



Appeal Decision

Hearing held on 11 January 2022

Site visit made on 12 January 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 03 February 2022

Appeal Ref: APP/U5360/C/20/3265866

William IV, 7 Shepherdess Walk, LONDON, N1 7QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Max Barney Pub Company Limited against an enforcement notice issued by London Borough of Hackney.
 - The notice, reference 2020/0214/ENF, was issued on 26 November 2020.
 - The breach of planning control as alleged in the notice is MCU FROM PUBLIC HOUSE TO 2 SELF CONTAINED RESIDENTIAL UNITS.
 - The requirements of the notice are to: 1. Cease the use of the property as self-contained residential units. 2. Remove all fixtures and fittings including all internal partitions, doors, bathroom & kitchen fixtures and fittings associated with and facilitating the unlawful material change of use to self-contained residential units; and, 3. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of the words "2 months" and the substitution of the words "18 months" in the compliance period. Subject to that variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. At the Hearing the appellants informed me they had made a separate application to convert the upper floors of the building into two flats and that they had negotiated a s106 obligation to cover the various payments and other requirements of the Council. As a result the Council were about to issue a grant of planning permission for the change of use of the first and second floors. This was agreed by the Council.
3. It was agreed I should continue the hearing to consider only the ground floor and basement of the building and when it was confirmed the planning permission was granted (which should be within a few days) that would override the notice in so far as it referred to the first and second floors. I should also extend the compliance period to enable the planning permission to be implemented (thus ensuring the notice no longer bites on the upper floors). As the planning permission has now been granted, I shall act as noted above.
4. The appellants also withdrew the ground (e) appeal. The effect of this is to leave only grounds (b) and (c) for the ground floor and basement and ground

(g) overall. There is no need to consider ground (f) as that related to the ground (a) appeal which has been overtaken by events.

The Appeal on Grounds (b) and (c)

5. This turns on the sole issue of the status in planning of the use of Property Guardians. Once the pub had ceased trading it was left empty and the appellant turned to a security company who installed Property Guardians (PGs) on the ground floor of the building. As I understand it, this is a relatively new, but popular form of providing security for empty buildings that would otherwise be vulnerable to squatters. The PGs have to live in the building as they find it without making any substantial changes and provide on-site security, and in return pay a below market rent to the security company. It is intended to be a temporary solution until a viable use is found for the building.
6. Various Councils (including Hackney itself) and numerous private landlords use this service to secure buildings that are otherwise vacant on a temporary basis. The problem is there would appear to be no advice or regulations concerning the planning matters that might arise. The Greater London Authority is aware of this and has issued a discussion paper but so far with no results. The problem in this appeal is that although the appellants have no desire or intention to claim or suggest that the installation of the PGs has created a material change of use to residential, the Council are concerned this is exactly what has happened.
7. On the one hand the appellant points out the occupation by PGs is only temporary and involves no substantive works to the building. To turn the building back to a pub would therefore also require no work, which suggests there had not been a material change of use in the first place. On the other hand the Council point out that the pub use has ceased and there is no dispute that ground floor and basement are being used only as residential accommodation.
8. I noticed on the site visit that a partition had been erected which split the bar area in half and was further sub divided into two private bedrooms. No other works seem to have been carried out. The bar was used as a kitchen with a plug-in hob and microwave; toilets and a shower already exist and the basement seemed to be used as a lounge/music practice space/gym and recording studio. I agree the partitions may not be 'substantive' and could easily be removed but even so there have clearly been some works to convert the pub into a dwelling. The use of the ground floor and basement for residential purposes is materially different from its use as a pub. The fact that there have been no substantive works is of little relevance as it is the use that is important. As to its temporary nature, there is no guarantee of how long that will be. If it proved difficult to rent out the pub then it is possible the PGs could remain and after 4 years an LDC for a material change of use could be applied for. Given what I have seen such an application would be difficult to resist.

Conclusion and Ground (g)

9. In my view it is clear that a material change of use to a residential use has taken place, the sole use of the ground floor and basement is residential and so the appeals on ground (b) and (c) fail. Planning permission has been granted for the conversion of the first and second floor to a flexible use as either two

self-contained residential units or a sui generis public house use. The ground floor still needs to be secured by the PGs and time needs to be allowed for the planning permission to be implemented. I shall therefore extend the compliance period to 18 months by which time it should be clear what is happening to the building as a whole. It also means the current PGs will not be made homeless.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jan Dolman - planning agent
Oliver Coleman - planning agent
Claire Saffer - solicitor

FOR THE LOCAL PLANNING AUTHORITY:

David Daines - planning enforcement