The Planning Inspectorate

Appeal Decision

Site visit made on 10 July 2013

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 August 2013

Appeal Ref: APP/X5210/C/12/2188942
114 Cleveland Street, Fitzroy Square London W1T 6PB

- 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 Abbotplace Limited against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN12/0914.
- The notice was issued on 30 November 2013.
- The breach of planning control as alleged in the notice is without planning permission, change of use of ground and part of lower ground floor level from office (Class B1a) to residential (Class C3).
- The requirements of the notice are to cease the residential use and remove the kitchen and shower at ground floor level.
- The period for compliance with the requirements is stated as follows: *'Compliance due date 11 April 2013'*.
- The appeal is proceeding on the grounds set out in section 174(2) (b) 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 as amended have lapsed.

Decision

1. It is directed that the enforcement notice is corrected by the insertion of the word *'material'* before the word *'Change'* in section 3 the breach of planning control alleged.

2. It is directed that the enforcement notice is corrected by the deletion of the number and words: *'Compliance due date 11 April 2013'* in section 5 to the enforcement notice and the substitution therefore of the following compliance period: *'3 months'*.

3. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

4. Section 55 (1) of the Town and Country Planning Act 1990 as amended ('the Act') includes in the definition of the word *'development'* the *making of any material change in the use of any buildings or other land* [my emphasis]. The word *'material'* was not included in the alleged breach nor is it stated in the heading to the notice, but that did not undermine its basis and this is how it was interpreted by the appeal parties. To accurately reflect the wording given in s55 (1), the word *'material'* should be included in the allegation. I am

satisfied that the correction would not cause injustice to any party and I have corrected the allegation accordingly.

5. Section 173 (9) to the Act requires a notice to specify a period for compliance [my emphasis] rather than a due date. The issued notice specified a date for compliance - 11 April 2013. The specified date was three months after the stated effective date – 11 January 2013, and it is clear that this is the period that the Council intended to specify[1]. From all of the written submissions, I am satisfied that no injustice would be caused by substituting the specified date with three months to comply with the notice as I have done above.

Ground (b)

6. This appeal is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The date of the notice's issue is the relevant date for the purposes of this appeal. The onus is squarely upon the appellant company to make the case out on the balance of probabilities.

7. The notice relates to the ground floor and lower ground floor which I will refer to as *'the Unit'* for consistency. In this case, the question to consider is whether or not a material change of use of the Unit occurred at the time when the notice was issued. The period leading up to that date is relevant.

8. Number 114 comprises a three-storey mid-terrace building with basement and mansard roof. The Unit is self-contained and accessed from the main entrance at street level. It is physically and functionally separate from the upper floors and there is no dispute between the appeal parties that it constitutes a single planning unit, which can lawfully be used as offices. An office use falls within Class B1 and a residential use is classified as Class C3 to the schedule to the UCO[2].

9. The nub of the appellant company's main arguments is that a material change of use of the Unit has not occurred. The contention is that the Unit has never been let or used for residential purposes. The Unit is on the market for office use and if unsuccessful, the appellant company would occupy the ground floor as offices, which is consistent with what I saw at the time of my site visit. The company maintains that the shower facilities are for people who may choose to cycle to work; modern offices contain such facilities. The kitchen is used for making tea, coffee, drinks and warming up food for lunch. There is a refrigerator and there is nothing unusual because such facilities are available in modern offices.

10. The appellant maintains that in 2003 the ground floor and a small part of the lower ground floor had a refrigerator with a worktop and a cupboard above in the position of the shower, a kitchen area on the half landing with cupboards above, and a toilet/wash hand basin in the toilet. However, the information appears to indicate that these facilities may have been linked to the primary use of the Unit as offices. On the other hand, after the refurbishments, the kitchen and shower was moved to the ground floor.

11. The evidence suggests that there was an intention to convert the Unit into residential accommodation. Two planning applications were submitted for the

[1] This is consistent with the enforcement delegated report dated 5 October 2012.
[2] See the Town and Country Planning (Use Classes) Order 1987 as amended ('the UCO').

change of use of the Unit from offices to residential in 2010 and 2012[3]. These were subsequently withdrawn after officer advice, but nevertheless, the 2010 plans showed a kitchen, shower and rooms one and two on the ground floor, and a toilet in the lower ground floor. The proposed layout and design was consistent with the submitted design and access statement, which outlined the residential nature of the proposed conversion.

12. In the case of *Gravesham*, it was found that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day domestic existence[4]. In this context, the Council's photographic information is particularly instructive. Prior to the issuing of the notice, it appears that the Unit had been modernised. The ground floor had a large domestic style kitchen fitted with white goods. It included a four-burner stovetop cooker with extractor system above. There was a toilet and shower facility, a bed and wardrobe in one of the rooms. Consequently, the entire ground floor area contained all of the necessary facilities for day-to-day living. By 20 September 2012, the Unit had been substantially completed and was ready for use as a single dwellinghouse. The evidence does not show that the type, nature and scale of the available facilities are linked to the use of the Unit as offices.

13. Prior to the issuing of the notice, the character of the Unit had materially and significantly changed from offices to residential even if it had not been actually occupied. This is because of the nature, extent and scale of the domestic kitchen and the availability of facilities for washing and sleeping. A change from the Unit's office use to residential amounts to a material change of use of the planning unit for which planning permission would be required.

14. For all of the above reasons, and having considered all other matters, I conclude that, on the balance of probabilities, the evidence shows that at the time when the notice was issued a material change of use of the Unit had occurred as a matter of fact.

15. Therefore, the ground (b) appeal must fail.

A U Ghafoor

INSPECTOR

[3] Details taken from paragraph 2.6 to the Council's statement and the reference numbers are 2010/2401/P and 2012/4075/P.
[4] See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306 and the Council also cited *Sage v SSETR and others* [2003] UKHL 22.