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## Appeal Decisions

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

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

**Decision date: 12 May 2020**

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### **Appeal A: APP/X5210/C/19/3242034**

**Land at Ground Floor Flat, 16 Conway Street, Fitzroy Square, London W1T 6BE**

- 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 Thomas Wilson against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice was issued on 14 November 2019.
  - The breach of planning control as alleged in the notice is without planning permission, the use of the Property as 'temporary sleeping accommodation' (as defined by Section 25 of the Greater London Council (General Powers) Act 1973 and as set out in the 'Explanatory Note' below) for more than 90 nights in the same calendar year in breach of by Section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973.
  - The requirements of the notice are: -
    1. Discontinue the use of the premises as 'temporary sleeping accommodation' as defined at Section 25 of the Greater London Council (General Powers) Act 1973 except to the extent allowed by Section 25A (1) of that Act, which permits the use subject to Conditions, including Conditions set out at Section 25A (2) (a) and (b) which limit use as temporary sleeping accommodation to a maximum of 90 nights in any one calendar year.
  - The period for compliance with the requirements is one month.
  - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B: APP/X5210/C/19/3243954**

**Land at Flat A, 16 Conway Street, Fitzroy Square, London W1T 6BE**

- 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 Thomas Wilson against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice was issued on 14 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, the use of the Property as 'temporary sleeping accommodation' (as defined by Section 25 of the Greater London Council (General Powers) Act 1973 and as set out in the 'Explanatory Note' below) for more than 90 nights in the same calendar year in breach of by Section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973.
- The requirements of the notice are: -
  1. Discontinue the use of the premises as 'temporary sleeping accommodation' as defined at Section 25 of the Greater London Council (General Powers) Act 1973 except to the extent allowed by Section 25A (1) of that Act, which permits the use subject to Conditions, including Conditions set out at Section 25A (2) (a) and (b) which limit use as temporary sleeping accommodation to a maximum of 90 nights in

any one calendar year.

- The period for compliance with the requirements is one month.
  - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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### **Decisions – both appeals**

1. Both appeals are dismissed and the enforcement notices are upheld.

### **Procedural Matters**

#### **Appeal B**

2. The address in the banner heading above has been taken from the enforcement notice. The address cited on the associated appeal form is given as 16A Conway Street by the appellant. However, that appeal form also cites the Council's reference number for the enforcement notice associated with this appeal. It is clear that the enforcement notice relates to Flat A, which the evidence before me indicates is on the first floor of 16 Conway Street (No 16). I have dealt with the appeal on this basis.
3. Also, on that appeal form the appellant indicated that he wished to appeal on ground (c). Nevertheless, he has confirmed that this was an error and that he wished to appeal on ground (b) instead. Consequently, I have proceeded on the basis that the appeal is on ground (b).

#### **Both Appeal A and Appeal B**

4. The appeals relate to different enforcement notices relating to flats on the ground floor (Appeal A) and first floor (Appeal B) within 16 Conway Street. Nonetheless, the alleged breach of planning control and the requirements are the same in each enforcement notice, the appellant is the same for both appeals and the evidence provided by the parties on each of the appeals is very similar. As such, to avoid duplication the reasoning below covers both appeals.
5. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that the appeals can be determined without the need for a physical site visit. This is because I have been able to reach decisions on them based on the information already available. Both the appellant and the Council were given the chance to comment on this matter and no responses were received.
6. The evidence before me refers to the planning merits of the developments and that No 16 is a grade II listed building within Fitzroy Square Conservation Area. However, as there are no appeals on ground (a) and no deemed planning applications for me to consider they are not relevant to my decisions. Furthermore, I am not empowered to consider whether or not planning permission should be granted for the developments.

#### **The ground (b) appeals**

7. The issue under ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. The appellant must show on the balance of probabilities that the matters as alleged in the notices have not in fact occurred.
8. Section 25 of the Greater London Council (General Powers) Act 1973 (as amended) (the GLC Act) deems the change of use from residential premises to '*temporary sleeping accommodation*' as a material change of use subject to the conditions set out in subsections (2) and (3) of section 25A.

9. Temporary sleeping accommodation is defined, within the GLC Act, as sleeping accommodation which is occupied by the same person for less than ninety consecutive nights and which is provided (with or without services) for a consideration arising either by way of trade for money or money's worth, or by reason of the employment of the occupant, whether or not the relationship of landlord and tenant is thereby created.
10. In relation to both the ground floor and first floor flats the Council has stated that it has received a complaint from another occupier of the building in respect to the use of the flats as temporary sleeping accommodation. A witness statement, submitted as part of the Council's evidence for both appeal A and Appeal B, indicates that new people show up regularly at the entrance of the residential building with large suitcases waiting for access. Furthermore, the Council has stated that it considers that the appellant is a director of Primestay Limited and that the flats are advertised by that company on its website and on another website 'Little Hotelier' as offering self-catering accommodation for short-term lets. The Council has also indicated that no replies were received to Planning Contravention Notices that were issued in relation to the use of the appeal properties.
11. The appellant has not specifically disputed the Council's evidence and his case for each property focusses on his claim that the only times the flats were let out on a rental shorter than 90 days were within the permissible yearly allowance. He also states that copies of the tenancy agreements can be provided and that tenants are not encouraged to sublet the property during any period of time as this causes inconvenience and damages the units. I do not have copies of the tenancy agreements before me.
12. As such, it appears that the appellant considers that the use of the appeal properties does not amount to a material change of use with regard to the conditions set out at section 25 of the GLC. Nevertheless, this is not a relevant argument to advance on ground (b) which is simply whether the flats have been used, on the balance of probability, for 'temporary sleeping accommodation'. The requirements of the notices are framed so that the use must cease except to the extent allowed by Section 25A (1) of that Act, which permits the use subject to conditions, including conditions set out at Section 25A (2) (a) and (b) which limit use as temporary sleeping accommodation to a maximum of 90 nights in any one calendar year.
13. From the evidence supplied it is more highly likely than not that the ground floor flat and the first floor flat at No 16 have been used as 'temporary sleeping accommodation' as defined by the GLC Act. Therefore, on the balance of probability the matters alleged in the enforcement notices have taken place and consequently the appeals on ground (b) must fail.

### **Conclusion - Appeal A and Appeal B**

14. For the reasons given above I consider that the appeals should not succeed, and the enforcement notices are upheld.

*D. Boffin*

INSPECTOR