
Appeal Decisions

Site visit made on 6 December 2016

by Jean Russell MA MRTPI

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

Decision date: 4 January 2017

Appeal A: APP/N4720/C/16/3150301

Land at 35 Vinery Mount, Richmond Hill, Leeds, LS9 9LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Brian Arnott against an enforcement notice issued by Leeds City Council.
 - The enforcement notice, numbered 14/00791/UCU3, was issued on 13 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of a basement to a self contained [sic] flat.
 - The requirements of the notice are to:
 - 1) Cease the use of the basement as a self contained [sic] flat.
 - 2) Remove the cooker, fridge and kitchen sink from the room and make good any walls from where these items have been removed.
 - 3) Remove from the site any rubbish and detritus as a result of steps 1 and 2.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the 1990 Act 1990 amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Act.
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Appeal B: APP/N4720/W/16/3150087

35 Vinery Mount, Leeds, West Yorkshire, LS9 9LY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Brian Arnott against the decision of Leeds City Council.
 - The application ref: 16/00113/FU, dated 29 December 2015, was refused by notice dated 15 February 2016.
 - The development is described as 'retrospective change of use to create a flat in the basement of a dwelling house. The flat has been rented to LDC from February 2013'.
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Decisions

Appeal A: APP/N4720/C/16/3150301

1. The enforcement notice is corrected by deleting the text of paragraph 3 in its entirety and substituting: '*the making of a material change of use of a single dwellinghouse to use as a dwellinghouse and separate self-contained basement flat*'. Subject to the correction, Appeal A is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/N4720/W/16/3150087

2. Appeal B is dismissed.

Preliminary Matters

3. 35 Vinery Mount is a four storey building including the basement and a loft. It was in use as a single dwellinghouse but has been subdivided; there is a self-contained flat in the basement and the upper floors are in use as one house. There has been a material change of use of the *building and* each part of it used as a separate dwelling. I shall correct the notice to allege that and this will cause no injustice; the notice will not be more onerous because the steps do not need to be changed.
4. The appellant states that 'the apartment has been let for many years' but he stated on the planning application form that the use of the basement began, following building works, between December 2012 and January 2013. That is less than four years before the enforcement notice was issued and so it was not too late for the Council to take enforcement action on the date that it did¹.

Appeal A on Ground (a), the Deemed Planning Application and Appeal B

Main Issues

5. The main issue for these appeals is the effect of the use of the basement as a flat on the living conditions of its occupiers and adjoining occupiers.

Reasons

6. The appeal concerns an end-terraced building, situated on the corner of Vinery Mount and Raincliffe Road in a dense residential area. Like nearby properties, no. 35 is a back-to-back house and the curtilage of the building comprises a short front yard. From the yard, one set of steps leads to the upper floors dwelling, and a second set, enclosed by walls, leads down to the basement flat.
7. Policy H6 of the *Leeds Core Strategy* (CS) indicates that the conversion of houses into flats will only be permitted where, amongst other matters, the property is not a back-to-back dwelling. The appeal development falls foul of that criterion and this finding alone carries weight against any grant of permission.
8. Behind the entrance to the flat, there is a small vestibule with another door leading to a room which is used as a kitchen, living and bedroom area. This is the only habitable room within the flat and it is served by one casement window. The window is located on the front elevation of the building just above ground level and it is a few metres from boundary walls around the front and side of the yard.
9. I saw that, because of the size of the window in relation to the room and the low level of the window in relation to the ground and walls outside, daylight entering the flat does not penetrate much beyond the kitchen sink area. The window faces north and the flat will receive little sunlight. The habitable room is so dark that it would be essential for occupiers to use artificial lights for domestic activities throughout the day and year, severely compromising their living conditions.
10. The appellant suggests that he could replace the front door to the flat with one that is fully glazed. Planning permission could be granted for the use of the basement as a flat subject to a condition that such works must take place. I have noted, however, that the entrance is at the bottom of enclosed steps. I inspected the flat with the existing door open, as though it were fully glazed, and there was still insufficient daylight to facilitate reasonable use or enjoyment of the dwelling.
11. Moreover, the size and position of the window is such that it does not afford any proper outlook; this is harmful in its own right and it exacerbates the sense of

¹ S171B(2) of the 1990 Act as amended

- claustrophobia in the flat caused by lack of light. Inserting a glass door would not redress this harm, because the entrance is set off the habitable room as well subterranean. It also strikes me that the front door would need to be obscurely glazed – and then it would not afford views – because otherwise the occupiers of the flat would lack privacy when the vestibule door is open to allow light through.
12. Turning to the issue of outdoor amenity, the appeal yard was a private space in that it was for the sole use of one household. The subdivision of the building has turned the yard into a shared space. It is not unusual for the occupiers of flats to have communal gardens but the yard in this case is particularly small – and the upper floors dwelling is still large enough to accommodate a family.
 13. I share the Council's concern that the flat has created a need for two households to store bins outside, cluttering the yard and making it unpleasant to use for sitting out or play. Those problems would be exacerbated if occupiers park bicycles here – and a storeroom available for that purpose is awkwardly located down and to the side of the basement steps. I find that the lack of private and usable amenity space will unacceptably diminish the living conditions of occupiers of the upper floors dwelling, if not also the occupiers of the flat; that there is a recreational ground nearby does not redress the harm.
 14. I also consider that use of the yard for shared access and bin storage would be liable to cause an unacceptable lack of privacy within the upper floors dwelling and the flat. The building and the yard can be seen from the street, but activity right outside the front windows by a separate household would be more intrusive. Comings and goings within the yard would also be liable to cause unacceptable disturbance to occupiers of the building, particularly the flat. The window is double-glazed but would need to be opened at times to ventilate the habitable room.
 15. This brings me to an additional concern that the bathroom in the flat must be mechanically ventilated. It is not unusual for that to be the case, but the bathroom in this instance lacks an outside wall as well as window, so any ventilation system would need to be powerful enough to discharge at the front. The appellant has installed ventilation in the bathroom and I see no reason to doubt that it is fit for purpose, but it is loud when heard from the sleeping area. I find that noise from the system will add to the oppressive feel of the flat, caused by lack of light and outlook, and will add to disturbance caused by comings and goings outside.
 16. The Council suggests that comings and goings from the flat could create noise in the wider area but that concern is based on speculation about the cumulative effect of developments such as this – and the Council has said there is no unacceptable concentration of flats nearby. There is no information before me about the juxtaposition of the rooms in adjoining dwellings, but the flat is small, carpeted and tanked; I would not expect unacceptable noise to carry between properties.
 17. The Council questions whether the building is large enough to be subdivided, but the *Planning Practice Guidance* advises that internal space standards for new dwellings may only be imposed where there is a local plan reference to the Nationally Described Space Standard (NDSS). CS Policy H6 does not refer to the NDSS – and it does not reflect the NDSS in resisting the conversion of houses that have less than 100m² floorspace. I would not dismiss this appeal on the basis of the building size. I also accept that the flat may meet standards set under housing legislation and that it benefits from having a private entrance.
 18. Nevertheless, for the reasons given, I conclude that the use of the basement as a flat causes unacceptable harm to the living conditions of its occupiers and adjoining occupiers. It conflicts with CS Policies H6 and P10, which expect development to

have no detrimental impact upon the amenities of neighbouring occupiers; provide satisfactory internal living accommodation; and protect residential amenity with regard to daylight, outlook, usable space, privacy and noise. It conflicts with Policy GP5 of the *Leeds Unitary Development Plan* and the *National Planning Policy Framework*, which expect development to avoid loss of but secure a good standard of amenity for existing and future occupants of land and buildings.

Other Matters

19. I explained during my site visit that I could not hear representations –but the appellant nevertheless offered to insert an additional window on the western side elevation of the flat. He did not make that proposal in his written representations. The Council has not had an opportunity to comment on the acceptability of any such scheme and I cannot do so either. That said, these appeal decisions would have been the same even if I had considered the possibility of inserting a side window, because lack of light and outlook are not my only objections.
20. I do not dispute that the appellant has always been able to let this flat and could find new tenants; there is a shortage of homes for single people. However, the flat does not increase the housing supply to such an extent as to outweigh the harm. I do not doubt that the appellant's tenants have caused no nuisance in the area but my concern is to protect their living conditions in the public interest. There are likely to be sufficient on-street parking spaces nearby to serve the flat, but that is not good reason to allow the appeals.

Conclusions

21. For the reasons given above and with regard to all other matters raised, I conclude that Appeal A should fail on ground (a), the deemed planning application should be refused and Appeal B should be dismissed.

Jean Russell

INSPECTOR