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## Appeal Decisions

Site visit made on 12 January 2022

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 January 2022**

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### **Appeal A Ref: APP/U5360/C/20/3257737**

**Unit 4C, 3-9 Belfast Road (AKA Ground Floor 5 Belfast Road), Hackney, London, N16 6UN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Pall Mall Estates against an enforcement notice issued by London Borough of Hackney.
  - The notice, reference 2018/0210/ENF, was issued on 22 July 2020.
  - The breach of planning control as alleged in the notice is without planning permission the material change of use of the property to a four bedroom self-contained residential unit.
  - The requirements of the notice are to: 1. Cease the residential use' of the property. 2. Remove all the partition walls, fixtures and fittings which facilitate the residential use of the property. 3. Remove all but one bathroom from the property. 4. Make good all damage to the property resulting from the removal of the unauthorised works. 5. Remove from the property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
  - The period for compliance with the requirements is: 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
  - An identical appeal has been made by Mr Damien Pajek, reference APP/U5360/C/20/3257738
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### **Decisions for 3257737 & 3257738**

1. It is directed that the enforcement notice is varied by the deletion of requirement 2. Subject to that variation, the appeals are dismissed and the enforcement notice is upheld.

### **Background to the Appeal**

2. Belfast Road is a winding back street that is lined partially by warehouses and other commercial uses and also a terrace of houses. The warehouses seemed to have largely been subdivided into smaller spaces and rented out, many for studio spaces for the creative industries. The large warehouse complex at 3-9 has been divided into various smaller, but still substantial, units, one of which is 4c. In turn 4c was divided into four separate small studios.
3. Two appeals have been made against the notice one by Mr Pajek who is the person who leased 4c and it seems originally carried out the works of sub-division and a second by Pall Mall Estates who are the owners of the unit. It seems that originally the owners were content to rely on Mr Pajek's representations but at a later date have stepped in with their own evidence. I

have pieced together the following version of events from all the evidence provided.

### **The Appeal on Ground (b)**

4. Mr Pajek carried out the works, apparently in 2016, and created four small studios, each was provided with a small bathroom with a toilet, sink and shower. The unit also had a shared kitchen and lounge space. In 2018 the Council carried out a site visit in which they noticed all four studios had been turned into bedrooms. In essence unit 4c had been converted into an HMO. A second visit in July 2020, showed two of the studios to be empty but 2 were still lived in. photographs from this later visit showed the two occupied studios kitted out as bedsits and the shared kitchen space clearly appeared to be being used as a lounge and kitchen area.
5. The notice was issued on the 22 July 2020 and I have no doubt that at that time a material change of use to a four bedroom residential use had occurred. No evidence was found at either of the visits by the Council of any commercial use and I have been provided with no evidence of any commercial use taking place at the unit before September 2020. The appeal on ground (b) fails.

### **The Appeal on Ground (f)**

6. Since the issue of the notice the situation has changed. Pall Mall Estates took back control of the unit and gave Mr Pajek a notice to quit. At the site visit I met the new leaseholder who has converted the unit back into commercial studios and reduced the kitchen area considerably by creating a 5<sup>th</sup> studio. All five were clearly being occupied by commercial tenants, two in the fashion industry, a brewery admin office, a journalist/music writer and an on-line yoga studio. The new studio does not have any ensuite facilities. Of the other 4, two have had the shower, either removed or disabled, and are used for storage, one is still usable, and the partitions around the fourth have been re-arranged so that it now acts as a communal facility for the whole unit. I have been given documents showing that from September 2020 the studios began to be occupied once more by commercial tenants.
7. I shall clearly uphold the notice as the residential use did take place. The issue is what steps should the owners take to ensure it does not recur. I agree that splitting the unit into four smaller spaces would seem to work very effectively for commercial uses, and evidence has been provided of similar spaces in another of the sub-divided warehouses that are part of the 3-9 Belfast Road complex. It is therefore unnecessary to require the removal of the partition walls.
8. The bathrooms are another matter. Despite a tenant of another of Pall Mall Estates' buildings providing a letter suggesting that ensuite facilities are useful, given the already small space available it would seem to me the ensuites in this unit are an unnecessary luxury. That would seem to be the opinion of the current leaseholder who has removed two of the showers and is clearly intending to create a single shared bathroom for all the occupants. Removing three of the four ensuites as required by the notice would make it much harder to resume the unauthorised residential use in the future.
9. Pall Mall Estates suggest the original 2016 conversion was to create four lawful workspaces and the residential use only began later. Therefore the ensuites

were lawful when installed and so cannot now be required to be removed as per Kestrel Hydro<sup>1</sup> and the other court cases on this subject. However, there is no evidence at all for a commercial use at that date and it would seem odd to me to spend the money on providing individual ensuite facilities for such small studio spaces. In my view on the balance of probabilities the ensuites were installed to facilitate the unlawful material change of use and so can be required to be removed by the notice.

### **Conclusion**

10. I shall uphold the notice but amend the requirements to enable the partitions to remain, but three of the ensuite facilities will still have to be removed.

*Simon Hand*

INSPECTOR

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<sup>1</sup> Kestrel Hydro v SSCLG & Spelthorne BC [2016] EWCA Civ 784