

Appeal Decision

Site visit made on 20 December 2016

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 11 January 2017

Appeal Ref: APP/Q1445/C/16/3152807

Ground floor flats 1 and 2, 22 Brunswick Street East, Hove, BN3 1AU

- 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 Ms Justina Grigiate against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice, numbered 2014/0448 was issued on 18 May 2016.
 - The breach of planning control as alleged in the notice is the change of use from two garages (sui generis) to 2 no self-contained dwelling units (C3) and the installation of new garage doors.
 - The requirements of the notice are:
Cease use as 2 no self-contained dwelling units
Remove front elevation ground floor glazed doors and reinstate garage doors, 2x pairs of timber doors with 6 glazed windows above (see image of Google Street View, captured July 2012).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: Appeal dismissed and notice upheld**
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Preliminary matters

1. The appellant or her agent did not attend the site visit but I was able to carry an unaccompanied site inspection for part of the property as the tenant of one of the flats provided access to his flat.
2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The site and relevant planning history

3. The appeal premises are on the ground floor of a three storey building subdivided into flats to the rear of a Grade I listed building on Brunswick Square. There are two flats on the ground floor, the subject of this appeal. The flat to which I had access was a small self-contained studio with shower room and cooking facilities, accessed from a common corridor running along the side and rear of the appeal property. Both flats have unauthorised French window double doors fronting on to the street which are also the subject of the notice.
 4. Planning permission was granted in 2001 for the change of use of the ground floor garages to residential use although this has expired. In April 2016, a part retrospective application was refused for the conversion of the ground floor garages to form two self-contained units with associated alterations.
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The appeal on ground (d)

5. The appellant claims that it is too late to take enforcement action against the conversion of the garages into two self-contained dwellings as this occurred in excess of four years prior to the issue of the notice on 18 May 2016.
6. In support of her case, the appellant has submitted the front pages of two assured shorthold tenancy agreements. The first relates to Flat 1, 22 Brunswick Street East, let by Achieving Perfection Ltd to Mrs Inge Hallam. It is dated 15 February 2012 with a rent of £525 per month. The second is for Ground floor south, 22 Brunswick Street East, let to Mr Nerijus Buskus, dated 13 January 2012 at £515 per month.
7. In respect of the French doors, the appellant contends that these were installed after the two flats were initially occupied but prior to 18 May 2012. However no evidence has been submitted to support this view.
8. The Council's evidence conflicts with that of the appellant. Council tax accounts for the two ground floor units did not commence until January 2013 and Google Streetview shows garage doors in situ in July 2012. The Council also states that the appellant did not become the owner of the property until July 2012, although in my view a change of ownership does not necessarily indicate that a material change of use did not commence at an earlier date.
9. The appellant indicated an intention to submit details of council tax payments relating to the occupation of two separate flats independently and continuously in excess of four years, together with a copy of the freehold where independent leases were noted. Additionally witness statements confirming tenants lived in the flats were indicated would be made available. However, no such information has been submitted. No documentation regarding utility connections or utility accounts for two flats has been submitted. No invoices or tradesmen's accounts have been submitted to corroborate when the conversion work was carried out or the French doors installed.
10. There is a distinct lack of information to support the appeal. Although front pages of the tenancy agreements were submitted, complete copies were not made available, nor was there any information about subsequent tenancies. Furthermore, no information has been provided to distinguish the addresses of the two ground floor flats with those elsewhere in the property in order to establish the flat numbers; and, whilst the address on one of the agreements is for Flat 1, the other is described as ground floor south and Flat 2 is not explicitly referred to. There is therefore a degree of ambiguity in the submitted evidence and the Council's evidence contradicts the appellant's version of events.
11. In appeals on legal grounds, the onus of proof rests with the appellant and the level of proof is on the balance of probability. On the basis of the available evidence, the appellant has not shown on the balance of probability that a material change of use of the appeal property into two self-contained flats occurred prior to 18 May 2012; that it has been used continuously for that purpose for a period of four years; or, that the installation of the French doors occurred prior to 18 May 2012.
12. The Council suggests that if a discrepancy exists (between the appellant's dates and the those of the Council), then if the change of use to two self-

contained units was concealed until council tax accounts were set up and the garage doors being replaced, the judgements in *R (aoa) Fidler v SSCLG [2011] EWCA Civ 1159* and *Welwyn Hatfield BC v SSCLG & Beesley [2011]UKSC 15* are relevant. Whether the change of use has been deliberately concealed is not evident from the appeal documents but in any event, I do not need to consider this in the light of my conclusions in the above paragraph.

13. The appeal on ground (d) fails.

The appeal on ground (g)

14. The appellant considers that a compliance period of 6 months is too short in order to honour the existing tenancy agreements and allow operational work to be carried out. A 9-12 month compliance period is considered to be reasonable.

15. As the appellant has not provided details of current tenancy agreements or periods of notice required, I am unable to take a view on whether a period longer than 6 months is justified.

16. The replacement of the doors is a relatively straight forward joinery job and I consider 6 months to be an adequate period for replacements to be commissioned, approval sought and for installation.

17. I do not accept part of the Council's justification for the compliance period on the basis that the appellant has been aware of the possible outcome since the notice was served, as this approach fails to acknowledge the appellant's right of appeal and the outcome of any such appeal.

18. Notwithstanding this, the appeal on ground (g) fails.

Reasons

19. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

20. The appeal is dismissed and the enforcement notice is upheld.

P N Jarratt

Inspector

