats (7 x 1 bed)(Class C3); Unauthorised construction of two storey and single storey extension to rear, unauthorised construction of dormer extensions to the front and rear of the Property.
- The requirements of the notice are:
 1. Demolish the two storey and single storey extensions to the rear of the property.
 2. Demolish the dormer extensions to the front and rear of the property.
 3. Cease the use of the property as 7 self-contained flats (numbered 40 Cavendish Road, 42 Cavendish Road flats 1, 2, 3, 4, 5 and 6.
 4. Remove all fixtures and fittings relating to the use as 7 self-contained flats stated in clause 5.3 above.
 5. Remove all resultant materials from the site.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part on ground (f), but otherwise the appeal fails and the enforcement notice is upheld as corrected and varied in the terms set out in the Formal Decision.

Procedural issues

1. The appellant's interest in the land is not apparent from the appeal form. Mr Kamboz confirmed at the Inquiry that Mr Kullar is a company director of Sonatex Ltd and that Mr Kullar submitted the appeal on the company's behalf. The Council accepted that 'Sonatex Ltd' had been incorrectly omitted from the appellant details on the appeal form. No injustice has been caused by this error and I shall determine the appeal on this basis.
2. All the evidence was affirmed at the Inquiry, which sat for one day.
3. The plan provided on page 60 of the appellant's Appendices bundle shows that 2 self-contained flats are located within the original dwelling, 1 self-contained flat is contained within the extended roof space and 4 self-contained flats are located within the two storey and single storey extension. I saw that the flats' entrance door locations accord with the plan. There is no dispute that the submitted plan is inaccurate and I have no reason to disagree. I find that the

plan provides an accurate depiction of the layout of the flats within the extended building, and I shall proceed on that basis.

The notice

4. There is no dispute that the matters alleged in the notice, change of use of a dwellinghouse into 7 self-contained flats, have occurred. As 3 of the 7 self-contained flats are accommodated in the two storey and single storey extension to the rear and one of the 7 self-contained flats is accommodated in the roof space, the operational development described in the allegation has facilitated the material change of use to 7 self-contained flats.
5. Furthermore, there is no need for the allegation to refer to 'unauthorised' change of use or 'unauthorised' construction as it has already identified that the breach of planning control alleged is 'without planning permission'. For precision, the allegation should refer to a 'material change of use' as a change of use is not development unless it is 'material'. Having established that a material change of use to 7 self-contained flats is alleged, it is unnecessary to include '(7 x 1 bed)(Class C3)'.
6. For greater precision, the notice should describe the alleged breach of planning control in the following way:

'without planning permission, the material change of use from a dwellinghouse to 7 self-contained flats facilitated by the construction of two storey and single storey extension to rear and construction of dormer extensions to the front and rear of the property.'
7. S176(1)(a) allows me to correct any defect, error or misdescription in the notice and I shall correct the notice to clarify that the operational development facilitated the material change of use. I will determine the appeal on the basis of the corrected allegation as set out in paragraph 6 above. No injustice would arise to any party from my correction of the notice as set in paragraphs 4 and 5 above.

Ground (d) appeal

8. For the appeal to succeed on this ground the appellant must show that, at the date the notice was issued, no enforcement action could be taken in respect of the corrected alleged matters. The relevant test is the balance of probability. The relevant period of immunity is 4 years, beginning with the date of the breach¹. The notice was issued on 13 October 2020 and the breach of planning control would have to be shown to have occurred on or before 13 October 2016, the material date.
9. The appellant claims that the two storey and single storey extension was substantially complete when the property was purchased, in late 2015. It is claimed that they only carried out refurbishment works and the construction of the front and rear dormers, before leasing the property for occupation as 7 self-contained flats, which commenced from the 9 or 10 October 2016. Evidence in the form of planning history, statutory declarations, rental agreements, builder's contract and invoice, and several other documents are provided to corroborate the appellant's version of events.

¹ S171B(1) and (2) of the Town and Country Planning Act 1990 as amended

10. To establish immunity, it is necessary to determine the date of the change of use to 7 self-contained flats and regard should be had to 2 factors:

- When each of the self-contained flats provided viable facilities for day-to-day living, having regard to the characteristics of a dwellinghouse set out in *Gravesham*²; and
- When the use of each self-contained flat began.

Once that date is established then it needs to be shown that each of the self-contained flats has been occupied continuously for a period of 4 years.

11. The appellant claims that planning permission for the "*change of use from house to 3 self-contained flats and the construction of a single and two storey extension at the rear*" (application reference: 20140540) (the 2014 PP) had been implemented prior to their purchase of the property. Conversely the Council claim the planning permission was not implemented and has expired. The two storey and single storey extension that has been completed is not that shown on the 2014 PP approved drawings. Furthermore, the front and rear dormers were also constructed as part of the single building operation which culminated in the provision of the 7 self-contained flats. The development is therefore significantly different in scope to that which was approved. I find the implementation or otherwise of the 2014 PP to have no relevance to the ground (d) appeal.

12. The 'Rainbow Construction Revised Quotation/ Invoice' dated 17 July 2016 (the Quotation) describes the works to be completed as "*conversion and extension of property into flats*". The staged payment plan, within the Quotation, includes the detail "stage 2 – Foundation - £2,500". The two storey and single storey extension would have been the only part of the development that required the provision of foundations. As such I find it more than probable that the two storey and single storey extension was erected as part of the works to facilitate the change of use to 7 self-contained flats.

13. The Quotation also states that the works would be started on 6 August 2016 and would end on 6 October 2016. While this document provides contingency arrangements in the form of potential extensions of time, Mr Kamboz stated that no extension of time was agreed or utilised. The Quotation provides an anticipated completion date rather than an actual completion date. Furthermore, it does not show when the extended building provided viable facilities for day-to-day living within each of the 7 self-contained flats, which I will turn to later.

14. The Google Street view image specifies an 'image capture' date of 'Oct 2016' and shows that the building works are on-going at the property. While there is no doubt that this image was taken at a time when the conversion works were on-going, there is nothing before me to attest to the accuracy of the image capture date. Given the evidence before me, showing that occupation of the converted property had occurred by mid to late October 2016, I find the image capture date to be less than credible.

15. The Rainbow Construction Invoice dated 10 August 2016 and labelled 'Invoice No: 10' (the Invoice) does not tally with the provisions of the Quotation. Mr Kamboz claimed that this invoice was for additional works that fell outside

² *Gravesham BC v Secretary of State for the Environment* (1982) 47 P & CR 142

the works detailed in the Quotation and that Rainbow Construction's invoice numbering was not specific to the appeal property. It is not uncommon for additional works to arise during the carrying out of building projects, however the job description on the Invoice is "refurbishment and flat conversion", which is similar to the description found on the Quotation. It is not possible to identify what works each of these documents specifically related to and Mr Kamboz could offer no further details. Even if I were to take the Invoice at face value, it only corroborates that building works were on going at 10 August 2016.

16. The Initial Notice deposited with the Council by Jhai Limited is dated 5 August 2016. The Council's corresponding letter of acceptance of that Initial Notice is also dated 5 August 2016. These go some way to corroborating that building works were begun in accordance with the details specified in the Quotation. It is however of note that the Initial Notice and Initial Notice Acceptance documents refer to "*4 number 1 bed self-contained flats with rear loft dormer and rear extension*" and that the address is 42 Cavendish Road. Mr Kamboz had no explanation for this as he said that he had no direct dealing with Jhai, who had been instructed by Rainbow Construction Ltd.
17. The Council's letter dated 7 December 2020 (the Letter) confirms that the Approved Inspector cancelled the Initial Notice and therefore the building works undertaken are classed as unauthorised and in contravention of Building Regulations. The Letter does not confirm that the development had not been completed. In fact, the Letter goes on to confirm that "*you will be required to open up work as determined by the Building Control Surveyor to show that the requirements of the regulations have been met...*". This implies that building works had been completed by 7 December 2020, which we know to be a matter of fact.
18. Mr Kamboz confirmed that Sonatex Ltd leases the whole property to a single company, who are then responsible for leasing each of the 7 self-contained flats. Notwithstanding the legitimacy of the 'rental agreement' entered into between Sonatex Limited and F1 Trading Ltd, the first agreement relating to the leasing of the whole property was signed on 5 October 2016 for the rental period 6 October 2016 to 8 April 2017. Normally, I would expect a commercial company to only take a lease on a building that is ready for occupation. Nevertheless, the evidence relating to F1 Trading Ltd does not show when each of the 7 self-contained flats possessed viable facilities for day-to-day domestic living on or before the material date.
19. When the use as 7 self-contained flats began also needs to be considered and the evidence assessed so far does not contribute to identifying the date when the use of the 7 self-contained flats began. The street numbering information and evidence relating to council tax, may demonstrate that the 7 self-contained flats existed at the dates on the respective documents, but they do not show when occupation of each of the 7 self-contained flats began.
20. As set out above, Mr Kamboz confirmed that neither he or Sonatex Ltd has first-hand knowledge of or involvement with any individual tenant of any of the 7 self-contained flats. Evidence purported to support the residential occupation of the 7 self-contained flats includes a number of 'rental agreements'. While there was some debate about the legality of these agreements, on the face of it they confirm that Sonatex Ltd employed an agent to lease out the whole property, which was initially 'F1 Trading Ltd' and then 'A & S Properties'. These

rental agreements show that between 9 October 2016 and 10 September 2019 the property was leased by a series of companies: YNES Ltd, Agapol Ltd and Krevetpol Ltd. From 10 September 2019 to 9 September 2020 Flats 40, 42A, 42B, 42C, 42D, 42E were leased by Mr Patrzalek Grzegorz and between 24 October 2019 to 23 October 2020 Flat 42F was also leased by Mr Patrzalek Grzegorz. It is of note that Mr Patrzalek Grzegorz appears to have signed the previous rental agreement on behalf of Krevetpol Ltd. Other than the suggestion that Mr Patrzalek Grzegorz occupied each flat, these documents do not provide details of who lived in any of the 7 self-contained flats since the material date.

21. There are further rental agreements between YNES UK and 6 individual tenants as follows:
 - Ovidiu Ionut Ababei – No 40 (6 months beginning on 15 October 2016);
 - Nicole Barbu - No 42A (6 months beginning on 17 October 2016);
 - Sumra Rafiq - No 42B (6 months beginning on 9 October 2016);
 - Diaconu Elena Ancuta - No 42C (6 months beginning on 13 October 2016);
 - Dumitru Giani - No 42E (6 months beginning on 16 October 2016); and
 - Patel Iliyas Gulambhai - No 42F (6 months beginning on 11 October 2016).
22. Rental agreements do not demonstrate use of the self-contained flats, only that the property had been leased. Other documentation provided to corroborate residential occupation in this case includes a sworn declaration from Ovidiu Ionut Ababei, which confirms their occupation of No 40 between 15 October 2016 and 14 April 2017. Their occupation started after the material date and does not confirm a continuous 4-year period of occupation.
23. Furthermore, even if these rental agreements were taken to demonstrate when the use of each self-contained flat had begun, they only demonstrate that the use of 2 self-contained flats (No 42B and No 42F) had potentially begun on or before the material date.
24. Drawing all of the above threads together, and in the absence of a date at which each of the 7 self-contained flats provided viable facilities for day-to-day domestic living and given the limited evidence relating to the use of each of the 7 self-contained flats, I find it less than probable that the material change of use of a dwellinghouse to 7 self-contained flats had occurred on or before the material date.
25. Even if I were to find that No 42B and No 42F were occupied before the material date, there is no evidence to show that these flats were continuously occupied between March/April 2017 and 10 September 2019. Furthermore, it would be improbable that Mr Patrzalek Grzegorz could have continuously occupied each of the 7 self-contained flats between September/October 2019 to September/October 2020.
26. The appellant has therefore failed to show, on the balance of probability, that the material change of use from a dwellinghouse to 7 self-contained flats occurred on or before the material date or that the use as 7 self-contained flats

has been continuous, without significant interruption, for a period of 4 years or more. The matters alleged are not therefore immune from enforcement action having regard to s171B(2) of the 1990 Act.

27. For the reasons given above, the appeal on ground (d) fails.

Ground (f) appeal

28. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.

29. The purpose of the notice is to remedy the breach of planning control. S173(5)(a) confirms that the notice can require "the alteration or removal of any building or works" that facilitate the development. The use of the 7 self-contained flats would need to cease, the two storey and single storey extension and dormer extensions to the front and rear of the property would need to be removed along with all fixtures and fittings facilitating the use as 7 self-contained flats to remedy the breach of planning control. The requirements of the notice would achieve this and are not excessive.

30. To remedy the breach of planning control the use of all 7 self-contained flats needs to cease and all the fixtures and fittings which facilitate that use need to be removed. Specifying the number of self-contained flats in requirements 3 and 4 implies that the removal of one self-contained flat could achieve compliance without fully addressing the breach of planning control. It is clear from the evidence before me that the appeal parties understand that it is the cessation of the use of all the flats that is required. No injustice would arise from the deletion of the number 7 from requirements 3 and 4 and, for precision, I shall vary the notice accordingly as the variation does not make the requirements any more onerous than first issued.

31. The appellant confirms that the dormer extensions to the front and rear of the Property will be removed, but goes on to argue that steps 1, 4 and 5 are excessive as they would exercise their permitted development rights for domestic extensions³ and change the use of the dwelling to a house in multiple occupation⁴ (HMO) if the notice is upheld. An HMO could be occupied by a maximum of 6 residents and the appellant further claims that "*there is no material impact on amenity of use of the Site as 7 self-contained flats compared to a 6 resident HMO. At most [the notice] should require removal of one self-contained flat and the fixtures and fittings that go with that one self-contained unit*".

32. Where a notice has been issued in respect of the development of land, S57(4) of the 1990 Act provides for the use of the site to revert to use as a single dwellinghouse without planning permission. Once the notice has been complied with, the single dwellinghouse would benefit from permitted development rights.

³ Schedule 2, Part 1, Class A and Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

⁴ Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

33. Permitted development rights would allow some extensions to a single dwellinghouse. The two storey and single storey extension would not however fall within the scope of the permitted development rights. In this case, the reversion to a single dwellinghouse and exercise of permitted development rights for extensions and alterations would be unlikely to see the reinstatement of the two storey and single storey extension. As such, I find that the claimed fallback position does not exist, and the removal of the two storey and single storey extension is not excessive to remedy the breach of planning control.
34. Similarly, permitted development rights for a single dwellinghouse would provide for a change of use to an HMO. Up to 6 residents living in an HMO is materially different to residents living in 6 self-contained flats. Furthermore, the appellant has not provided any details to show how the 7 self-contained flats could be altered to create a 6 person HMO or 6 self-contained flats. Even if details had been provided, there is no ground (a) appeal before me for consideration. For these reasons, there is no credible fallback position and I find requirements 1, 4 and 5 to be necessary to remedy the breach of planning control.
35. The steps required do not exceed what is necessary to remedy the breach of planning control. However, for greater precision, I will vary the steps required to comply with the notice. The appeal on ground (f) succeeds to this limited extent.

Ground (g) appeal

36. For an appeal to succeed on this ground it must be shown that the compliance period specified in the notice falls short of what should reasonably be allowed.
37. The appellant suggests that 6 months is too short given the current pandemic situation as tenants would need adequate time to find alternative accommodation. They go on to suggest that, once the property is vacated, the building works would need to be completed and there is a shortage of building materials, which could delay the completion of works. Furthermore, it is claimed that securing a contractor to complete the works could also add to the time needed. A period of 12 months is suggested as a reasonable compliance period by the appellant.
38. In this case, the Council advised that they normally specify a compliance period of 3 months but, having considered the effects of the pandemic, a compliance period of 6 months was given. We also heard from Mr Kamboz that Rainbow Construction Ltd are retained by the appellant to undertake building work on their behalf. While there may be a shortage in building materials nationally, I consider 6 months to be adequate to secure any necessary materials and complete the necessary works following the vacation of the 7 self-contained flats.
39. For these reasons, the appeal on ground (g) fails.

Overall conclusion

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

Formal Decision

41. It is directed that the enforcement notice be corrected by:

The deletion of the words 'the unauthorised change of use from house to 7 self-contained flats (7 x 1 bed)(Class C3); Unauthorised construction of two storey and single storey extension to rear, unauthorised construction of dormer extensions to the front and rear of the Property' and the substitution of the words 'the material change of use from a dwellinghouse to 7 self-contained flats facilitated by the construction of two storey and single storey extension to rear and construction of dormer extensions to the front and rear of the property' in section 3:THE BREACH OF PLANNING CONTROL;

and varied by:

The deletion of the number '7' from requirements 3 and 4 in section 5: what you are required to do.

Subject to the correction and variation, the appeal is dismissed, and the enforcement notice is upheld.

M Madge

INSPECTOR

