



Appeal Decision

Hearing Held on 13 November 2018

Site visit made on 13 November 2018

by Katie Peerless Dip Arch RIBA

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

Decision date: 30 November 2018

Appeal Ref: APP/X5210/C/18/3198458
47 Great Russell Street, London WC1 3PB

- 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 Mr Roger England against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice, numbered EN16/0452 was issued on 7 February 2018.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of the front two rooms at ground floor level from Class A1 retail use to Class C3 residential accommodation.
 - The requirements of the notice are: permanently cease the use as residential accommodation.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Main Issues

2. I consider the main issues in this case are:

on ground (b): whether the alleged change of use has occurred as a matter of fact and, if so,

on ground (d): whether the change of use is immune from enforcement action through the passage of time and, if not,

on ground (f): whether the requirements of the notice exceed what is necessary to remedy the breach of planning control.

Site and surroundings

3. The appeal property is a grade II listed terraced house with accommodation over 4 storeys. The building is listed for its age, its contribution to the group setting of the terrace of which it is part and its contribution to the surrounding area which includes the British Museum and forms the Bloomsbury Conservation Area. Other properties in the terrace clearly have a shop use at ground floor level, whereas the appeal property has no external signage and the only indication of a possible retail use is a notice in the window.

4. To the rear of the property there is a later single storey addition in use as a kitchen which also has a roof terrace. The kitchen can be accessed from the ground floor rooms and the roof terrace from a doorway on the half landing between the first and second floors.

Reasons

Ground (b)

5. In 2011 the appellant applied for planning permission¹ to change the use of part of the building to residential and the Council granted permission for a '*change of use from office (Class B1) to residential (Class C3) at basement, first, second and third floor levels and change of use of the ground floor (rear proportion and hallway) from part shop (Class A1) and office (Class B1) to residential (Class C3) with the front proportion of the ground floor to remain as a shop use*'. The planning permission included condition 6, which required the development to take place in accordance with a number of drawings, one of which², shows 3 rooms on the ground floor in a retail use.
6. The application form notes that there was an '*occasional art gallery and exhibition space*' on the ground floor. The appellant therefore maintains that the rooms in question on the ground floor were not previously in an A1 retail use and that the Council cannot therefore unilaterally require them to '*remain*' in such a use through the grant of a planning permission.
7. I consider that the fact that the planning permission includes the words '*... from part shop (class A1) ...*', in the description of development does not have an impact on the validity of the permission, even if they are incorrect. There is no dispute that the rooms were not previously in a residential use and the permission makes clear that they are not being granted permission for this sole use. It seems to me that what the permission actually does is to confirm that the rooms should have an A1 retail use, as shown on the application drawings and as referred to in the condition. I therefore find that the present authorised use of the building includes both a residential use and an A1 retail use on the ground floor.
8. I have taken into account 2 previous appeal Decisions relating to the property and the findings of APP/X5210/A/12/2185954 concluded that there was an authorised '*shop use*' in the front 2 rooms. Appeal APP/X5210/A/13/2202236 confirmed the refusal of permission for these rooms to change to residential. In that appeal, the appellant once again claimed that the rooms were not in an A1 use, but should be considered as having a D1 (gallery use). The Inspector declined to determine whether or not the relevant part of the building was in a D1 use but concluded that whichever use class was involved, the change of use should not be granted permission. I therefore find no reason to disagree with either of these previous findings and conclude that the implemented 2011 permission confirms the lawful use of the property.
9. However, the Council agreed at the Hearing that it is only the 2 larger rooms towards the front of the building that it considers should be in an A1 use and not the smaller room that was part of the original building and which leads through to the kitchen, which is located in a later addition in the rear yard.

¹ Ref: 2011/5134/P

² Numbered 100/PL/624, dated November 2011 (the 2011 permission)

10. Condition 3 requires that, '*before the uses commence*', sound insulation is to be provided between the '*existing shop*' and the residential dwelling. This has not been carried out but, again, I do not find that this means that the permission is invalid because there may not have been an '*existing shop*'.
11. This condition does, however, add weight to the Council's contention that the planning permission, which has been implemented through the current residential use, could create 2 separate planning units that could be physically and functionally separate. Nevertheless, I consider that the building could also operate as a single planning unit with a mixed use if that is how the appellant chose to implement the planning permission. In that scenario, there would be no problem with using the 2 front rooms to access the rear residential parts of the building, provided an A1 use was still operating within them as the predominant use. At the Hearing the Council confirmed that it does not object to access to the residential areas being taken through the rooms, its main concern being to retain an active shop frontage to the property.
12. Turning now to whether there has been a breach of planning control as a matter of fact, this will depend on whether the 2 front rooms do, in fact, have a dominant A1 use or are being used residentially without any A1 element, as alleged in the enforcement notice. The appellant deals in fine art and paintings for sale are displayed in the rooms and also on parts of the first floor, where, I am told, prospective purchasers can view them at the appellant's invitation. In his statutory declaration, the appellant states that the public normally have access to the property for the purpose of buying the paintings every day until 20.00hrs and there is a sign displayed in the window inviting customers to ring for entry or to telephone for access.
13. The Council and a neighbouring owner dispute that the way the appellant's business operates from the property falls within an A1 use and consider that whatever takes place there is actually only an ancillary residential use. However, it seems to me that there was nothing to indicate that the 2 front rooms were not being used for the purposes claimed and that this includes a mainly A1 use.
14. At the time of my site visit, the spaces were not laid out as normal residential rooms and, whilst they are not physically separated from the rest of the house, this does not mean that they are not in the use claimed. Given the high value of the pieces on sale, it is not unreasonable that, for security purposes, customers have to ring or call for entry. It also appears that the appellant has discussed paying business rates for the rooms with the Council, who have not taken up the offer as they consider that the whole house is in a residential use, hence the issue of the enforcement notice.
15. In summary, I have seen nothing to persuade me that the appellant's statutory declaration about the extent of the retail use in the building is inaccurate and I have found that a mixed use of the property is authorised and is still, in fact, taking place. In consequence I find that it has not been demonstrated that the breach of planning control as alleged has occurred.
16. This does not, of course, mean that the Council would be unable to enforce against any future unauthorised change of use that might occur after the issue of this Decision, such as the 2 rooms ceasing to include an A1 use so that the whole building was in a residential use, or if another non-A1 use was found to be taking place in the rooms.

Other grounds of appeal

17. The appeal on ground (d) claimed that, if the appeal on ground (b) failed and the building was found to be in a wholly residential use, this use has continued since at least 2011 and is consequently authorised. As I have found the building to be in a mixed C3/A1 use, this ground of appeal does not therefore fall to be considered. Similarly, as the enforcement notice will be quashed, there is no need to consider the appeal on ground (f).

Conclusions

18. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances, as noted above, the appeal under the various grounds set out in section 174(2) to the 1990 Act as do not need to be considered.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Tim Miles	Montagu Evans, Chartered Surveyors
Robert Walton	of Counsel, Landmark Chambers
Roger England	Appellant
Sonan Kempadoo -Smith	Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Gary Bakall	Planning Enforcement Officer, London Borough of Camden
Alastair Mills	of Counsel, Landmark Chambers
Nick Baxter	Conservation Officer, London Borough of Camden
Pritej Mistry	London Borough of Camden Legal Department

INTERESTED PERSONS:

Brian Lake	Neighbouring occupier
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DOCUMENTS

- 1 Notes of Mr Lakes Statement
- 2 Statement of Common Ground

PLANS

- A Plan 100/PL/624 from the 2011 permission