Appeal Decision

Inquiry held on 9 March 2010

Site visit made on 9 March 2010

by Katie Peerless **Dip Arch RIBA**

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

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Decision date:
11 May 2010

Appeal Ref: APP/A5840/C/09/2107292
St George's Tavern, 14 Coleman Road, London SE5 7TG

- 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 J Sternlight against an enforcement notice issued by the Council of the London Borough of Southwark.
- The Council's reference is LEG/PL/130271/SY/07-EN-0332.
- The notice was issued on 21 May 2009.
- The breach of planning control as alleged in the notice is the change of use of the Land from use as a public house (within use class A4) to use as a public house and ten self-contained residential studio units on the upper floors (the Unauthorised Use).
- The requirements of the notice are:
  i) Cease the use of the first and second floor levels as ten self-contained residential studio units;
  ii) Remove from the first and second levels all internal partitions and dividing structures, the kitchens and facilities associated with the Unauthorised Use; and
  iii) Remove all resultant material and debris arising from compliance with requirements (i) and (ii) above.
- The period for compliance with the requirements is three months from the date the enforcement notice comes into effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.

This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 30 March 2010.

Decision

1. I allow the appeal on ground (c) insofar as it relates to flats 1, 5, 6, 7 and 10. I direct that the enforcement notice be varied by the deletion of requirements (i) and (ii) and the substitution of the following requirements:

   'i) Cease the use of flats 2, 3, 4, 8 and 9 on the first and second floor levels as self-contained residential studio units;

   ii) Remove from flats 2, 3, 4, 8 and 9 on the first and second levels all internal partitions, dividing structures, kitchens and facilities associated with the unauthorised use; and'

2. I dismiss the appeal and uphold the enforcement notice as varied insofar as it relates to flats 2, 3, 4, 8 and 9 and I refuse planning permission in respect of these units, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

3. The appeal property is a Victorian public house on three floors, with the licensed premises on the ground floor and rooms on the two upper floors. Prior to its purchase by the appellant in 2005, the upper floors were arranged as five 'letting rooms', shared facilities for the tenants, a store room and a self-contained flat. The appellant has converted the upper floors into ten self-contained units, each with its own kitchen and bathroom facilities. Some of the units now also have a steep internal staircase leading to what has been described by the appellant as additional storage areas. However, the tenants of the units are clearly utilising these spaces as living areas and all the occupied flats with such areas (flats 2, 3, 4, 6, 7 8 and 9) had beds in them.

4. It is agreed between the parties that there are no relevant planning permissions for the property. The only recent applications concerned a proposed new dwelling in the courtyard area adjacent to the pub.

Ground (b)

5. For an appeal on this ground to succeed, it must be demonstrated that the alleged breach of control has not occurred as a matter of fact. There is no dispute that there has been a change in the layout of the upper floors so that they are now in use as the ten self-contained residential units noted above. The appellant's submissions that the changes do not amount to development that needs planning permission will be considered under the appeal on ground (c); that is that there has not been a breach of planning control. In these circumstances, the appeal on ground (b) consequently fails.

Ground (c)

6. The appellant considers that the two upper floors are in an established residential use that is separate from the public house use and that the works that have been carried out have not altered this situation. However, it is agreed that the store room was, until 2005, part of the public house use.

7. It is also not disputed that the upper floors of the building, apart from the storage areas, were, prior to 2005, in a residential use. However, the parties are in disagreement as to whether this use was ancillary to the public house use or part of a composite mixed use consisting of both A4 (previously A3) and residential. Nonetheless, whichever situation existed then, it seems that the building comprised a single planning unit. The situation is now that there are two distinct areas in different uses that have no functional relationship to each other and, although in the same ownership, they are run as two separate businesses. This indicates to me that there are now two planning units where before there was only one.

8. Nevertheless, a material change of use that requires planning permission is only likely to have occurred if the changes that have been carried out have made a significant difference to the character of the activities in comparison with the previous pattern of use. In this case, I noted at the site visit that the two upper floors now have sleeping accommodation for at least twenty people and possibly more, if all the double beds I counted were used by two people rather than one. Previously there was accommodation for a maximum of ten people in the letting rooms and probably only two or three people in the manager's flat.

9. Prior to the post-2005 alterations, it seems that the self-contained flat on the second floor was used by either the licensee or the manager of the public house for residential purposes. Evidence to this effect was given at the Inquiry by a witness (now the landlord) who had used the public house and carried out maintenance work on it for many years. Although the appellant suggested that the flat may have been rented out independently before he bought the property, I have been shown no positive evidence of this. In these circumstances, it seems to me that the flat was part of, and ancillary to, the public house use. This flat has now been split into two self-contained units (flats 8 and 9) that are now unconnected to the public house and are rented out independently from it.

10. Whilst the use is still residential, the accommodation that was previously a flat with a separate living area, kitchen, bathroom and one bedroom used as ancillary accommodation for the public house use is now two separately rented units, with duplicated kitchen and bathroom facilities and consequently reduced living space for the occupants. I saw at the site visit that flat 8 contained 3 beds and flat 9 had 2.

11. I find this sub-division and intensification of use to be a material change for which planning permission has not been granted. Similarly, the storeroom is now two residential units (flats 3 and 4) and this too is an unauthorised change of use. I conclude that the appeal on ground (c) must fail in respect of these parts of the building.

12. The remainder of the accommodation consisted, before 2005, of five rooms that were let out to lodgers by the landlord or licensee. I am told that some of the lodgers stayed in their accommodation for up to three years and were mainly contract workers from other parts of the country who were involved in building projects in London. The appellant maintains that this meant that these parts of the upper floors were akin to a house in multiple occupation, operating separately from the A4 (previously A3) public house use.

13. The Council submits that these rooms were also ancillary to the public house use; they were not self-contained and were operated in conjunction with the main business of the pub. The letting of the rooms was organised through the publican and no evidence was put forward to suggest that this was undertaken as a separate operation. This is in contrast to the current situation, where the renting out of the units is managed through a letting agent, each unit has individual facilities and metering and the public house is run by a landlord who is not responsible for the business on the upper floors.

14. Whilst I agree with the Council that the renting out of the rooms that are now flats 1, 5, 6, 7 and 10 appeared to be part of the public house business, they were not used in the same manner as a lodging house or hotel. The residents stayed for long periods, when the rooms were used as their main residence, and they were able to cater for themselves using the kitchen facility. Consequently, I am not persuaded that the changes that have been carried out within them have altered the character of the use in the same way that has occurred in the manager’s flat and the store room.

15. The ‘letting rooms’ were previously occupied by one or two long term tenants and the only significant alteration in their use is in the way the management of the lettings is arranged. The units now have kitchenettes and shower rooms in place of the communal facilities, but whether or not they were part of an A4 ancillary use or a separate residential operation, I consider that these changes have not brought about a material change that indicates that planning permission for the internal alterations is required.

16. However, in respect of the area that was previously a shared kitchen for the tenants and is now flat 2, I consider that the conversion of this area into a self-contained living unit is material. Although the use could previously have been considered as residential, the alterations have changed the character of the use and increased the occupancy capacity. I therefore conclude that this change also requires planning permission.

17. In conclusion, I find that planning permission is not required for the internal works to flats 1, 5, 6, 7 and 10 or their continued use as rented accommodation and the appeal on ground (c) succeeds to that extent. However planning permission is needed to authorise the changes that have created the remainder of the self-contained units.

Ground (d)

18. The appellant submits that the residential use on the upper floors is lawful and immune from enforcement action, as it has existed since at least 1993. However, as noted above, I have accepted that the five former ‘letting’ rooms are lawful and it is not disputed that flats 3 and 4 were previously in use as storage in connection with the public house. I have concluded that the manager’s flat was also part of the public house use and that the sub-division into two separate dwellings, together with the changes to the former kitchen and store room is a material change of use.

19. These changes took place since the appellant acquired the property in November 2005, the enforcement notice was issued in May 2009 and the requisite period of immunity from enforcement action has not, therefore, accrued. The appeal on ground (d) consequently fails.

Ground (a)

20. The appellant asks for planning permission to be granted for the alterations to the interior of the property, citing the improvement in the facilities and the benefits of providing reasonably priced accommodation for his tenants. However, the sizes of the unauthorised residential units fall well below those set out in the Council's adopted supplementary planning document ‘Residential Design Standards’ and it considers that this will result in unacceptably cramped living conditions for the occupants.

21. There is currently no requirement to upgrade units that existed before the introduction of the current spatial standards or that have acquired immunity from enforcement action. Although I noted that the former ‘letting rooms’ would not meet the adopted space standards and the accommodation was cramped, I have already concluded that planning permission was not required for the alterations that have taken place and it was not disputed that these rooms have been rented out for many years.

22. I am also aware of the 'fall back' position in respect of these rooms. If the enforcement notice was to be upheld in respect of them, they could nevertheless revert to 'letting rooms' on the same basis as previously, but without the internal facilities.

23. However, where new units are created, I consider that it is important that they meet the minimum standards required for a pleasant and healthy living environment. The Council states that it does not object in principle to a fully residential use on the upper floors but is concerned that none of the units meets the minimum size requirements set out in the guidance for residential properties of this type, whether or not the mezzanine 'storage' areas are taken into account.

24. Even if these areas are taken as increasing the living accommodation, the standard of the space is still not acceptable when measured against the requirements of the Design Standards. The headroom in the mezzanine areas is restricted in some of the units and, in flats 3 and 4, the introduction of an upper level has reduced the headroom in the living space beneath them. The restricted layout of the units means that there is little separation between the sleeping, cooking and bathroom areas.

25. The appellant states that nothing would be achieved in requiring the store room and the manager's flat to be returned to their previous conditions. However, as noted above, there is no objection to these areas being used for residential purposes independently from the public house use provided the room sizes and facilities meet the adopted standards. If the enforcement notice is upheld, the use of these sub-standard living areas in their present form will have to cease and it will be for the appellant to agree a suitable layout with the Council for any future residential occupation.

26. I conclude that the flats, as presently laid out, conflict with the aims and objectives of policies 3.12 and 4.2 of the Southward Unitary Development Plan 2007 and the adopted Residential Design Standards which seek to ensure new residential accommodation is designed to a satisfactory standard.

27. For the reasons given above I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application where it relates to those units that require planning permission to authorise them; that is flats 2, 3, 4, 8 and 9.

Ground (g)

28. The appellant originally asked for nine months to comply with the enforcement notice should the appeal fail, to allow notice to be given to his tenants and to allow time for the current agreements to expire. At the Inquiry, he asked for the time scale to be changed to twelve months because he has recently (5 March 2010) granted a twelve month tenancy on one of the flats. In the circumstances, I consider that it was unwise, and could even be considered deliberately perverse, to grant such a tenancy shortly before the date of an enforcement appeal that could require the vacation of the flat. However, the unit in question, flat 10, is one of those that I have found does not require planning permission and the length of this tenancy does not now need to be taken into account.

29. The Council considers that three months gives sufficient time to comply with the requirements and this seems to me to be a reasonable period to give the requisite notice and for the tenants to find other accommodation. I therefore find that there is no compelling reason to extend the period for compliance or prolong the occupation of this unsatisfactory accommodation. The appeal on ground (g) consequently fails.

30. Should it later be shown that there are exceptional circumstances that indicate that this period should be extended, the Council has powers under S173A(b) to do so, whether or not the enforcement notice has come into effect.

Conclusions

31. For the reasons given above I conclude that the appeal should succeed in respect of flats 1, 5, 6, 7 and 10 only, and I will vary the enforcement notice accordingly. Otherwise I uphold the notice as varied and refuse to grant planning permission in respect of flats 2, 3, 4, 8 and 9.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Alun Alesbury	Of Counsel, instructed by Planning and Project Management Services
He called	
Mr Christopher Forde	Publican, St George's Tavern
Mr Joseph Sternlight	Appellant
Mr Alvin Ormonde	Planning and Project Management Services

FOR THE LOCAL PLANNING AUTHORITY:

Colin Thomann	Of Counsel, instructed by Rachel McKay, Legal Department of the London Borough of Southwark
He called	
Mr Anthony Roberts	Enforcement Officer, London Borough of Southwark
Mr Glen Camanzuli	Team Leader, Planning Enforcement, London Borough of Southwark

DOCUMENTS

1 Statement of Common Ground
2 Copy of Enforcement Officer's case notes
3 Extract from Council Tax Valuation List
4 Notes of Mr Thomann's closing submissions
5 Bundle of legal authorities and the Town and Country Planning (Use Classes) Order 1987 as amended

PLANS

A Floor plans of appeal property as existing

PHOTOGRAPHS

1 Set of photographs showing interior of appeal property
2 Aerial photograph of appeal site