
Appeal Decisions

Site visit made on 13 September 2016

by Martin Joyce DipTP MRTPI

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

Decision date: 27 September 2016

Appeal A: APP/A5840/C/16/3145988 25 Rye Hill Park, London SE15 3JN

- 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 Maurice Laurent Ltd against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice, LPA Ref: 15/EN/0383, was issued on 20 January 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the property from a single dwelling house to multiple self-contained dwellings, consisting of two self-contained flats on the lower ground floor, two self-contained flats on the ground floor, two self-contained flats on the first floor and two self-contained flats on the second floor.
- The requirements of the notice are to:
 1. Cease the use of the property as more than one self-contained dwelling;
 2. Restore the property to its condition before the breach occurred, including the removal of all fixtures, fittings and partitions connected to the use of the property as more than one self-contained dwelling;
 3. Remove all of the kitchens from the property except for one (which for the avoidance of doubt shall include the removal of kitchen worktops, sinks, fridges, splashbacks (*sic*) and electricity sockets (at work top level) and switches (at work top level));
 4. Remove all of the bathrooms from the property except for a communal bathroom and up to two en suite bathrooms (which for the avoidance of doubt shall include the removal of showers, hand basins, toilets, water heaters, plumbing and electricity connections, partition walls and doors);
 5. Remove all of the individual electricity meters, consumer units, fuse boxes and housing cupboards that do not serve the property as a single dwelling house;
 6. Remove the locks from the entrance door to each unauthorised flat; and,
 7. Remove from the property any material and debris arising from the requirements of 1-6 above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(b) of the Town and Country Planning Act 1990 as amended. As 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.

Summary of Decision: The appeal is dismissed and the enforcement notice, as corrected, is upheld.

Appeal B: APP/A5840/W/15/3138539 25 Rye Hill Park, London SE15 3JN

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a Development Order.
 - The appeal is made by Maurice Laurent Ltd against the decision of the Council of the London Borough of Southwark.
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- The application, Ref: 15/AP/3065, dated 27 July 2015, was refused by notice dated 9 September 2015.
- The development proposed is prior approval of a proposed larger house extension (GPDO Schedule 2, Part 1, Class A.1(ea)), new rear extension.

Summary of Decision: The appeal is allowed and approval is granted as set out below in the Formal Decision.

Preliminary Matters

1. The appeals relate to the same property, a four-storey terraced building, but they concern different developments, with that which is the subject of Appeal B being a proposal for a new rear extension where the prior approval of the Council for development permitted by The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO) has been sought and refused.
2. The description of the proposed development in respect of Appeal B was altered by the Council in their decision notice to "erection of a single storey rear extension extending 6 metres beyond the rear wall of the original dwelling with a maximum height of 3 metres and eaves height of 3 metres". The description given in the application is that stated in the summary box above. I have seen nothing to indicate that the appellants agreed to an amended description for their application thus, whilst it is factually correct, I shall determine the appeal on the basis of that given in the original application. However, the reference in the application to Class A.1 (ea) is erroneous, as the relevant part of Class A of Part 1 of Schedule 2 to the GPDO is Class A.1(g)(i). Under Class A.4, the prior approval of the Council is needed for a proposed rear extension that exceeds 3m in length but otherwise meets the limitations in Class A.1(g).
3. On a further point, the Council have submitted that the prior approval procedure is no longer available to the appellant as the appeal property is not now a single dwellinghouse, having regard to the alleged material change of use that is the subject of the enforcement notice and Appeal A. However, the property was in use as a single dwellinghouse at the time of the application and, I understand, at the time of the Council's decision, thus I shall determine Appeal B on the basis that, in the event of prior approval being given, the development could only be implemented if all of the relevant provisions of the GPDO were met, including its lawful overall use. Such approval would also be subject to the conditions set out in Class A.4 of Part 1 of Schedule 2 to the GPDO.
4. Finally, there is a minor spelling error in the enforcement notice that is the subject of Appeal A, in that the word "splashbacks" has been spelt incorrectly in the third requirement. Correction, using the powers available to me would not cause any injustice or prejudice, thus I shall take appropriate action accordingly.

APPEAL A ON GROUND (b)

5. The appeal on ground (b) is based upon the contention that the alleged material change of use of the appeal property to use as eight self-contained flats has not, as matter of fact, occurred, rather the property has been converted, albeit only partially until the appeal has been determined, to use as a shared dwellinghouse. It comprises six completed bedrooms and a fully

fitted kitchen that is suitable for sharing as a single household. It is served by a single electricity supply and registered as a single household for Council Tax purposes. The Council, however, contend that the six rooms on the ground, first and second floors have all of the facilities necessary for day-to-day living, and that partitions have been installed on the lower ground floor rooms to provide the same accommodation as elsewhere, thus the change of use alleged has occurred as a matter of fact.

6. In an appeal of this nature, on legal grounds, the burden of proof lies with the appellants¹. They need to show, on the balance of probabilities², that the matters alleged in the notice have not occurred as a matter of fact.
7. At my inspection of the appeal property I noted that six rooms on the ground, first and second floors of the property had been laid out as individual accommodation units behind lockable doors to the common staircases and landings. Five of the rooms were occupied at the time of my visit, whilst the sixth, the front room on the ground floor had similar fixtures and fittings to the others. These include an *en suite* toilet and shower room, a living/sleeping area and kitchen units with a sink, cupboards and a fridge in each unit. One unit also had a washing machine and a coffee maker. Each room has a separate electricity meter/consumer unit linked to one of eight control units on the lower ground floor. None of the outer doors was numbered, but I saw that they had been in the past, and such numbering is shown in the photographs submitted by the Council.
8. Two rooms on the lower ground floor were empty and devoid of any fixtures or fittings. The Council's evidence, from photographs and notes of a site inspection, is that partitions had been installed in those rooms in readiness for similar conversion to the other six units. However, the partitions, and electric meters, have since been removed, albeit that their position is clear from the fresh plasterwork visible at my inspection.
9. The appellants contend that the accommodation provided is that of a shared household, as cooking facilities are not available within the rooms, rather there is a kitchen which can be used communally. I saw that the kitchen is located on the ground floor with a range of equipment including an oven, hob, sink unit, water heater and kettles and a toaster. A fridge/freezer is located just outside this room. Below, on the lower ground floor, is a laundry room, although the single washing machine therein was not in working order. A further washing machine was stored out of use in a cellar to the front of this floor.
10. The appellants have produced no evidence to show the degree of usage of the kitchen facilities by current occupiers or, indeed, any documentary evidence of the terms of their residential occupation of the accommodation that has been provided. The Council has, however, submitted details of advertisements for the letting of "studios" at the property, which include, within the description, a "modern open plan kitchen", as shown on photographs. The advertisements do refer to the availability of a "big communal kitchen" and a communal garden, but it is clear that the units have been advertised on the basis that they are self-contained, with all of the facilities necessary for day-to-day living behind the lockable doors.

¹ *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

² *Thrasylvoulou v Secretary of State for the Environment* No 1 [1984] JPL 732.

11. It is a matter of fact that I did not see, at my inspection, any cooking equipment in any of the five occupied units, including any microwave cookers or even kettles, save for the coffee maker in the front flat on the first floor. I did note, however, the presence of cooked food in various fridges which indicates that either the communal kitchen had been used, or that cooking equipment had been removed from the units prior to my visit. I cannot reach a firm conclusion on which situation is more likely but the fact that door numbers had been removed indicates to me that there may have been some attempt to mislead.
12. In any event, I return to the burden of proof that is required of the appellants in an appeal of this nature. To succeed in their contention that the property has merely been converted into a shared household with residents using communal cooking facilities, they must provide evidence to show, on the balance of probabilities, that this is what has occurred. I do not consider that they have met this burden of proof. The six rooms of the upper three floors of the property have each been provided with the necessary facilities for day-to-day living, notwithstanding the lack of evidence of specific cooking facilities. However, a microwave oven and a kettle are items that are easily removed and then returned and it is possible that this is what has occurred at the property. Moreover, even if the "communal kitchen" is used by residents of the units, there is nothing to show that such use is on a collective basis, with occupiers of the units living as a shared household.
13. As for the two incomplete rooms on the lower ground floor, it is apparent that they were in the process of being converted in the same manner as the other rooms at the date of the Council's issue of the notice, notwithstanding the subsequent removal of partitions. I will not speculate, within the realms of this decision, on the reasons for such action but I am satisfied that it is likely that the conversion work would have been completed but for the issue of the notice and the fact that the remainder of the property had been significantly altered indicates conclusively that a material change of use had, as a matter of fact, taken place. In all of these circumstances, the appeal on ground (b) fails and the notice will be upheld.

APPEAL B

Main Issue

14. The main issue in this appeal is the effect of the proposed development on neighbouring occupiers of Nos 23 and 27 Rye Hill Park in terms of loss of light, including sunlight, and overbearing effect.

Reasoning

15. The proposed rear extension is as described in the Council's decision notice, and I refer to this above. A 3m-high flat roofed single-storey extension, with roof lights, would project by 6m from the rear main elevation of the appeal property. It would replace other existing extensions to the rear – a single-storey storage building of about 5.1m in length and 2.5m in height, sited along the boundary with No 27 to the north-east, and a staggered extension formerly containing a ground-floor kitchen with bathroom above, with a toilet accessible from the rear yard. The two-storey element extends for about 3m from the rear main wall, with the single-storey sections continuing for about another 2.2m, all alongside the boundary with No 23, to the south-west. The two-

storey part of the extension is about 5m in height, whilst the single-storey beyond is of about 2.6m. The land slopes generally in a south-westerly direction, thus No 23 is on lower ground than the appeal site.

16. In their consideration of the application for prior approval the Council determined that the new extension would result in a loss of both sunlight and daylight to the neighbouring properties and would also have an overbearing effect. However, the appellants have now submitted a daylight and sunlight study which shows that windows on the neighbouring properties would not receive any less daylight and sunlight than at present, and that only a marginally greater degree of overshadowing of a part of the garden area at No 27 would occur if the proposed extension were to be built. The Council accepts the results of this study and no longer contends that the proposal would result in any loss of light. They still claim, however, that there would be an overbearing effect.
17. I do not, however, share this opinion. The existing extensions at the rear of the appeal property already create a degree of overbearing impact, and I do not consider that it would be materially worsened by their removal and the erection of the new single-storey rear extension that is proposed. The views from lower windows in the neighbouring property are already significantly impeded by both the existing extensions at the appeal property and by rear offshoots at Nos 23 and 27 and there would be no materially increased loss of outlook, or sense of enclosure, as a consequence of the proposal before me. I therefore find no conflict with the relevant policies referred to by the Council from the LP Core Strategy, and the Southwark Plan 2007, as well as the Residential Design Standards SPD 2011. My conclusion on this issue is that the proposed development would not materially worsen the living conditions of neighbouring occupiers of Nos 23 and 27 Rye Hill Park in terms of loss of light, including sunlight, or overbearing effect. The appeal therefore succeeds and prior approval will be granted.
18. The Council have not suggested that any conditions other than those set out in Class A.4 of Part 1 of Schedule 2 to the GPDO, and I do not consider any others to be necessary.

Other Matters

19. I have taken account of all other matters raised in the written representations but they do not outweigh the conclusions I have reached in respect of the main grounds and issues of these appeals.

Conclusions

20. For the reasons given above I consider that Appeal A should not succeed but that Appeal B should be allowed.

FORMAL DECISIONS

Appeal A: APP/A5840/C/16/3145988

21. The enforcement notice is corrected by the deletion, in Section 5.3, of the word "spashbacks" and the substitution therefor of the word "splashbacks". Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/A5840/W/15/3138539

22. The appeal is allowed and approval is granted under the provisions of The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO) for the siting, appearance and design of the proposed rear extension on land at 25 Rye Hill Park, London SE15 3JN, in accordance with the terms of the application Ref: 15/AP/3065, dated 27 July 2015, and the plans submitted with it.

Martin Joyce

INSPECTOR