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## Appeal Decision

Site visit made on 15 April 2019

**by Paul Freer BA (Hons) LLM PhD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 June 2019**

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**Appeal Ref: APP/X5210/C/18/3200047**

**Land at 226A Camden High Street, London NW1 8QS**

- 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 Bezhlel Rajuan of Firebone Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice, numbered EN17/1258, was issued on 1 March 2018.
  - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised conversion of the first and second floors from 2 x self-contained flats to 4 x self-contained studio units.
  - The requirements of the notice are:
    - 1) Cease the use of the first and second floors as four self-contained 1 bed studio flats
    - 2) Restore the first floor to its previous use as 1 x self-contained residential unit
    - 3) Restore the second floor to its previous use as 1 x self-contained residential unit

**or**

    - 4) Restore the first and second floor to its original use as one single self-contained flat

**and**

    - 5) Make good any damage as a result of the above works.
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
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**Summary Decision: the appeal is allowed and the enforcement notice is quashed**

### **Procedural Matters**

1. The breach of planning control as alleged in the notice is, without planning permission, the unauthorised conversion of the first and second floors from 2 x self-contained flats to 4 x self-contained studio units. Two points flow from this.
2. Firstly, 'conversion' is not of itself development as defined in Section 55(1) of the Town and Country Planning Act 1990 (the 1990 Act). The definition used in the 1990 Act is the making of any material change in the use of any buildings or other land. I shall therefore correct the notice to allege 'a material change of use comprising the conversion....' Notwithstanding this defect, it is clear that the appellant has understood the meaning of the notice and I am therefore satisfied that I can do so without causing injustice.
3. Secondly, the enforcement notice is concerned with a breach of planning control rather than other areas of legislation. As such, the word 'unauthorised'

is not appropriate in this context and I shall delete it. The notice correctly alleges 'without planning permission' and therefore the word 'unauthorised' is superfluous in any event. No injustice would arise from correcting the notice in that respect.

4. In the first of the requirements at paragraph 5(1) of the notice, the requirement is to cease the use of the first and second floors as *four self-contained 1 bed studio flats* (my emphasis). There is, therefore, a slight inconsistency between the breach of planning control alleged in paragraph 3 of the notice and the requirements to comply with it at paragraph 5(1).
5. It is important that an enforcement notice is internally consistent. In this case, whilst there is no confusion about the meaning of the breach of planning alleged, I prefer the description used in paragraph 5(1) of the notice as being the more accurate. I shall therefore correct the allegation in the notice accordingly. Again, it is clear that the appellant has understood the meaning of the notice and I am satisfied that I can do so without causing injustice.
6. At the time of my site visit, the layout of the appeal property comprised two self-contained one-bedroom flats on the first floor and two self-contained one-bedroom flats on the second floor. At first floor level, there is a larger flat facing onto Camden High Street and a smaller flat with windows in the rear elevation of the building. In his evidence, the appellant describes the larger of these flats as Flat 1 and the smaller flat as Flat 2. The same layout is repeated at second floor level. In his evidence, the appellant describes the larger of the flats at second floor level as Flat 3 and the smaller flat as Flat 4. There is, understandably, some inconsistency in terms of how the four flats are identified in the evidence from different sources. In the interest of consistency, I have therefore adopted the numbering employed in the appellants' evidence.

#### **The appeal on ground (d)**

7. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of four years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
8. The evidence provided by the appellant in support of this appeal is derived from several sources, including statutory declarations, Council Tax assessments, tenancy agreements and correspondence relating to Housing Benefit payments. It is convenient to consider these in turn.
9. The appellant has provided two statutory declarations. I am satisfied that both of these statutory declarations have been properly made, and accordingly afford them due weight.
10. The first of these statutory declarations is made by Mr Ibrahim Salam, who confirms that he occupied a flat on the first floor (Flat 1) between May 2009 and September 2013. In his declaration, Mr Salam recalls that there were a total of four flats in the building and that all four remained occupied throughout the time that he resided there. I also note that Mr Salam viewed all four flats before selecting which one he wanted to move into, confirming in his

declaration that each flat was similarly equipped with small kitchens and en-suite shower rooms/toilets.

11. The second of these statutory declarations is made by Mr Ibrahim Atiyeh, who is the current occupier of Flat 3. Mr Atiyeh confirms that he moved into the flat around March /April 2011. He indicates that he has been into the other three flats in the building, again confirming that they are all self-contained with a kitchen and shower room/toilet. However, Mr Atiyeh does not indicate exactly when he went into the other flats, which therefore limits the reliance that I can place on his evidence in that respect.
12. The Council Tax records show that the property was first assessed as four individual flats in July 2014, and therefore some four months or so short of four years before the notice was issued. But this must be looked at in context and in the light of other evidence, including the statutory declarations made by Mr Salam and Mr Atiyeh. In that respect, I take the appellant's point that the fact that the individual flats were first assessed only in July 2014 does not necessarily mean that they were not in existence and in occupation before that date.
13. The appellant has provided correspondence from Home Studios 4U Ltd, the current Letting and Managing Agents for the property. In a letter dated 10 January 2019, Mr Mizrachi, a Director of that company, confirms that Home Studios 4U Ltd took over as the Letting and Managing Agents for the property in early 2014. In his letter, Mr Mizrachi goes on to explain that he personally visited the property in January 2014, before Home Studios 4U Ltd took over as agents, and indicates that he went into each of the four self-contained flats. It is also pointed out that the first tenancy agreements date from February/March 2014 but have rolled over. I return below to the significance of the latter part of that statement. Although not submitted as a statutory declaration, given the detail that it contains and its consistency with other evidence (see below), I nevertheless attach significant weight to this correspondence.
14. I have been provided with Assured Tenancy Agreements (ASTs) relating to each of the four flats, two dated 28 February 2014 (Flat 1 and Flat 4) and two dated 6 March 2014 (Flat 2 and Flat 3). All four ASTs are between Home Studios 4U Ltd and the occupiers of the individual flats. All four of those individuals were still in occupation on the date the enforcement notice was issued, including Mr Atiyeh, the signatory to one of the statutory declarations submitted by the appellant.
15. I recognise that these ASTs were for periods of six months only and therefore would only have covered the period to the end of 2014. In other circumstances, that would have reduced the weight that I could attach to them. However, in this case and as set out above, the Letting and Managing Agents indicated that the ASTs have rolled over. Whilst I have no further documentary evidence to confirm that to be the case, that evidence has not been challenged by the Council and accordingly I have no reason to cast doubt upon it. On the contrary, the ASTs are entirely consistent with other evidence that is before me and for that reason I attach significant weight to that evidence.
16. The appellant has provided copies of letters from the Council awarding Housing Benefit to each of the occupiers of the four flats. The letter to the occupier of Flat 1, dated 11 April 2014, refers to payment of Housing Benefit from 3 March 2014. The letter to the occupier of Flat 4, also dated 11 April 2014, refers to

payment of Housing Benefit from 28 February 2014. The letter to the occupier of Flat 3, the aforementioned Mr Atiyeh, is dated 2 May 2014 and refers to payments of Housing Benefit from 1 April 2014. The final letter, to the occupier of Flat 2, is dated 28 May 2014 and refers to payments of Housing Benefit from 6 March 2014.

17. I recognise that only one of these letters, that to the occupier of Flat 4, relates to the payment of Housing Benefit within the period of four years immediately prior to the issue of the enforcement notice. Nevertheless, the remaining three letters all relate to dates very close to the commencement of that four-year period. The Council points out that these benefit records do not in themselves prove that the property was being used as four self-contained units and that the benefits could be paid on a room by room basis rather than on the basis of self-containment. However, whilst the point that the Council makes is a perfectly valid one, these letters should not be read in isolation but must be read in the context of other evidence that is before me. When read in that way, and given that the letters emanate from the Council itself, I again attach significant weight to this evidence.
18. In addition to the above-mentioned letters, I have been provided with copies of subsequent letters sent by the Council on various dates in 2015, 2016, 2017 and 2018. Attached to these letters are schedules that refer to the names of the tenants. These confirm that the same four tenants have been in occupation throughout that period which, as well as providing evidence of continuity of occupation, also tend to confirm that the ASTs have rolled over as indicated in the letter from Home Studios 4U Ltd.
19. Finally, I have been provided with copies of various invoices relating to the property, the earliest of which dates to 10 March 2014. However, these invoices are short on detail and could equally relate to a property not divided into four self-contained flats. Accordingly, I attach only limited weight to that evidence.
20. In summary, I am struck by the inherent consistency within the documentary evidence submitted by the appellant. That evidence points strongly towards continuous occupation of the building as four self-contained 1 bed studio flats from the time that Home Studios 4U Ltd took over as Letting and Managing Agents for the property in early 2014. Moreover, the two statutory declarations and the letter from a Director of Home Studios 4U Ltd are, in my view, strong evidence that the property was occupied as four self-contained 1 bed studio flats for several years before that.
21. The Council relies on the fact that Council Tax was paid only from July 2014 but, for the reasons set out above, that in itself is not conclusive and is not sufficient to counter the documentary evidence produced by the appellant. Although not raised by the Council, I am mindful that I have not been provided with evidence relating to the payment and recording of rent, or the payment of utility bills. Given that the current residents all appear to be long-standing occupiers of the property, such evidence should have been relatively easy to obtain. However, whilst I find the omission of that evidence somewhat surprising, in view of the amount and consistency of other evidence that has been provided, I do not consider that the absence of such evidence fatally undermines the appellant's case.

22. I therefore find that the appellant's evidence is sufficiently precise and unambiguous to show that, on the balance of probability, the use of the first and second floors as four self-contained 1 bed studio flats use had been continuous for a period in excess of four years beginning with the date of the breach.

**Conclusion**

23. For the reasons given above, I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed.

**Formal Decision**

24. It is directed that the enforcement notice be corrected by deleting the breach of planning control alleged at paragraph 3 of the notice in its entirety and replacing it with "**Without planning permission:** a material change of use comprising the conversion of the first and second floors from two self-contained flats to four self-contained 1 bed studio flats".

25. Subject to that correction, the appeal is allowed and the enforcement notice is quashed.

*Paul Freer*  
INSPECTOR