The Planning Inspectorate

Appeal Decision

Site visit made on 8 June 2015

by P N Jarratt BA(Hons) DipTP MRTPI

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

Decision date: 25 June 2015

Appeal Ref: APP/X5210/C/14/2223383
14 Iverson Road, London, NW6 2HE

- 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 Ms C Boyle against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN14/0376.
- The notice was issued on 16 July 2014.
- The breach of planning control as alleged in the notice is the change of use of the basement, ground and second floors from HMO accommodation (sui generis) to x3 self-contained flats (C3) and x2 HMO bedsits (C4).
- The requirements of the notice are:
  i) The use of the property as self-contained flats shall cease;
  ii) Remove any associated fixtures and fittings associated with the self-contained units including the locked door at the foot of the stairs between the first floor and second floor levels and the floor to ceiling partition and door to the left of the foot of the stairs at ground floor level.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
- **Summary of Decision: Planning permission granted and notice quashed.**

The site and relevant planning history

1. The appeal site is a terraced house on 4 floors located in a largely residential street and is licensed to be used as a House in Multiple Occupation (HMO) for 8 bedsits. At my site inspection doors and partitioning erected internally effectively convert the property into three self-contained flats and two bedsit rooms on the following basis: the basement consists of 2 bedsit rooms with a shared bathroom and kitchen and its own external access door but with no internal connection with the rest of the property; the ground floor consists of a self-contained flat with kitchen and bathroom, the first floor has 2 bedsit rooms which are unoccupied with a kitchen and WC on the half landing. Work is in progress to partition one bedsit to create a kitchen and bathroom; and, on the second floor there is a self contained flat between the foot of the stair leading from the first floor landing up to 2 lockable bedrooms, kitchen and bathroom.

2. Planning permission was granted for the creation of self-contained flats within the basement and second floor areas in 1975 and 1981 respectively.

3. Two applications for Certificates of Lawfulness (LDC) to establish the use of the second floor and basement as self contained flats were dismissed on appeal in August 2013 (APP/X5210/X/12/2189852 and 2189857). Since then, partitioning has been fitted in the ground floor hallway running along the length of the staircase, thereby providing a self contained flat on the ground floor.

The appeal on ground (b)

4. An appeal on this ground is that as a matter of fact, the alleged breach has not occurred. However it was evident from my site inspection that the unauthorised change of use has occurred.

5. The appeal on this ground fails.

The appeal on ground (c)

6. The appellant states that there has not been a breach as 14A (basement) has always been a self-contained flat with its own front door; 14D (second) has been a flat since 1980 and 14B (ground) has been created by the appellant to comply with the Council's Management Order[1]. There are also 4 gas and 4 electricity meters.

7. Although the appellant has submitted Council Tax and utilities bills for each of the four 'flats' within the property, this is the same evidence considered by the Inspector in the LDC appeals. The Inspector refers to the property being formally licensed as a HMO on 16 March 2011; the schedule of license conditions refers to bedsits; and, that the works to self-contain the second floor were undertaken between December 2011 and January 2012 by inserting a door at the foot of the stairs to the second floor. Additionally the Inspector considered that the evidence was not sufficiently precise and unambiguous to demonstrate on the balance of probability that the use of the basement as a self-contained flat was lawful in July 2012.

8. In view of this and in the absence of any other evidence to indicate that the flats are lawful through the grant of a planning permission either expressly or as permitted development, the appeal on this ground fails.

The appeal on ground (d)

9. The appellant considers that at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.

10. The dates of the erection of partitioning indicates that the breach has occurred within the previous four years prior to the date of the enforcement notice and cannot therefore be considered as lawful due to the passage of time.

11. The appeal on this ground therefore fails.

The appeal on ground (a)

12. From my inspection of the site and its surroundings, and from the written representations made, I consider that the main issue in this appeal is the effect that the change of use has on the supply of low cost housing.

[1] This is an unusual arrangement that has arisen as a result of the appellant's relationship with her tenants.

13. Although the appellant has not submitted any substantial case that planning permission should be granted, reference is made to the property having been converted and used as self-contained flats in the past. However since the time when permission was granted, the Council is now seeking to resist the loss of low cost housing for which there is a demonstrable need. Policy CS6 of the Camden Core Strategy 2010 relates to the provision of quality homes through supporting the supply of bedsits amongst other aims. Policy DP9 relates specifically to student housing, bedsits and other housing with shared facilities and expressly resists development that involves the net loss or self-containment of bedsit rooms.

14. Allowing the appeal on this ground would normally be contrary to those policies in the absence of any justification that other material considerations should be taken into account and that such considerations clearly outweigh the policies.

15. In this case I consider that there are other considerations that should be taken into account. The property has previously had permission for self-contained flats in the basement and second floor although that use has ceased at some point when the bedsits were established. The staircase between the ground and the basement has been removed and the Council considers that the reinstatement of the staircase could not be enforced due to the passage of time. Because of the absence of any internal physical connection the HMO bedsits in the appeal property could not be operated on an integrated basis and the basement accommodation appears to operate independently from the rest of the property.

16. The appellant states that she occupies the ground floor and it is not unreasonable for her to have a reasonable degree of privacy and I recognise the necessity for this in view of the Management Order. Furthermore, there is no evidence that the nature or type of tenant would change as a result of permission being granted and, consequently, there would be little effect on the availability of low cost housing to persons in need of such accommodation. However, I recognise that the situation could change in the future but even in that event I do not anticipate that this would have any significant effect on the Council's policies in respect of the provision of low cost housing accommodation.

17. On this basis I consider that these other material considerations outweigh the policy considerations.

18. For the reasons given above and having regard to a decision drawn to my attention by the Council (APP/X5210/A/12/2188149), I conclude that the appeal on this ground should be allowed. Neither party has suggested the need for any conditions nor do I not consider that conditions are necessary in view of the fact that the change of use has already occurred.

Conclusions

19. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Formal decision

20. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land at 14 Iverson Road, London, NW6 2HE, as shown on the plan attached to the notice, for the change of use of the basement, ground and second floors from HMO accommodation (sui generis) to x3 self-contained flats (C3) and x2 HMO bedsits (C4).

P N Jarratt

INSPECTOR