



Appeal Decision

Inquiry held on 19 October 2022

Site visit made on 19 October 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2022

Appeal Ref: APP/E5330/C/19/3228120

82 St. Margaret's Terrace, Plumstead, London SE18 7RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Ugur Halil against an enforcement notice issued by the Council of the Royal Borough of Greenwich.
- The notice was issued on 4 April 2019.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised conversion of and making of a material change of use of a single self-contained family dwelling house, into 7 self-contained studio flats at the property.
- The requirements of the notice are:
 - (i) To permanently cease the use of the property as self-contained flats and revert to use of the Property as a single dwelling house; and
 - (ii) To permanently remove from the Property all debris and spoil generated as a result of the requirement (i) above.
- The period for compliance with the requirements is: 12 months.
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

Applications for costs

1. An application for costs was made by Mr Ugur Halil against the Council of the Royal Borough of Greenwich. This application is the subject of a separate Decision.

Preliminary Matters

2. Following the Inquiry, I viewed the building from the outside. However, as agreed with the parties, I have not viewed the inside of the building.

The Appeal on Ground (d)

3. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. The main issue is whether the use of the property as seven flats has become lawful under Section 171B of the Town and Country Planning Act 1990. This states that no enforcement action could be taken after the end of the period of four years beginning with the date of the breach.
4. The enforcement notice was issued on 4 April 2019. The four year period would need to have been complete before the enforcement notice was issued in order for the use to have become lawful. During that four year period, there would

need to be a continuous breach of planning control by use as a dwelling. Essentially, the building would have needed to be occupied without significant interruption. Such an interruption would comprise a period when the Council could not have taken enforcement action against the use of the appeal site, as set out in case law¹.

5. The judgement in *Ocado Retail Ltd v Islington LBC* [2021] EWHC 1509 (Admin) states that the four year period could be any period before the enforcement notice was issued. Once that right has been accrued, it is not lost if the right has not been exercised for a period of time, provided there has been no abandonment or new use introduced.
6. My attention has also been drawn to *Bansal v SSHCLG & LB of Hounslow (IP)* [2021] EWHC 1604 (Admin) that related to the use of a building for two flats. Taking account of the conclusions of that judgement, each flat should be considered an individual planning unit and any four year period would apply to each flat rather than the building as a whole. This suggests that I could find that one or more of the seven flats had become lawful.
7. The documentary evidence presented primarily consists of copies of Assured Shorthold Tenancies (ASTs) through the period in which the appellant claims the property has been used as seven flats. Additional evidence, such as some records of deposits and relating to Council Tax, have been provided. At the Inquiry, all evidence was given on affirmation or oath. However, the Council have indicated that further documentary evidence would be required to demonstrate any lawful use. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be sufficiently precise and unambiguous, even if there is no evidence to contradict it.
8. The ASTs provide that the flats can be occupied for a fixed term from a set date. There is nothing in the ASTs requiring that flats be occupied and it is possible that a tenant could rent the flat, but not live in it. For example, one tenant, Ms Kentish-Saunders, provided evidence that she had another home during the latter part of her occupancy, although she stayed in Flat 4 a few nights a week and kept clothes and other belongings in the flat such that the residential use continued to be active in that case. Nevertheless, on the balance of probability and in the absence of contradictory evidence, I consider that the flats would have been occupied during the period of the ASTs.
9. Although ASTs provide a fixed term for a tenancy, that does not mean that the tenant has to vacate the flat at the end of their term. They are able to remain after the end of the term. During the time the property has been managed by PK Sales & Lettings, Mr Olubunmi confirmed that, when asked, he allows tenants to stay beyond the end of their term. If that is likely to be shorter than six months, the minimum term of an AST, occupation is able to 'roll over'. However, he told the Inquiry that he normally arranges a new AST if the tenant is intending to stay for a longer period.
10. The appellant and his brother bought the property in 2006 and subdivided it into ten units in 2008. However, the manner in which it was subdivided did not work, so in 2011 the internal layout of the building was re-configured to form

¹ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226, *Swale BC v FSS & Lee* [2005] EWCA Civ 1568 and *Islington LBC v SSHCLG* [2019] EWHC 2691 (Admin)

the seven flats as they now exist. Therefore, the first occupancy of the flats following that re-configuration could constitute the beginning of their use as individual planning units subject of this enforcement notice, provided they were occupied without significant interruption for a period of four years.

11. The brother of the appellant moved into Flat 1 on 1 March 2011 and stayed for approximately ten months before it was let to another tenant. His periods of occupation within the flats were not subject of ASTs. The other flats were subject of ASTs starting between 1 March and 5 October 2011.
12. Marketing of the flats during the first period following their creation, until 2015, was carried out by the landlord. There was limited marketing, which meant that gaps between tenancies were longer than may have been the case had agents been used. ASTs were initially based on those provided by an agent, but others used a form obtained from a stationer or the internet. I understand that some tenants were allowed to stay for a period beyond the end of their tenancies. Given the passage of time since these events, the appellant was unable to recall all of the precise dates tenants vacated their flats, except that it was following the end of the term of their ASTs. Consequently, the gaps between tenants aren't always clear. Short gaps between tenants can be a natural incidence of letting that would not affect the ability of the Council to issue an enforcement notice. However, longer gaps may mean that there is a significant interruption in occupation.
13. In April 2012, there was an attempted break in of the property. The front door was damaged and a window into Flat 1 was broken. Both were subsequently boarded up, although in a manner that allowed the door to remain in use to allow access for occupants of the flats. The occupant of Flat 1 moved out of that flat the following day. Flat 1 was subsequently used for storage by the landlord, particularly of furniture such as beds and mattresses as the flats have always been let fully furnished, and other items relating to the management of the building. That meant Flat 1 was not used as an independent residential unit. This meant that there was a break in the use of Flat 1 for the period it was used for storage.
14. In 2015 the landlords decided that they no longer wished to manage the building themselves and decided to ask a letting agent to take over marketing and managing the property. Mr Olubunmi of PK Sales & Lettings visited but required significant works to bring the property to a standard that he would be willing to market and manage. Tenants were gradually asked to leave in order to carry out the required works. I understand that the works of refurbishment, including resolving issues with damp and decorating, took 3-4 months and were complete toward the end of 2015. I understand that the building was mainly empty from approximately April or May 2015 to January 2016.
15. Given that the flats were first occupied between 1 March and 5 October 2011 and were mainly empty from approximately April or May 2015, occupation of some of the flats without significant interruption could have exceeded four years such that lawfulness may have been accrued between first occupation and this refurbishment. I have already concluded that cannot include Flat 1, but I will go through the other flats individually.
16. The first AST on Flat 2 began on 6 August 2011 for one year. The second AST began on 1 February 2013, suggesting a vacant period of nearly six months. On questioning, the appellant indicated that the first tenant stayed beyond the

end of their AST and suggested that there were a couple of months between the first tenant moving out and the next occupying the flat. During that time the flat was marketed by advertising in the window and by word of mouth. The flat remained fully furnished. However, it was not physically occupied, even though available and suitable for occupation. The couple of months it was not occupied was a significant interruption in the use, during which time the Council was not able to take enforcement action on this unit. This means that the use started on 1 February 2013.

17. The tenant who occupied the flat under the second AST remained in the flat beyond 31 January 2015, the end of their second AST. The appellant stated, under affirmation, that they remained in the flat until the end of 2015. Therefore, the flat was not occupied without significant interruption for a period of four years and the use cannot have become lawful prior to refurbishment. It was then refurbished, with the next AST beginning on 27 July 2016 such that there was a gap of at least six months when it was not residentially occupied.
18. The first AST on Flat 3 began on 20 July 2011. It was occupied beyond the end date of that AST, with only a couple of weeks gap before the brother of the appellant moved into this flat on 15 August 2012. He stayed until 4 May 2015, when he vacated the flat to enable its refurbishment. It is unclear whether the flat was marketed in August 2012 and what happened during that short gap on occupation; however, it was brief and consequently not sufficient to constitute a material interruption in the use. Nevertheless, the period of occupation was less than four years prior to refurbishment. A new AST following refurbishment was dated 30 January 2016, resulting in a gap of over 8 months.
19. Flat 4 was the last to be subject of an AST, beginning on 4 October 2011 and was subsequently occupied by Ms Kentish-Saunders, who moved out on 21 October 2014. As set out above, she had a further AST until 15 April 2015 during which time she stayed a few nights a week. That occupancy maintained the residential use for the whole of this period. Nevertheless, the total period of occupation prior to refurbishment was less than four years. Following refurbishment, the next AST commenced on 24 March 2016 such that there was nearly 9 months between tenants.
20. The initial AST on Flat 5 began on 10 September 2011, with the AST prior to refurbishment ending on 6 January 2015. That is a period of less than four years. According to the rent statement, rent was next received on 20 March 2016 indicating the flat was empty for over 14 months.
21. Flat 6 was subject of an AST beginning on 1 March 2011 and the final AST prior to refurbishment ended on 10 November 2014. Again, that is a period of less than four years. The next AST began on 28 April 2016, indicating a gap of over 16 months.
22. Finally, at Flat 7 the first AST began on 1 September 2011 and the final AST prior to refurbishment ended on 20 April 2015, so less than four years. It is unclear when that flat was next occupied as the evidence relating to the first tenant following the refurbishment has not been provided. However, I understand none of the flats were let following refurbishment until 2016, so any gap would have been over 7 months.
23. For the above reasons, on the balance of probability none of the flats had been occupied for a period of at least four years before the refurbishment began.

24. In addition to the refurbishment, there were works carried out by Thames Water due to a leaking mains pipe outside the property that was rectified by April 2016, although that did not require the flats to be vacant. The refurbishment, however, required the flats to be vacant while the works were carried out. Following refurbishment, the flats were furnished and arrangements made with the agent to market and manage the property.
25. I accept that the layout wasn't changed and the works were refurbishment, such that the flats weren't used for any other purpose. The landlords clearly intended for the use to resume as soon as the refurbishment was complete. It is possible that varying flats within the building were capable of occupation throughout that period. Nevertheless, they weren't physically occupied for residential purposes. That resulted in a substantial interruption in the period of occupation of each flat. For that reason, I consider that the Council would not have been able to take enforcement action against the residential use of any of the flats during that period. That means that, at the beginning of the gap in occupation for the renovation, the time stopped running in relation to the four year period.
26. That means that any four year period would have needed to start following the refurbishment. The earliest date any of the flats were re-occupied was early 2016. The enforcement notice was issued on 4 April 2019. Consequently, none of the flats could have achieved the four year period for occupancy after the refurbishment.
27. My attention has been drawn to other matters, such as the contents of planning applications in 2012 and evidence relating to Council Tax. However, these would not alter my conclusion that the gap in occupancy to allow the refurbishment and, in the case of flat 2, a gap for marketing had the effect of stopping and re-starting the four year period for each flat. As neither the period before nor after the refurbishment was four years for any flat, none of the flats have become lawful through the passage of time.
28. For these reasons, I conclude that the appeal under ground (d) should fail.
29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

30. The appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kate Olley of Counsel instructed by Nicholas Kingsley-Smith, who called:

Ugur Halil Appellant

Ahmet Halil

Alice Kentish-Saunders

Paul Olubunmi PK Sales & Lettings

FOR THE LOCAL PLANNING AUTHORITY:

Charles Merrett instructed by the Council of the Royal Borough of Greenwich Legal Services, who called:

Jane Devine Planning Enforcement Officer, Royal Borough of Greenwich

DOCUMENTS SUBMITTED AT THE HEARING/INQUIRY:

Document 1: Opening on behalf of the Royal Borough of Greenwich

Document 2: Bundle of documents submitted by Paul Olubunmi