



Appeal Decision

Inquiry held on 27 March, 8 April 2024

Site visit made on 28 March 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st June 2024

Appeal Ref: APP/V5570/C/22/3310717

Land at Basement and Ground Floor, 295 Caledonian Road, London N1 1EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (1990 Act).
- The appeal is made by Mr Taylan Coban against an enforcement notice issued by the London Borough of Islington.
- The notice was issued on 29 September 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, the change of use of the rear basement and part rear ground floor into a self-contained residential flat, the change of use of the front basement into a self-contained residential studio flat and alterations to the shopfront, together with the insertion of an external access door from the ground floor to the basement".
- The requirements of the notice are to: (i) Remove the glazing panels from the shopfront stallriser and reinstate timber panels to match the existing shopfront in terms of profile, thickness and colour; (ii) Cease the use of the rear ground and rear basement as a self-contained residential flat; (iii) Cease the use of the front basement as a self-contained residential flat; (iv) Remove the kitchen and WC and shower room facilities from the ground and rear basement; (v) Remove the kitchen and WC and shower room facilities from the front basement; (vi) Upon the completion of steps (i), (iv) and (v) above, remove all resulting debris materials from the land.
- The period for compliance with the requirements is six months after the notice takes effect.
- 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 Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Applications for Costs

1. During the inquiry, an application for costs was made by the London Borough of Islington against Mr Taylan Coban. This application is the subject of a separate decision.

Preliminary Matters

2. 295 Caledonian Road is a mid-terrace property within the Burnsbury Conservation Area (CA), and comprises 3 main storeys and a basement level. There is a studio flat within the front part of the basement (Flat 1), and a separate duplex flat located at the rear of the basement and ground floor (Flat 2). It is these flats which form part of the alleged breach of planning control. The remainder of the ground floor is occupied by a barber shop, which fronts on to the high street. The flats are accessed via a staircase with its own entrance at ground floor level, which is next to the barber shop entrance.

3. Prior to the alleged development being carried out, the basement and rear ground floor are understood to have been used in conjunction with the ground floor retail unit, which prior to the barber shop, was an off-licence and convenience store. There is no dispute that a material change of use of the appeal property occurred upon creation of the two basement flats, and I have proceeded on this same basis.
4. Various late evidence was submitted in advance of the inquiry. From the appellant, this included additional statements from Taylan Coban and Lulezim Gashi, evidence of bank transactions, invoices, a lettings agreement and some additional photographs. In response to this late evidence, the Council also submitted a rebuttal statement. All of these submissions were relevant to the issues arising in this appeal, and given neither party objected, I have accepted them into evidence.
5. All evidence during the inquiry was given under oath.

GROUND D

6. Pursuant to ground (d), the appellant says that the change of use of the basement and part ground floor to two self-contained flats, took place more than four years prior to the date of the enforcement notice (EN), and subsisted continuously throughout this time. On this basis, the appellant contends that the change of use was immune from enforcement at the date of the EN, and therefore lawful. This ground is limited to the alleged change of use, and does not include the shopfront alterations, which the appellant says occurred at a later date.
7. I should highlight that the immunity period for a change of use of a building to use as a single dwelling has recently been extended to 10 years following the commencement of provisions under the Levelling-up and Regeneration Act 2023. However, where an enforcement notice was issued before 25 April 2024, as is the case here, the relevant immunity period remains at four years¹.
8. To succeed on this ground, the burden is on the appellant to demonstrate, on the balance of probability, that the change of use had taken place continuously throughout a four-year period prior to the date of the EN. This means the change of use would need to have begun no later than 29 September 2018. As a legal ground of appeal, the planning merits of the development are not relevant.
9. I have considered the appellant's evidence in accordance with the principle established in *Gabbitas*². This says that where there is no evidence to contradict an appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, then it should be accepted.

Background

10. In May 2020 the Council was made aware of building works which were ongoing at the appeal property. Contemporaneous photos submitted to the

¹ The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

² *Gabbitas v SSE & Newham BC* [1985] JPL 630

Council showed a large hole within the shop floor, which a neighbour thought had been made to facilitate conversion of the basement level into a flat.

11. In June 2020, following letters from the Council querying these works, the appellant submitted a retrospective planning application (reference P2020/1588/FUL) to seek approval of the conversion of basement and ground floor areas into a barber shop and residential studio flat along with changes to the shopfront. This application was refused by the Council on 14 September 2020 (Retrospective Application).
12. The Retrospective Application only sought permission for Flat 2, and not Flat 1. The plans submitted with the application show the area which is now Flat 1 as "*storage space for barber shop*". The application form said the development of Flat 2 had begun on 25 May 2020, and notably, the declaration on the application form was made by the appellant himself. If the details included on the application form are taken at face value, then Flat 2 does not appear to have been created until May 2020. This timeline is consistent with the date that the Council was first made aware of works ongoing at the property.
13. Following refusal of the Retrospective Application, the appellant's agent exchanged numerous emails with the Council. In an email dated 8 February 2021, which the appellant was copied into, the appellant's agent confirmed Flat 2 was vacant, and attached several photos of the "*the current situation*". These photos show what appears to be an entirely new flat, with no signs of anyone having lived there. Notably, the appliances all appear to be brand new and unused, with new appliance stickers clearly evident on the inside of the oven and washing machine. This suggests the flat had been recently completed at this time, a position which is again consistent with the date given in the application form for the Retrospective Application, in terms of when the development began.
14. Notwithstanding this position, the appellant says the date specified in the application form was simply an error. He contends that Flats 1 and 2 were both created in 2016, and have been rented out for residential purposes ever since. He claims the flats were originally accessed via a staircase inside the shop, just beyond the shop's entrance. In 2020, he says the staircase was refurbished, and a separate entrance to the flats was created so they could be accessed independently from the shop. He says it was these "refurbishment" works that the neighbour had seen and reported to the Council. Conversely, the Council says these works are evidence of when the flats were most likely first created.

Access to Flats

15. In terms of further background, planning permission was granted in 2006 (reference P060470) for a rear extension to the appeal property, for use as a one-bedroom flat and shop storage (2006 Permission). The parties agree that the 2006 Permission was implemented, and the appellant confirmed the development was carried out in accordance with the approved plans. Whilst this permission primarily concerns the rear of the property, the approved plans do not show a staircase within the ground floor shop unit.
16. Street view photos from 2017, 2018 and 2019 clearly show the front of the appeal property when its ground floor was used as an off-licence and convenience store. Throughout these years, a large drinks fridge can be seen along the wall beyond the entrance to the shop, which appears to be where the

access staircase to the flats is alleged to have been. Given the presence of this fridge, it does not seem credible that a useable staircase could have also existed in a similar position. Without a staircase, it is not clear how any basement flat would have been accessed.

17. Whilst the appellant and several witnesses said the former staircase was located just behind the fridge, none of them could describe its specific location or orientation with any degree of detail. Instead, it was repeatedly described as very steep. This lack of specificity is problematic, as without it, it is difficult to understand how a staircase could have existed in the location described.
18. Prior to the creation of the separate entrance to the flats, there was a roller shutter across the full frontage of the appeal property. This was locked each night following closure of the off-licence. If flats did exist in the basement before the 2020 works, then anytime the shop was closed, the roller shutter would need to have been opened and closed for every coming and going from either flat. Mr Salman initially said he would sometimes wait in a nearby café until the shop opened following a night out to gain access to his flat, which attests to the practical difficulties of such an arrangement. On further questioning, he then said he had a key to the roller shutter, so could come and go as he pleased. If he did have a key, this somewhat undermines his original testimony regarding the need to wait in a café.
19. Moreover, the photos of the 2020 works show that the hole in the shop floor is in the same position as the former fridge. There is no indication of any staircase having been there previously in these photos. The basement walls are bare brick, wires can be seen hanging loose and there appears to be extensive rubble within the basement. The works appear to have been more substantial than refurbishment of an existing staircase, and are more consistent with the narrative of the flats being created at this time.

Lightwell

20. Within the stallriser to the shopfront, there is a glass-fronted lightwell into Flat 1. There is a built-in bench inside the shop which extends out from window level, which accommodates the lightwell. The appellant says this lightwell has been in situ ever since the creation of Flat 1 in 2016.
21. However, the street view photos of the property referred to above show a painted timber or render stallriser throughout 2017, 2018 and 2019, which would not have provided any light to a basement flat below. These photos also show a large shelving unit inside the shop in the same position as the bench which accommodates the lightwell. It is therefore not credible that the lightwell existed before 2019, when these photos were taken. This casts significant doubt over the veracity of the appellant's timeline.
22. The appellant has submitted a number of photographs inside Flats 1 and 2, which were purportedly taken in 2018. In one of these, Yucel Korkmaz and Yeliz Korkmaz can be seen in Flat 1, with the cut-in for the lightwell visible behind them. Given the lightwell could not credibly have existed at this time, the photo must have been taken at a date later than indicated (noting the "adjust" button shown on the photos would have allowed the date stamp to be changed). In turn, I place little reliance on the photos submitted, as it seems likely that the dates have been altered.

Tenancies and Rent

23. The appellant has provided a series of tenancy agreements for both flats dating back to 2016. Yucel Korkmaz is said to have occupied Flat 1 from 5 November 2016 up until 4 November 2021. Ferhat Salman is said to have occupied Flat 2 from 11 February 2016 up until 10 February 2021, with Ugur Tosun and Sinem Tosun taking over the tenancy from this point on.
24. There are a number of inconsistencies between the tenancy agreements and the sworn statements and oral testimony given at inquiry. For example, Yucel Korkmaz' statutory declaration says he lived in Flat 1 from May 2016, not November, as set out in the tenancy agreement. Ferhat Salman says he had vacated Flat 2 by the end of November 2020, whereas the tenancy supposedly did not end until February 2021. The agreements also state tenants were responsible for arranging and paying their own utilities, yet in practice, all bills were included within the rent. These anomalies are unexplained.
25. Notably, Mr Salman also became the proprietor of 4 Joshua Walk, a residential dwelling, on 2 January 2018, and was registered to vote at this address from 5 November 2019. This is despite him supposedly having lived in Flat 2 until November 2020. Mr Salman said the delay in moving into his house was due to renovations. However, if he did occupy Flat 2 until November 2020 as alleged, this means after buying his house, he waited nearly three years to move into it. Even accounting for any period of renovation, such an extensive delay raises some degree of doubt over his testimony.
26. In terms of rent, the first evidence of any payment being made in respect of either flat was from Mr Tosun in January 2021 (thought to be a deposit prior to his tenancy starting in February 2021). There is no evidence of any rent having been received by the appellant prior to this date. This is a significant gap in the appellant's evidence, as presumably evidence of rent receipts could have been adduced, if rent had been received before this time, even if paid in cash. It is unclear why the appellant would not have provided such evidence if it existed, noting that the Council had requested this information on numerous occasions.
27. I should also highlight that in 2018, the appellant granted a long lease of the entire ground and basement floors to Mr Gashi. Mr Gashi ran an off licence and convenience store within the ground floor unit prior to it being converted to a barber shop. During this period, Mr Gashi was effectively the owner of the ground and basement floors, and was responsible for payment of all bills and business rates in connection with the whole of these premises. Notwithstanding this position, all rent from the flats was said to be paid to the appellant. Mr Gashi said he did benefit from the arrangement, as the tenants would buy things in the shop. He also intimated that he benefited from a reduction in the cost of his lease. Nonetheless, it would be unusual for a landlord in Mr Gashi's position to derive so little financial benefit from the rental of his own premises.

Invoices

28. The appellant has submitted two invoices in respect of works carried out at the appeal property: the first relates to the alleged works carried out in 2016 for the conversion of the two flats (2016 Invoice); and the second relates to the 2020 "refurbishment" works to the staircase (2020 Invoice).

29. The 2016 Invoice, which is dated 16 May 2016, lists the address of Lura Construction Ltd (who allegedly carried out the works) as Unit 16, Waltham Park Way, Billet Road E17 5DU. Yet, the Company House records show Lura Construction did not move to this address until 31 January 2017. The appellant was unable to explain why the invoice would have listed an address which the company had not yet moved to. Mr Murati of Lura Construction chose not to give evidence at the inquiry (despite having been listed as a witness), which means this anomaly remains unexplained.
30. The 2020 Invoice from Sahin Construction Ltd describes the 2020 works as “*work carried out to renovate the staircase*”. This invoice is dated 29 June 2020. However, much like above, Sahin Construction did not move to this registered address until a much later date. Once again, no explanation was given for the discrepancy on the invoice.
31. Without a credible explanation to the contrary, it seems possible, if not likely, that these invoices were produced after the event, with a view to supporting the appellant’s narrative of events. This casts serious doubt over their legitimacy. The lack of any evidence relating to the payment of these invoices lends credence to this supposition.

Summary

32. Pulling these factors together, the appellant’s evidence is fraught with uncertainty, inconsistency and omission. The evidence falls significantly short of being sufficiently precise and unambiguous to demonstrate that the change of use to two self-contained flats had continued uninterrupted for a period of at least four years prior to the date of the EN. Instead, much of the evidence appears to support the Council’s contention that both flats were created in or around 2020.
33. The appellant has therefore not discharged their evidential burden, and on the balance of probability, the material change of use was not immune from enforcement action at the date of the EN. The appeal on ground (d) therefore fails.

GROUND F

34. Pursuant to ground (f), the appellant contends that the steps required to be taken in the EN exceed what is necessary to remedy the alleged breach of planning control. In particular, the appellant says that the requirement to reinstate the timber stallriser and the requirements to remove the kitchens, WCs and shower rooms from each of the flats, are excessive.
35. As per s173(4) of the 1990 Act, the purpose of the EN is to remedy the breach of planning control. The requirements set out in the EN must therefore achieve this purpose.
36. In this instance, the installation of the kitchens, WCs and shower rooms were integral to the conversion of the basement floor into residential flats. Without these facilities, the basement could not be used in this way. The glazed stallriser was also installed to provide natural light into the residential accommodation below, and helped enable this residential use. In accordance with the *Murfitt*³ principle, these components therefore facilitated use of the

³ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

basement as residential flats, and it is entirely appropriate and proportionate for these components to be removed or reinstated.

37. Whilst there are examples of glass stairrisers elsewhere along Caledonian Road, this factor would only be relevant to the planning merits of the development under a ground (a) appeal, and cannot be considered under ground (f).
38. For these reasons, I am satisfied that the requirements of the EN go no further than remedying the breach of planning control. The appeal on ground (f) therefore fails.

GROUND G

39. Pursuant to ground (g), the appellant says that the period for compliance with the requirements of the EN falls short of what should reasonably be allowed. The EN currently requires the steps to be complied with, within six months of the date that the notice takes effect.
40. Compliance with the EN will mean the tenants of each flat need to find new homes. In the current rental market, this could take some time. I therefore consider a period of nine months would be more appropriate in this instance, as this should allow sufficient time for alternative accommodation to be sourced and secured.
41. The appeal on ground (g) therefore succeeds, but only to this extent.

Other Matters

42. As already discussed, the appellant says that the flats were accessed via the shop floor up until the refurbishment works in 2020. Prior to 2020, this would have meant that the flats were entirely reliant on the shop for access. The ground floor and basement level are also under the same title and ownership, and the appellant's witnesses all agreed that services and utilities for the flats were provided and paid for by the shop premises. If the flats did exist before creation of the separate entrance, then in line with the principles established in *Burdle*⁴, this points to the flats and the shop being part of a single planning unit in a mixed-use prior to 2020.
43. When the independent entrance to the flats was created in 2020, arguably, it was only at this point that the flats became self-contained. If that were the case, then a further material change of use would have occurred. The appellant did not appear to disagree with this assessment.
44. If a further material change of use did occur, this would have taken place approximately two years prior to the EN being issued. It would therefore not have been immune from enforcement at the date of the EN. Even if the appellant's timeline of events was accurate and the two flats were created in 2016, in all likelihood, this means the appeal would have failed in any event.
45. If the flats had existed prior to 2020 as alleged by the appellant, then the Council further contends that the four-year immunity period would not apply, as the appellant deliberately concealed their existence. However, given that the appeal on ground (d) has failed, it is unnecessary to consider this argument further.

⁴ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

Conclusion

46. I have extended the time for compliance with the requirements of the EN, so the appeal on ground (g) succeeds. However, for the reasons given, I conclude that the appeal on grounds (d) and (f) should not succeed. I shall therefore uphold the enforcement notice, subject to a variation.

Formal Decision

47. It is directed that the enforcement notice is varied by substituting "six (6) calendar months" with "nine (9) calendar months" in schedule 5. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

James Blackwell

INSPECTOR

DOCUMENTS SUBMITTED AT INQUIRY

1. Appellant's Opening Submissions
2. Appellant's Closing Submissions
3. Council's Opening Submissions
4. Council's Closing Submissions

APPEARANCES

FOR THE APPELLANT

1. Mark O'Brien O'Reilly (Counsel)
2. Taylan Coban
3. Ilshad Sumin
4. Lulezim Gashi
5. Ferhat Salman
6. Yucel Korkmaz
7. Yeliz Korkmaz
8. Ugur Tosun

FOR THE COUNCIL

1. Charles Streetan (Counsel)
2. Kevin Plaster MA MRTPI