The Planning Inspectorate

Appeal Decision

Inquiry held on 23 October 2012
Site visit made on 23 October 2012

by Simon Hand MA

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

Decision date: 1 November 2012

Appeal Ref: APP/T5150/C/12/2174014
6 and 6A Nicoll Road, London, NW10 9AB

- 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 Neil Senevi against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/11/0106.
- The notice was issued on 1 March 2012.
- The breach of planning control as alleged in the notice is the change of use of the main building in the premises from a hotel to twenty-six self-contained flats and the erection of a plastic cladded outbuilding in the rear garden and its use as a two bed self-contained flat.
- The requirements of the notice are Step 1 demolish the single storey detached outbuilding in the rear garden of the premises, remove all items and debris arising from that demolition and remove all fixtures, fittings and materials associated with the unauthorised residential use in that building from the premises. Step 2 cease the use of the premises as residential flats, remove all items, materials and debris, including ALL kitchens and bathrooms which facilitate the unauthorised change of use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (d) and (e) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Costs

1. An application for costs was made at the Inquiry and is the subject of a separate decision.

Decision

2. The enforcement notice is corrected by deleting "6A" from Schedule 1; deleting "The erection of a plastic cladded outbuilding in the rear garden and its use as a two bed self-contained flat. (The unauthorised development)" from Schedule 2; and deleting "Step 1" in its entirety from Schedule 4 and renumbering "Step 2" to "Step 1". Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Reasons

3. No 6 is a large house on Nicoll Road which has been converted into 26 single bedroom, self-contained flats. No 6A is a building in the rear garden that is

used as a two bedroom self contained flat. At the Inquiry the Council accepted their evidence relating to the garden building had been wrongly dated and they could no longer argue that this building had not been in use for more than 4 years. They accepted that the notice could, therefore, be corrected to remove reference to this building.

4. The ground (b) was in fact an argument that the notice was invalid for two reasons. The first was that the building at 6A was not in the garden of No 6, but actually behind No 8 and so the plan accompanying the notice was incorrect. With the removal of 6A from the notice this argument was not pursued. The second reason was that the building had never been a hotel, and so the allegation was incorrect. The correct place to pursue this argument was on ground (d), so there remained no appeal on ground (b).

The appeal on Ground (e)

5. The appellant's contention is that the notice was not properly served, as none of the occupiers of the 26 flats were served with a copy. Section 172(2) of the Act requires that a notice shall be served: "(a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land being an interest, which in the opinion of the authority, is materially affected by the notice".

6. There was no dispute that the 26 occupiers of the flats were materially affected by the notice, and they were also occupiers of the land, the issue was whether the actions of the Council to serve the notice were adequate, and if not, whether the occupiers of the flats have been prejudiced.

7. The officer of the Council responsible for service of the notice was no longer employed by them and no-one with any direct knowledge of what happened was at the Inquiry. Mr Rolt confirmed that it was standard practice in these sorts of cases to deliver the notice to the property, addressed to the occupiers. More than one copy of the notice would be included in the envelope. The Council had evidence that an envelope had been delivered to No 6, although that evidence was not brought to the Inquiry. In response to the concerns raised by the appellant's ground (e) arguments the Council, on 12 October, sent a copy of the notice to each individual flat, with a covering letter with Mr Rolt's telephone number and e-mail address and details of the inquiry. The letter explained they could contact Mr Rolt with any comments or attend the inquiry in person. There have been no responses to that letter.

8. The appellants contended that although the notice may well have been delivered to No 6, it was incumbent on the Council to deliver a separate notice to each occupier. We do not know how many copies, if any, were included in the envelope that was delivered. The occupiers were mostly people sent to No 6 by Brent and other councils because they were in desperate need of housing and were often highly vulnerable individuals. It was thus doubly important to ensure they had been properly served. The letter of 12 October could not constitute valid service as it was delivered at best only 11 days before the opening of the Inquiry, and as the 12th was a Friday they were left with only one working week to deal with the potential loss of their homes.

9. I agree with the appellant that in this case it was particularly important to ensure the notice was properly served. The Council did not know the names of the tenants, not least because their Planning Contravention Notice was not

returned. S329(2) of the Act deals with the service of notices where the name of the person to be served is not known. Looking at S329(2)(b) it is clear that a notice should be delivered to the 'occupier' of the premises either as a registered letter, recoded delivery, handed to a person at the address or affixed conspicuously to an object at the address. This whole section is written in the singular, and I consider that a vague group envelope does not fulfil these requirements. There is only one letterbox at No 6, with each flat having its own pigeonhole for mail. At the very least the Council should have sent a separate notice addressed to the occupier of each flat. I consider therefore that a single envelope simply addressed to the occupiers, regardless of the number of notices it contained, does not meet the requirements of proper service.

10. However the second issue is whether the occupiers of the flats have been prejudiced. I agree with the appellant that the letter of 12 October does not give any of the occupiers time to take legal advice on their position or to research and mount an effective case against the issue of the notice. However, no-one has contacted the Council to enquire as to what is going on, and no-one attended the Inquiry. Had there been any interest amongst the residents to query the effect of or appeal the notice, either option was readily available to them. Consequently, while I consider the notice was not properly served I do not think that the occupiers of the flats were unduly prejudiced. The appeal on ground (e) fails.

The appeal on ground (d)

11. The past history of the property is somewhat uncertain. In November 2004 a Certificate of Lawful Use or Development was issued by the Council confirming that for the previous 10 years the building had been used as a House in Multiple Occupation for 23 people. The appellant bought the property at auction in 2010 as 26 self-contained flats, and this is confirmed by the auction details dated September 2010. The date of this conversion can be pushed progressively back in time. EDF energy confirm that all the flats had a separate electricity meter installed on 11 February 2008. In January 2008 a survey was carried out by 'Property Professionals' and their detailed floor plans, dated 30 January 2008 show 26 self-contained flats. Estate agents details from 2007 also advertise the property as containing 26 self-contained flats.

12. None of this evidence was challenged. The notice was issued on 1 March 2012, so to demonstrate the property has been occupied for four years as 26 self-contained flats the starting date is 1 March 2008. It is thus abundantly clear to me, and I think also to the Council, that the conversion to 26 self- contained flats took place more than 4 years ago. The key issue is thus whether or not the property was used as a hotel in 2009. The Council argue that it was. In their view there was thus an unauthorised change of use from a HMO for 23 people to 26 self contained flats, sometime in or before 2007, a further unauthorised change of use to a hotel, sometime in 2009, then another change of use back to 26 flats sometime in 2010 prior to the auction. As all these changes of use were unauthorised, there was no right to revert back to the flats from the hotel, and the right to revert back to the HMO had been lost. The building now therefore has a nil use. I agree with this analysis, if the hotel use can be demonstrated, then the current building will have a nil use. The requirement to remove all the kitchens and bathrooms is thus reasonable to prevent the unauthorised use as 26 self-contained flats from continuing and

there is no need to consider the necessity of returning the property to a previous use.

13. The evidence for the hotel use has been obtained from the internet. It consists of various hotel booking websites such as Tripadvisor, Clickbed, Alpharooms, and six others. These enabled bookings to be made for a hotel at No 6. However the appellant pointed out a number of inconsistencies. The hotel was usually called the 'North West Hotel' with London in front or after this name, but in one case it was called "The Nicoll House Hotel". The address was also variously No 6, or No 6 to 8 and in one case No 8 Nicoll Road.

14. Three websites had reviews from people who had stayed, the earliest review was 8 January 2009 and the latest 8 March 2010, with the majority falling between July 2009 and March 2010. Most people didn't like the hotel, but some thought it was good value for money and there was a range of opinions expressed, several in French and one possibly in German. The websites also generally described the accommodation as a bedroom, en-suite bathroom and kitchenette, which fits the description of the self-contained flats. The appellant sought to cast doubt on the reliability of internet based hotel reviews, but while I accept these are not necessarily hard evidence for the quality of the accommodation, it seems unlikely to me that reviews of a non-existent hotel would be posted on the web, nor that so many booking sites would purport to book rooms at this hotel if it was not a going concern. It thus seems highly likely to me that there was a hotel here in 2009/2010. I do not think the confusion over the address is particularly important, the photo in each case was of No 6, and the photo on several of the websites of the inside of the reception was also clearly of No 6, as I confirmed on the site visit. All the websites clearly advertised the same hotel, even if there was confusion over the exact address.

15. The appellant argued that even if there had been a hotel at No 6, the conflicting and unconvincing nature of the evidence, and some of the comments themselves, suggested it was not a serious enterprise. It was described as a bit of 'mischief' undertaken by the then buildings owners, who were trying to supplement their income from the flats by renting out some of them when they were vacant as hotel rooms. There was no evidence how many rooms were let, or even whether they were all in No 6 or some in No 8. This use was at best occasional or de-minimis, and could not be said to amount to a material change of use. They also point out none of the letting or property agents who provided evidence about the use in the past mentioned any hotel use.

16. The Council pointed out however, the onus was on the appellant to demonstrate their case. No evidence had been provided as what the use was during this period, other than as a hotel. A number of tenancy agreements had been provided by the appellant, most dating from late 2010, but two were from 2007, one for 6A, the garden building and one for flat 13 at No 6 and one other for January 2010, which also related to No 6A. It had thus been possible to get some evidence from before the current appellant's ownership, but nothing for any of the flats in No 6 for the period of the hotel use.

17. I am inclined to agree with the Council on this point. The only evidence for the use of No 6 from summer 2009 to early 2010 is as a hotel. The agents' evidence is entirely silent on the hotel use, neither confirming nor denying it. There is nothing to suggest this was a partial use or that parts of no 6 were still

let as self-contained flats and other parts as hotel rooms. It would seem the garden building was still used a residential accommodation, but that does not bear on the use of No 6. I accept that the website information, especially the confusion over the address, is misleading, but this still doesn't negate the strong impression left that the owners decided to set up a relatively short lived hotel business at No 6. Even if some of the flats were still being occupied by long term tenants, that would amount to a new mixed use of flats and hotel, which, as far as this ground is concerned is just as fatal to the appellant's arguments. I cannot accept that the evidence shows this was a de-minimis piece of mischief, I consider that on the balance of probabilities No 6 was used as a hotel in 2009/10 and that this amounted to a material change of use. Consequently the appeal on ground (d) fails.

18. Several times at the Inquiry, the possible impact of the 26 flats on the character and appearance of the area was raised, and I note that very recently a 100 bed Stay Club building has been constructed opposite the site. This offers short term lets to students and tourists. Nevertheless, no ground (a) appeal has been lodged and the merits of the development are irrelevant for the grounds that were appealed. There is also no suggestion that the current owners had anything to do with the original conversion of the property to flats or a hotel and they clearly bought the property in 2010 in good faith. Nevertheless, the two grounds are technical grounds and I find that on ground (e) there has been no prejudice to the occupants of the flats, despite the poor service of the notice originally and on ground (d) that there was a hotel use in 2009/10 so that four years use as flats cannot be established.

Conclusions

19. I shall correct the notice by removing the reference to No 6A in schedule 1, remove the second allegation in schedule 2 and remove the first step in schedule 4, renumbering step 2 to step 1. Subject to those corrections the appeal is dismissed and the notice upheld.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Power
He called

Mr Sunevi	The appellant
Mr Butchart MRTPI	Masterplan Consulting

FOR THE LOCAL PLANNING AUTHORITY:

Mr Wicks MRTPI
He called

Mr Rolt MRTPI	Brent Planning Service

DOCUMENTS

1 Appellant's costs submission
2 Council's notification of the Inquiry
3 Letter sent to occupiers of the 26 flats by the Council on 12 October
4 Paper copies of the hotel websites notified to the parties prior to the Inquiry
5 Paper copies of hotel websites found by the Council the day before the Inquiry
6 E-Mail dated 10 April 2012 from the Council to the appellant's agents confirming they do not agree the notice is incorrect and would not be withdrawn.