The Planning Inspectorate

Appeal Decision

Site visit made on 8 September 2023

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 18/09/2023

Appeal Ref: APP/N5660/C/22/3291590
83 Cricklade Avenue, London SW2 3HE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr Leslie Johnson against an enforcement notice issued by the London Borough of Lambeth.
- The notice was issued on 7 December 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the premises to two self-contained flats.
- The requirements of the notice are:
    a) Cease the use of each of the two unauthorised flats; and
    b) Remove all internal doors, partitions, kitchen units, appliances, bathrooms and electrical water and gas services including boilers and meters, that facilitate the unauthorised use; and
    c) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the 1990 Act as amended.

Decision

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

Preliminary Matters

2. In ground (d) appeals, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

3. The notice alleges the use of the property as two self-contained flats, which are referred to in evidence as Nos 83 and 83A. The Council acknowledges the original two-storey house was used as a family dwellinghouse and that its lawful use is as a single dwellinghouse. There is no definition of the term dwellinghouse in the 1990 Act but caselaw[1] has established that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it

[1] *Gravesham BC v SSE & O'Brien* [1983] JPL 306.

the facilities required for day-to-day private domestic existence. A self-contained flat is normally a dwellinghouse for the purposes of the 1990 Act.

4. The appellant argues the use of the main house, No 83, remains as a single dwellinghouse. However, the evidence submitted by the appellant indicates that No 83 has been let to four individuals and has been used as a small house in multiple occupation (HMO), with two or more households sharing basic amenities (toilet, personal washing facilities or cooking facilities), within the meaning of Class C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987. A single dwellinghouse would fall within Class C3 of the Use Classes Order.

5. However, the allegation does not detail an HMO but alleges the material change of use to flats. The description 'self-contained flat' would not be incorrect whether or not one of the flats was occupied as an HMO or a family dwellinghouse, given that the use class does not form part of the allegation. In addition, it is clear from the notice that it is the sub-division of the property into two dwellinghouses that the Council is targeting, not any use of No 83 as an HMO. I have determined the appeal on this basis.

Reasons

Background and Evidence

6. Section 171B(2) of the 1990 Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Uses are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired[2].

7. Therefore, it is necessary to consider whether the appellant has shown, on the balance of probabilities, that the material change of use of the premises to two self-contained flats occurred four or more years prior to the issue of the notice, and that use continued after the date of change without any significant interruption, such that it is now too late for the Council to take enforcement action.

8. The appeal property is a two-storey, semi-detached house. The property is split into two self-contained dwellings, known as No 83 and No 83A. No 83 comprises the original building at ground and first floor and is accessed from the front of the building. No 83A is a one bedroom unit occupying a single storey extension at the rear, with separate access from the side of the main building.

9. The appellant has provided sworn evidence by way of a Statutory Declaration[3], dated 28 July 2021, which states the following details. The property was purchased in 1986. A single-storey rear extension was built between October 2015 and April 2017, pursuant to planning permission (Ref 15/03985/FUL). The extension was converted to a self-contained, one-bedroom flat and was occupied by a family member shortly after completion in June 2017. Separate gas and water connections were created in April 2017. Maintenance and improvement works have been carried out, including new bathroom and

[2] Section 191(2)(a) of the 1990 Act as amended.
[3] Under the Statutory Declarations Act 1835.

kitchen fittings, but the works never required the property to be vacated. The appellant's son lived in No 83A between June 2017 and December 2019. This was his sole residence. From December 2019, No 83A was occupied by a couple and a managing agent was appointed[4].

10. It is further stated that between May and September 2017, the appellant took steps to split the property title between Nos 83 and 83A[5], and the Council formally approved the numbering of the flat as 83A in January 2019[6]. Council Tax has been paid for No 83A since December 2019. No 83A has been occupied as a self-contained flat continuously aside from a short period during tenancies. During this time, the house has remained in use as a dwellinghouse.

11. In addition to the supporting documents noted above, an email from the water provider has been submitted, dated 12 April 2017, regarding an engineer's appointment to install a new water connection at No 83A, along with a letter from an approved contractor with a quotation for installing a new gas supply at No 83A, dated 9 May 2017.

12. A second Statutory Declaration, dated 20 July 2021, has been submitted by the appellant's son. This corroborates the information provided by the appellant. In summary, it is stated that Mr T Johnson occupied No 83A between June 2017 and December 2019 without interruption. The flat was entirely self-contained, with all the facilities for day-to-day private domestic existence, with no access to No 83.

13. A signed statement, dated 27 July 2021, has been provided by Mr Thomas, Director of a buildings and maintenance company. This confirmed the two dwellings have been operating as separate flats from completion of the extension conversion in June 2017. Mr Thomas states he has direct knowledge of the property and provides dates of visits when maintenance works were carried out. It is stated that No 83A has been occupied continuously.

14. An undated letter has been provided by the managing agent Jacksons. This corroborates some of the information provided, including that both flats were self-contained and No 83 was occupied by the appellant with No 83A being occupied by his son in 2018 and the early part of 2019. However, the agent states the gas and electricity supply is shared. It also states that No 83 was let to four individuals, their tenancy commenced on 17 June 2019, and they moved in on 20 June 2019.

15. A further letter from an estate agent has been provided which details valuations for the rent and/or sale of No 83 and No 83A, dated September 2017, and a second valuation from a different agent for the sale of No 83A.

16. In addition, the appellant has submitted signed and dated Assured Shorthold Tenancy Agreements (AST) to let No 83A to two individuals, dated 21 December 2019 for a period of 12 months up to 20 December 2020, which was then extended to 20 December 2021 and subject to an amendment on 21 March 2021. This notes that the payment of water, gas and electric bills is the responsibility of the landlord.

[4] Letter of appointment dated 25 April 2019.
[5] Letter from Solicitor confirming instructions, dated 15 May 2017; Surveyor's receipt, dated 12 June 2017.
[6] Copy of the Council's Order confirming the street numbering, dated 9 January 2019.

17. A further AST, dated 23 October 2021, was issued to a new tenant for 12 months until 22 October 2022. There are also supporting statements of account from the managing agent that cover part of the rental period and a property condition report, dated 2 June 2021. A Gas Safety Certificate dated 19 December 2019 relating to No 83A, and Energy Performance Certificates, dated 30 April 2019 for No 83, and 30 April 2019 for No 83A, have been provided.

18. The Council's evidence incudes a note of a site visit on 13 June 2019, which describes three bedrooms and a bathroom on the first floor with the ground floor comprising a living room/kitchen area and another room. It is clear this refers to No 83. The extension, No 83A, comprised a bedroom, a bathroom, a w/c and a kitchen. Both units contained all the facilities for day-to-day private domestic existence at that time.

Analysis

19. There is no dispute that No 83 is used and occupied for residential purposes nor that its lawful use as a dwellinghouse has been lost. The dispute concerns the use of No 83A.

20. The Statutory Declarations submitted by the appellant and his son are duly signed and witnessed and carry significant weight. The sworn evidence sets out in detail when the extension that became the flat at No 83A was built, and how is has been used and occupied throughout the relevant period. There is a range of relevant supporting evidence including ASTs, statements for rental payments, and corroboratory letters from contractors and property professionals.

21. The Council argues that the appellant's sworn evidence is contradictory in terms of when the conversion took place. However, the appellant's statement says the extension was built pursuant to a planning permission and then converted. It was subsequently occupied by his son who lived in No 83A independently. This is confirmed in a second sworn statement from the appellant's son and corroborated by the contractor who carried out the works. Although this latter evidence is not sworn, it is sufficiently detailed and cannot be simply dismissed. Similarly, the letter from the managing agent adds to the weight of evidence.

22. A connecting door was in place when the extension was built, presumably as this appeared on the approved plans. It was removed in December 2019, when No 83A was let formally. However, the door does not show that the appellant's son was regularly interacting with the occupants of the main house and was reliant on the primary accommodation provided in the main house.

23. The Council maintains that the property was vacant in June 2019, when the enforcement officer carried out a site visit. However, the Council's photographs of No 83A show the opposite based on the personal items and possessions that are in each room.

24. I accept that evidence on the separate utilities is unclear, especially as the bills were included in the rent and the managing agent refers to shared gas and electricity. Nonetheless, this would not suggest that a change of use had not taken place. The sworn evidence, plus the totality of the corroborative information, sets out how No 83A was fitted out with all the necessary facilities

for separate day-to-day private domestic existence, and that it was occupied and used as such. The ASTs and rental statements show that No 83A was let and occupied as a separate unit of accommodation. They do not cover the period of occupation by the appellant's son. However, the lack of a formal tenancy agreement between the appellant and his son, or the appointment of a managing agent, is not unusual due to the family relationship. The matter is dealt with in the sworn evidence.

25. The Council suggests there has been a break in occupancy. I agree there is an overlap between tenancies, according to the dates of the ASTs. However, there is no significant gap that would suggest a period of vacancy during which time the Council would have been unable to take enforcement action.

26. The individual items of evidence such as street numbering orders, emails from utilities providers, matters relating to the property title and valuations/marketing are of limited value individually but collectively they add weight to the appellant's case.

27. The Council maintains that the change of use of No 83A occurred in 2019 and cites the date of a complaint from a local resident which reported conversion works being carried out in April 2019. However, the complaint itself is not provided and I cannot reach a conclusion on its accuracy, nor whether it relates to works to No 83 or No 83A. The Council Tax records and electoral register accord with the appellant's information but do not in themselves show No 83A was not in use as a self-contained unit of accommodation prior to 2019.

28. Overall, I find that the appellant's evidence is sufficiently precise and unambiguous. I am satisfied that it has been shown, on the balance of probabilities, that a material change of use to two self-contained flats occurred four or more years prior to the date of the notice such that it is now too late to take enforcement action.

29. The ground (d) appeal succeeds, therefore.

Conclusion

30. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed. In these circumstances, the appeal on ground (f) does not fall to be considered.

D Moore

Inspector