
Appeal Decision

Site visit made on 21 December 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 11 January 2017

Appeal Ref: APP/H5390/C/16/3154906
17 Bryony Road, London W12 0SR

- 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 Sukhdev Singh Dari against an enforcement notice issued by the Council of the London Borough of Hammersmith and Fulham.
 - The notice was issued on 10 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission the conversion of the single dwelling house into two self-contained flats.
 - The requirements of the notice are:
 - a. Cease the use of the property as two self-contained flats and reinstate the use as a single dwelling.
 - The period for compliance with the requirements is within nine (9) months of the date on which this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

Procedural Matters

2. The notice refers to "conversion", however interior works to alter living arrangements in a house do not by themselves constitute development. Section 55 (3) of the 1990 Act states that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. Thus the correct allegation should be the material change of use of a single dwellinghouse to use as two self-contained flats. As it is clear from the parties' submissions that the notice attacks the use as self-contained flats, no injustice would result if it were corrected to allege a material change of use to two self-contained flats. I will exercise my powers under s176(1) of the Act accordingly.
 3. Conversely, although the notice requires the unauthorised use to cease, the secondary requirement to "reinstate" the use as a single dwelling does not refer to specific works that may have been carried out that were integral to and solely for the purpose of facilitating the unauthorised use. It is established that a notice alleging a change of use may require removal of such works even if such works on their own might not constitute development, so that the land is restored to its condition before the change of use occurred.
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4. As it is evident that the Council requires the property to be restored to its condition before the breach took place, I shall correct the notice to make it clear what the step requires. No injustice would be caused to either party since the effect of the correction is to make the notice comply with the requirements of s173(3) and s173(4) of the 1990 Act, as regards what steps they should specify.

Ground (a) and the deemed application for planning permission

Main issues and reasons

5. The main issues on this ground are firstly, the effect of the development on the supply of dwellings suitable for family occupation in the area, and secondly the effect on living conditions of occupants including future occupants of the flats.

Supply of family housing

6. The appeal property is a two-storey mid-terraced house in a residential area that is in use as two self-contained flats. It is situated within the Old Oak and Wormholt Conservation Area. Having regard to the duty imposed on me under S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am satisfied that the development preserves the character and appearance of the conservation area.
7. The minimum net floor area that provides the threshold for conversion into two or more dwellings under Policy DMA1 of the Development Management Local Plan 2013 (DMP) is 120m². It is undisputed that the original floorspace of the property is about 108m² which, whether gross or net which is not stated, falls short of this standard. The reasoned justification for this policy at Paragraph 4.2 explains that smaller terraced houses in the borough provide a source of accommodation suitable for families and it is important to ensure that this stock is not unduly reduced because of conversion into flats.
8. Policy DMA1 contains other criteria which if met, would support a conversion. The two flats would comply with these criteria in that at least one provides two bedrooms, and one of the units could be made car free by a suitably worded condition, so avoiding any undue on-street parking stress. With regard to access to garden or amenity space, as I describe below a proposed alteration to the internal layout of the upper floor flat would result in only the ground floor unit being "appropriate for families" and as that unit has access to adequate external space this criterion of the policy would also be met.
9. I read that population projections for the Greater London area indicate that the main growth in the number of households will be in "one person" households. Whilst there is no evidence to contradict the appellant's statement that "couple" households may by contrast be decreasing in number, small terraced houses such as No 17 remain a valuable source of accommodation for families. On the information available the appellant has not persuaded me that the Council cannot meet its housing needs whilst maintaining the development plan policy on conversions.
10. I also take into account that an additional unit of accommodation contributes generally to the housing supply in the Council's area. However the minimum floorspace required for acceptable conversions is a key aspect of the policy criteria. As such the modest increase in housing units in the Borough does not overcome the fundamental conflict with this policy.

11. To conclude on this issue the development causes harm from loss of a dwelling suitable for family occupation in the area. The harm caused is substantial and contrary to the aims of DMP Policy DMA1. This policy I find to be consistent with the National Planning Policy Framework 2012 (Framework) especially paragraph 50 which seeks the delivery of a wide choice of high quality homes.

Living conditions

12. Minimum net floorspace standards are set out for individual rooms in converted flats in DMP Policy DMA2 and the Council's Planning Guidance Supplementary Planning Document 2013 (SPD) Housing Policy 5: *Internal Space Provision in Residential Conversions*. As currently configured the kitchen/diner/living room and main bedroom of the first floor flat do not meet these minimum standards.
13. However a drawing is submitted with the appeal that proposes the deletion of a bedroom in the first floor flat to increase space in the remaining habitable rooms. The drawing is submitted under the *Wheatcroft*¹ principle but this has no application to ground (a) or to the deemed application in light of the wording of s177(1)(a). The Act is clear that the power to grant permission relates to the matters alleged in the notice. The deemed application under consideration is different from the scheme that defined the original layout that was rejected by the Council. The proposed change in layout would still come within the allegation in the notice, which refers to two self-contained flats.
14. The proposed altered layout would not entail physical changes that would affect the external appearance of the building whilst the living/dining/kitchen, remaining bedroom and bathroom would all comply with the Council's minimum standards. Such a revised layout could be secured by condition, requiring it to be implemented by a set time from the date of any eventual permission.
15. I conclude on this issue that the development is capable of complying with DMP Policy DMA2 and SPD Housing Policy 5, as it can provide rooms adequate in size for their intended use and occupancy. With only the ground floor flat being suitable for family use it provides access to amenity space that would comply with DMP Policy DM A9 and SPD Housing Policy 2.

Planning balance and conclusion

16. With a revised layout to one of the flats the development would meet the Council's internal room space and external amenity space standards. However this would be at the expense of removing a bedroom that would make the flat unsuitable for family accommodation. Whether the layout is revised or not the development still clearly fails to comply with the development plan policy for the change of use of small dwellinghouses that are suitable for family accommodation and for which, despite some evidence of a decrease in such households, there remains an acknowledged need.
17. The appeal on ground (a) therefore fails.

Overall Conclusion

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

¹ Wheatcroft v SSE & Harborough DC [1982] JPL 37

Formal Decision

19. It is directed that the enforcement notice be corrected as follows:

- Delete "conversion" and replace with "material change of use"
- Delete "reinstate the use as a single dwelling" and replace with "restore the single dwelling house to its original condition before the breach of planning control took place".

20. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR