



Appeal Decisions

Inquiry Held on 20 August, 3 October, and 17 October 2024

Site visit made on 20 August 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2025

Appeal A Ref: APP/N5660/C/24/3342228 7 Rita Road, London SW8 1JX

- 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 Nadeem Siddiqi (Henley Beech Ltd) against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 28 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change in the use of the premises from 3 to 7 self-contained flats, resulting in 1 flat in the basement, 2 flats on the ground floor, 2 flats on the first floor, 1 flat on the second floor and 1 flat situated over the second and third floor ('the unauthorised 7 flats').
 - The requirements of the notice are to:
 - a) Cease the use of each of the unauthorised 7 flats; and
 - b) Remove all internal doors, partitions, kitchen units, appliances, bathrooms, electrical, water and gas services including boilers and meters, that facilitate the unauthorised 7 flats; and
 - c) Remove all associated waste and debris resulting from compliance with the above steps from the premises.
 - The period for compliance is six months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/N5660/C/24/3342231 9 Rita Road, London SW8 1JX

- 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 Sophia Amejee (Ascot Gate Ltd) against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 28 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change in the use of the premises from 3 to 7 self-contained flats, resulting in 1 flat in the basement, 2 flats on the ground floor, 2 flats on the first floor, 1 flat on the second floor and 1 flat situated over the second and third floor ('the unauthorised 7 flats').
 - The requirements of the notice are to:
 - a) Cease the use of the unauthorised 7 flats; and
 - b) Remove all internal doors, partitions, kitchen units, appliances, bathrooms, electrical water and gas services including boilers and meters, that facilitate the unauthorised 7 flats; and
 - c) Remove all associated waste and debris resulting from compliance with the above steps from the premises.
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- The period for compliance is six months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Formal decisions

Appeal A

1. The appeal is allowed, and the enforcement notice is quashed.

Appeal B

2. The appeal is allowed, and the enforcement notice is quashed.

Applications for Costs

3. Separate applications for costs were made by the appellants against the Council, and a claim was also made by the Council against the appellants. These applications are the subject of separate decisions.

Matters concerning the enforcement notices

4. Both enforcement notices allege the same breach at both no 7 and no 9; namely the material change in the use of the former single family dwellinghouse from 3 to 7 self-contained flats. Although the Council no longer holds the formal decision notice it is of the understanding that planning permission was granted in 1989 for the use of each property as three self-contained flats (six in total). The appellants claim that further conversion works subsequently took place to the extent that each property accommodated five self-contained flats. They then claim that this changed in November 2019 when an additional two flats were created in both properties.
5. On the above basis the appellants are of the view that the allegation should be reworded to indicate a change from 5 to 7 self-contained flats. However, given that I am allowing the appeals it is not necessary that I address this matter as the end result is the same. Besides, although certain witnesses and other persons refer to the properties each containing 5 flats due to conversion works carried out in 2016 for which no planning permission was sought the appellants themselves have made no formal submissions as to the lawfulness of 5 flats due to immunity by way of the passage of time.
6. Accordingly, I am satisfied that the allegation in both enforcement notices is correct.

Background

7. In March 2016 pre-application advice was sought from the Council for the acceptability of proposed works at both properties involving basement excavation, basement and ground floor infill extensions, a rooflight to the basement area, a mansard roof extension with dormers, and internal alterations to enlarge the then existing flats in order that they might meet London Plan standards. The advice was formally given in November 2016, but this was not furthered until December 2020 when a planning application (ref 20/04329/FUL) for the proposed development was submitted. Planning permission was subsequently granted for the said works.
8. On 15 March 2023 a complaint was received regarding alleged unauthorised works and the creation of additional flats at nos 7 and 9. Following an

enforcement investigation, and identifying a breach of planning control, the Council saw it expedient to issue enforcement notices against both properties.

Appeals A & B

The appeals on ground (b)

9. An appeal on ground (b) is that the breach alleged has not occurred as a matter of fact. The evidence is on the balance of probability and the onus is on the appellant to prove his or her case.
10. For this particular ground, the appellant is challenging the wording of the allegation (ie 3 flats rather than 5 flats). Nonetheless, as I have explained in paragraph 5 above, I am satisfied, that the Council was quite entitled to frame the alleged breach as it reads in the enforcement notice.
11. Accordingly, the ground (b) appeals for both Appeals A and B do not succeed.

The appeals on ground (c)

12. An appeal under ground (c) is that the appellant accepts that the breach as alleged has taken place but no planning permission is required for the development identified. Even if I was to accept the claim that the lawful use of each of the properties was as 5 self-contained flats, the increase to 7 (14 in total) would still represent a material change in planning terms for which the benefit of planning permission is required.
13. The appeals on ground (c) cannot, therefore, succeed.

The appeals on ground (d)

14. An appeal under ground (d) is that, at the date the enforcement notice was issued, it was too late for the Council to take formal action as the development which constituted the breach of control had already acquired immunity from such in planning terms due to the passage of time.
15. The burden of proof is upon the appellants who need to demonstrate immunity from planning enforcement action on the balance of probability. The key is that the evidence should be precise and unambiguous to this end.
16. S191(2) of the 1990 Act, as amended, says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
17. In this particular instance the enforcement notices were issued against nos 7 and 9 Rita Road, respectively, on 28 February 2024. In applying the four year immunity bar, which still holds relevance here despite the recent change in legislation, the material date is therefore 28 February 2020.
18. A 'self-contained flat' is defined within s254 of the Housing Act 2004 as a separate set of premises which forms part of a building, either the whole or a material part of the building and in which all three basic amenities – defined as a toilet, personal washing facilities and also cooking facilities - are available for the exclusive use of its occupants.

19. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence.
20. Self-contained units are usually characterised by having exclusive use of all facilities within their own physical envelope. Each flat has its own internal front door entrance, accessed off the communal areas and their own individual water supply. In this particular instance, from my site inspection, I can confirm that all seven flats satisfy the *Gravesham* test.
21. In the Court of Appeal judgement of *Swale BC v FSS* [2005] EWCA Civ 1568 it was made clear that it must be shown that the use of the property for residential purposes – or, in the current appeal, the creation and use of additional residential units – was continuous throughout the four-year period. Accordingly, to demonstrate immunity from enforcement action the appellants must show that the respective properties have been in continued use as seven self-contained residential flats since on or before this date.
22. The issue is whether the use has continued substantially uninterrupted. Any discontinuity in the unauthorised use during the claimed four-year period will be a matter of fact and degree in each case. Where a property has been tenanted any significant void period between tenancies could amount to discontinuity in the use.
23. The onus is on the appellants to prove their case, and my decision has to be based on evidential fact and, where applicable, case law, as opposed to planning merit and/or impact which cannot be taken into account.

The Evidence

24. The appellants have provided evidence in the form of statutory declarations, letters, invoices, bank statements, photographs, tenancy agreements and, crucially, for cross reference with the agreements, a ledger, put together by Cygnet Estates Ltd, the management agents for both properties. However, the lengthy ledger which extends back to November 2019 groups together all the flats, some of which have had their numbering/lettering changed over time. As there were no bank statements to show with certainty which tenants paid what and when, the limitations of the evidence submitted, did not make for easy reading.
25. Nadeem Saddiqi, of Henley Beech Ltd, who own no 7, and is the firm's accountant appeared as a witness. He is also the accountant for Ascot Gate Ltd, the owners of no 9. He explained that he prepared the accounts which were then passed to Cygnet Estates in order to compile the ledger. During cross-examination Mr Saddiqi was asked whether there were ledgers for each individual flat. He replied there was, but it had not been produced as he did not think it would be necessary. Clearly, this would have been more coherent and simplified matters had they been made available.
26. For its part the Council has identified details and correspondence – some from interested parties - which would appear to counter the appellant's evidence.
27. In essence, the appellants' case is that, during November 2019, works were carried out to the top floors and also the lower-ground floor maisonettes to create an additional two flats in both properties, thereby totalling seven in each.

28. Subsequently, between the end of 2021 and the Autumn of 2022 necessary repair works to the communal areas and external fabric commenced. This included repointing, the formation of a mansard with dormer windows, gutter work, and other improvements including upgrading the lighting in communal areas, cleaning the external brickwork, painting and also new flooring.
29. I understand that during 2021 an expanse of scaffolding covering the external front walls of both properties was erected to facilitate the above works, along with timber hoarding within which were placed makeshift entrances to the buildings. One resident claims that the scaffolding was erected during the Spring of that year, another resident recalls it was put up in the July. It is this which has been the source of particular contention, as to whether these works themselves brought about the creation of the additional flats. If this was the case then, given the time period, immunity by way of the four year bar could not be demonstrated.
30. However, if the conversion to 7 flats (14 in total) had taken place, as claimed, prior to the end of 2019, and were occupied by or before 28 February 2020, the issue would turn towards whether, during the refurbishment works in 2021 and 2022, the flats within remained occupied despite the inconvenience caused. A Google Street image shows that the scaffolding was in place in June 2022, and the general consensus is that it remained until the Autumn of 2022.
31. Mr Hasan Siddiqi, of Cygnet Estates, appeared as a witness. He is the nephew of Nadeem Siddiqi and he explained that during the period the above works were carried out all tenants remained in occupation. Although no tenants moved out there were requests for rent reduction due to disruption and the inconvenience.
32. Mr Sulaimin Amejee, a manager at UK Asset Management (London) Ltd produced a Statutory Declaration and also gave evidence. The firm was the appointed agents in 2006 by Glenhazel Ltd, the previous owner of both properties, until Henley Beech and Ascot Gate purchased them in mid 2022. He said that both properties were reconfigured to accommodate 5 flats in 2016, and later 7 flats within each in 2019. He also said that the subsequent refurbishment works were undertaken from the outside of the buildings, and he stressed that all tenants had access to their respective flats during this period, despite the scaffolding and hoarding erected.
33. Although not appearing as witnesses other Statutory Declarations were submitted by various persons. In particular, Allama Farooq says he worked as a supervisor to the conversion works carried out in 2019 and external fabric, explaining that the lower ground floor maisonettes in both properties along with those on the top floor were sub-divided to form the additional flats.
34. In referencing the Design and Access Statement (DAS) drawn up by SHA Architects which accompanied planning application ref 20/04329/FUL for the mansard extensions and the excavation works, the document states on page 2 that *'The existing use of the site is as 6 no.flats'*. The DAS covers both properties, and given my findings as to when the seven flats in each property were first occupied, which I set out later, this statement was clearly untrue and did not reflect the actuality of the situation at that time as regards the schedule of accommodation.

35. However, a letter from SHA, dated 17 June 2024, and produced at the Inquiry, indicates that a representative of the firm surveyed the properties in 2016 to coincide with the pre-application discussions I mentioned earlier. No subsequent surveys were carried out, and the layout plans submitted alongside application 20/04329/FUL in December 2020, which showed only six flats in total, were thereby incorrect and misleading. It was said that it had not proved possible to re-survey the properties and provide updates, accordingly, due to COVID restrictions. Further, at this time, Mr McGuinn, the Council's enforcement witness, said that no site visits were being undertaken by the Council and, as such, the irregularity went undetected.
36. At the Inquiry, save for producing the above letter, the appellant, Mr Nadeem Saddiqi, in cross examination, was somewhat evasive as to why the 2016 drawings were submitted without an update and explanation that they did not represent the floorspace layout at that time.
37. Another instance which confused the situation relates to an e-mail exchange between Capita Local Government Services (CLGS) and Mohammed Rafi, Director of London I Construction relating to the registration of new flats having been created at nos 7 and 9. In an e-mail dated 2 December 2021 when CLGS asked when the new flats were created Rafi responded "August 2021." In fact, and maybe as a result of this, both properties are listed on the Council tax valuation list as each comprising seven flats since August 2021.
38. Mr Rafi's e-mail was misleading and is contrary to his evidence at the Inquiry where he said that the internal works carried out in 2019 changed the layout in each property from five to seven flats. Appearing as a witness, having also produced a Statutory Declaration, Mr Rafi said that he visited the properties in March 2019, having been instructed by Glenhazel Ltd, the previous owners, to create an additional four flats. At the time of his visit he noted that there were 5 self-contained flats in both properties. This was corroborated by Vijay Kumar, also of London I construction, and Chris Suppu from their respective Statutory Declarations.
39. Mr Rafi said that the conversion works were completed by November 2019, and the claim that these were carried out just prior to this are confirmed by a series of invoices produced which were drawn up by London I Construction and sent to Glenhazel Ltd (the then owners of nos 7 and 9) during July and October 2019. Corresponding bank statements for London I Construction were also produced showing these were paid by Glenhazel. Photographs showing seven doorbells installed at both properties in 2019 support this.
40. Despite the absence of separate ledgers for each flat, close scrutiny of the tenancy agreements, and cross-referencing these with the ledger entries would suggest that the seven individual self-contained flats within no 7 were all occupied with rent being paid, at the latest, by 16 December 2019, and the corresponding seven flats in no 9 were similarly occupied by 2 January 2020. There appears to have been a failure of certain tenants to register themselves for the electoral roll, but this is not particularly unusual nor determinative as to occupation.
41. Mr Rafi also said that, in 2021, London I Construction was then instructed to arrange for the refurbishment works mentioned, as approved by the Council, to be carried out, which necessitated the erection of the scaffolding. The Initial Notices produced by 'Complete Building Control' Ltd regarding compliance with

Building Regulations are titled 'Refurbishment of 5 flats on ground, first and second floors' (ref CBC/22/62130/WEB) and 'Formation of lightwell to existing basement and a mansard' (ref CBC/21/5943/WEB) both indicate that neither of these works concern a new dwelling. However, this is not incorrect as the conversion works to create the additional flats had already been carried out in 2019.

Assessment

42. In the *Swale* case the judge noted that the law has always recognised that an occupier does not have to be continuously or even regularly present in order to establish unbroken use of the premises as a dwellinghouse or, in the current appeal, as self-contained residential units.
43. Referring once again to the ledger, and examining the rents paid, it would seem that twelve of the fourteen flats were fully occupied throughout the period of the refurbishment works, with regular payments apparent. There are, though, possible significant breaks suggested in the tenancies for Flats 2 and 3 (ground floor, rear and ground floor, front, respectively) at no.7
44. Although there are no entries for Flat 2 in the ledger between December 2021 and February 2023, it is also apparent that considerable lump sum rentals were subsequently paid to the landlords. Accordingly, the absence of monthly entries does not necessarily mean that the flat was not occupied, at least for some of the time. Entries for Flat 3 are absent between August 2021 and February 2022, but a Statutory Declaration was produced by Wessam Al Mohamad, a former tenant of Flat 3, who says he rented the flat between April 2018 and July 2022. He says that the scaffolding was an inconvenience, but indicates that access to his flat was not barred during the period that the works were carried out.
45. The ledger then shows regular entries for all fourteen flats up until the date that the enforcement notices were issued in February 2024.
46. Two local residents have submitted letters relating to the period of time that the scaffolding and timber hoarding covered the outside of the building. One said that on 18 July 2021 he spoke to the tenant of the top floor flat in no 9 who informed him that she was the last remaining tenant at no 9, and no 7 was now empty of tenants. However, on 21 July 2021 the said tenant emailed Hasan Siddiqi – a copy of which was submitted along with the appeal papers - and referred to a conversation she had had with a neighbour from Flat "7c" three days earlier, who had "moved in recently". The two accounts are clearly inconsistent.
47. The other resident e-mailed the Council saying that, from his flat in Regents Bridge Gardens on the opposite side of Rita Road, he could see directly into the first and second floor windows of both properties. Save for building contractors he saw no one else enter or leave the premises during the period the scaffolding was in place. Further, as there were no curtains or blinds behind the windows he noticed there was no furniture or signs of occupation during this time.
48. I cannot comment on the resident's observations as to the comings and goings at the premises but, given the amount of scaffolding, I find it difficult to believe that the insides of the facing flats would have been clearly discernible to

persons in the residential block opposite. Moreover, as I referred to above, the ledger has entries for the flats showing rents paid between May and August 2021. This continues into the months of September and October for all units apart from Flat 3.

49. Another point of contention was whether the front doors of both properties remained accessible from the street for the benefit of the tenants. A local resident says that all three doors were padlocked and fastened shut with screws from the outside, overnight and throughout the weekends. However, Mr Al Mohamad who says he rented one of the ground floor flats between April 2018 and July 2022, and produced a Statutory Declaration to this effect, was clearly able to access the building.
50. In this connection, a Statutory Declaration was also submitted by Parvez Iqbal Blouch, a repair and maintenance coordinator who said that, during 2022, he supervised the refurbishment works to the properties, which included the painting of the communal areas and the laying of new flooring within. In this capacity he indicates that he had also supervised the builders working for London I Construction during the Autumn of 2019 in the conversion works carried out to both properties at the time. He mentions that, over the past seven years, he has frequently met with his client's representatives, managing agents and also tenants.

Conclusions on the ground (d) appeal

51. This was a difficult case given the contradictory evidence involved, some which on the face of it is irreconcilable. This was compounded by the apparent attempts not to disclose the conversion works to the Council. Nonetheless, dissemination and analysis of the considerable evidence eventually produced by the appellants appears convincing. That said, the appellants' case cannot be considered as precise and ambiguous in the true sense of the words. It had to be carefully interpreted and was itself inconsistent in parts.
52. The reference to six flats in the DAS and the outdated layout drawings, both produced by SHA Architects, were relied on heavily by the Council, and these errors were only explained by a letter from SHA produced in June 2024. SHA's claim that the material submitted to the Council on planning application (ref 20/04329/FUL) concerning the refurbishment works is initially difficult to fathom but, when taking into account COVID restrictions, it is perhaps, understandable. This, though, does not explain why such fundamental errors were not picked up by the applicants at the time the application was submitted to the Council.
53. It could perhaps be interpreted as concealment. However, by way of case law, namely the judgement of *Jackson v SSCLG* [2015] EWHC 20 (Admin), significant positive deception would need to be demonstrated here. The Council did not raise this point and, weighing everything up, there is no clear evidence of such.
54. It would reasonably seem that the Council's case was impeded as a significant amount of evidence which served to assist the immunity claim was not produced by the appellants until late in the appeal process. I have some sympathy for the Council's sole witness here who, as a result, found his rebuttal evidence becoming somewhat diluted. I must also acknowledge and do appreciate the contributions from the many interested parties who provided

information, as I must all persons who helped the Inquiry process and produced Statutory Declarations.

55. Certain local residents produced letters which would suggest that the flats were all vacated during 2021 and 2022 when the refurbishment works were taking place. Certainly, given the amount of scaffolding and hoarding erected to facilitate these works it would seem unlikely that the various tenants would have remained in residence. However, close examination of the rental records, also the contents of a Statutory Declaration from a former tenant who lived there between April 2018 and July 2022, and the contents of an e-mail dated 21 July 2021 from a tenant within no 9, would strongly suggest that the premises could still be accessed and, moreover, remained occupied throughout the period of refurbishment. Accordingly, I am satisfied that continuity of use has been demonstrated.
56. Despite the difficulties encountered with the Inquiry's proceedings and the need to twice reconvene, the assessment of all the evidence available would, on the balance of probabilities, suggest that the use of both nos 7 and 9 as seven self-contained flats was, by the date the enforcement notice was issued, immune from planning control. I therefore find that the appellants have discharged the burden of proof.
57. For the reasons given above I conclude that the appeals should succeed on ground (d), as the evidence adduced indicates that due to the passage of time it was too late to serve enforcement notices against the breaches identified at both properties.
58. Both enforcement notices will therefore be quashed.

The appeals on ground (f)

59. An appeal on ground (f) is that the steps required by the enforcement notice go beyond what is reasonably necessary to remedy the breach. Given my findings as to the unauthorised uses at both properties enjoying immunity from enforcement action it is not necessary for me to address this matter further.

The appeals on ground (g)

60. An appeal under ground (g) is that the stipulated time period for compliance is unreasonably short. Similarly, though, as I have found the use of all the flats to be immune from enforcement action, there is no need for me to explore this matter.

Timothy C King

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Charles Merrett of counsel - Instructed by Henley Beech and Ascot Gate

He called:

Hasan Siddiqi – Cygnet Estates

Mohamed Rafi – London I Construction

Sophia Amejee – Ascot Gate

Sulaiman Amejee – UK Asset Management

Nadeem Siddiqi – Henley Beech

FOR THE LOCAL PLANNING AUTHORITY:

Ms Noemi Byrd of counsel - Instructed by Lambeth BC

She called:

Ronan McGuinn – Planning enforcement officer, Lambeth BC

INTERESTED PARTIES

Mr Trevor Galloway