

Appeal Decisions

Site visit made on 12 January 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 8 February 2017

Appeal A Ref: APP/U5360/C/16/3152226

Appeal B Ref: APP/U5360/C/16/3152227

Land at 55 Chatsworth Road, Hackney, London E5 0LH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Jenny Seebaluck (Appeal A) and Mr Chandun Seebaluck (Appeal B) against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 11 May 2016 under ref. 2014/0067/ENF.
 - The breach of planning control as alleged in the notice is: "*Without planning permission the material change of use of the basement of the Property into a self-contained flat.*"
 - The requirements of the notice are to:
 1. Cease the use of the basement of the property as self-contained flat and return the basement of the property to its condition before the unauthorised change of use was commenced.
 2. Remove all partitions, fittings, fixtures and equipment that facilitate the use of the basement of the property as a self-contained flat.
 3. Make good all damage to the Property resulting from the removal of the unauthorised works.
 4. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is six months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the 1990 Act as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended have lapsed and do not fall to be considered for Appeal B.
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Decisions

Appeal A Ref: APP/U5360/C/16/3152226

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/U5360/C/16/3152227

2. The appeal is dismissed and the enforcement notice is upheld.
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Background and matters of clarification

3. No. 55 Chatsworth Road is a traditional three-storey terraced building with additional space within a basement, even though there is no obvious external sign of the basement in views from Chatsworth Road. The ground floor is occupied by Venetia's Coffee Shop. The upper floors are in residential use.
4. In response to a planning contravention notice, the appellant (in Appeal A) confirmed that the basement had been converted into a one-bedroom flat since 11 March 2014. The enforcement notice attacks the material change of use of the basement into a self-contained flat.
5. The appellants, who are not represented, confirmed in a letter of 5 July 2016 that "*the appeal is mainly being made*" on ground (a) and that ground (c) "*may not apply*" as despite visits from an officer of the Council it would appear that planning permission was not actually granted by the Council. The letter ends by stating "*Please forgive me if my understanding of appealing under grounds c, f and g is not correct.*" Notwithstanding these comments, as no grounds of appeal have been withdrawn, the original grounds of appeal, as set out in the heading above, fall to be determined.

Appeals on ground (c)

6. An appeal on ground (c) is that there has not been a breach of planning control. This might be because no development was involved, or because planning permission has already been granted on application to the Council, or because the development is permitted by a development order.
7. The onus of proving this ground lies with the appellants. Whether or not the basement is satisfactory for residential use is a matter for ground (a) and does not have a bearing on the ground (c) appeals.
8. The making of a material change of use of the basement of the property into a self-contained flat constitutes an act of development. As the Council says this does not fall within permitted development. Express planning permission from the Council was required. No such planning permission has been obtained. I therefore find on the balance of probabilities that the development alleged in the enforcement notice constitutes a breach of planning control. The appeals on ground (c) therefore fail.

Appeal A only – appeal on ground (a) and the deemed planning application

9. In assessing whether planning permission ought to be granted for what is alleged in the notice, I consider the main issue to be the effect of the use of the basement as a flat upon the living conditions of its occupiers.
10. The development plan for the area includes the Core Strategy (CS), the Development Management Local Plan (DMLP) and the London Plan (LP). I have also been referred to London's Housing Supplementary Planning Guidance (HSPG) and the National Planning Policy Framework (the Framework).
11. The appellant notes that an officer from the Council visited the property several times advising on the work and improvements required in order for the basement to be used for residential purposes. Whilst the appellant refers to a verbal agreement that the works were satisfactory, clearly no application for

planning permission was made. The Council's formal stance on planning matters is found within the enforcement notice where the Council says that the unauthorised conversion of the basement of the property to a self-contained flat has resulted in the creation of a unit of substandard accommodation. From my site inspection, I agree with the Council's viewpoint.

12. The flat contains four main rooms – a bedroom, a living room, a kitchen and a room containing bathroom facilities, utility space and a toilet. The bedroom has no window. The living room is served by one rear-facing, obscure-glazed door. There is one small side window to the kitchen which looks towards the boundary across a narrow yard. The same side elevation contains an obscure-glazed door and a boarded window to the bathroom/utility space.
13. When I walked around the flat, I noted the very limited access to natural daylight and sunlight it affords. It would be essential for occupiers to use artificial lights to carry out most domestic activities throughout most times of the day and year. Moreover, the size, position and design of the windows and external doors are such that any occupiers would have no proper outlook. In fact, users of the bedroom would have no outlook at all.
14. The internal living conditions of the flat are such that any occupiers are likely to experience a sense of claustrophobia. This would be exacerbated by the low ceiling heights ranging from 1.94 m to 2.00 m, as measured and agreed by the parties at the site visit. The nationally described space standard sets a minimum ceiling height of 2.3 m for at least 75% of the gross internal area of a dwelling. Table 3.3 of the LP says that *"To address the unique heat island effect of London and the distinct density and flatted nature of most of its residential development, a minimum ceiling height of 2.5 m for at least 75% of the gross internal area is strongly encouraged so that new housing is of adequate quality, especially in terms of light, ventilation and sense of space."* This basement flat falls well short of these ceiling heights.
15. The Council's statement mentions *"space requirements"* without going into any detail. From other measurements agreed at the site visit, I find that the floor area of the flat at about 39 sq. m is just sufficient if it is occupied as a one-bedroom, one-person, one-bed space flat, according to Table 3.3 of the LP. It does not reach the required floor area of 50 sq. m for a one-bedroom, two-person, two-bed space flat. I have little information before me about how the flat has been or is occupied. In any event, tenancies can change quite regularly and the double bed in the bedroom suggests that, in theory at least, the flat could be occupied by more than one person. In that scenario, the flat's meagre size would further compromise the living conditions of occupiers.
16. Given the subterranean location and physical limitations of the basement structure and the fixed nature of the external surroundings, I consider that there is limited scope for making any physical changes that would satisfactorily address the identified shortcomings of the flat's design and layout. No detailed scheme of improvements has been put forward in this appeal for consideration.
17. The appellant says that the basement was let out on a temporary basis as a temporary solution to a tenant's problems with a room she was renting above. The tenant then preferred the basement arrangement. However, whether or not that tenant is happy to continue renting the basement flat can have little

bearing on my finding that the living conditions provided by the basement flat are wholly inadequate for human habitation.

18. Bringing all the above together, I conclude on the main issue that the use of the basement as a flat causes unacceptable harm to the living conditions of its occupiers. The scheme is indicative of poor design and is not a suitable response to Hackney's current and future housing needs. The development conflicts with CS Policies 19 (Housing Growth) and 24 (Design), DMLP Policies DM1 (High Quality Design) and DM2 (Development and Amenity) and LP Policy 3.5 (Quality and Design of Housing Developments). There is also conflict with the HSPG and the Framework which requires planning to seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
19. My finding on the main issue is decisive to the outcome of the ground (a) appeal and the deemed planning application under Appeal A, and taking into account all other matters raised in the written representations, I conclude that they should not succeed.

Appeals on ground (f)

20. On ground (f), it is clear from considering what is said in paragraphs 3, 4 and 5 of the enforcement notice, read as a whole, that the remedial requirements follow from paragraph (a) of section 173(4) of the 1990 Act as amended. The notice is directed at remedying the breach of planning control and the key consideration on ground (f) is therefore whether the requirements exceed what is necessary to achieve that purpose.
21. It seems to me that the requirements of the notice are ones that are normally stipulated where a material change of use has taken place in breach of planning control. Their purpose is to remedy the breach by restoring the land (the basement) to its condition before the breach took place. In that regard it is well established that ancillary operational development intended to facilitate an unlawful use can be removed by an enforcement notice, even if in itself it did not constitute development requiring planning permission.
22. No additional steps are required to remedy the breach. In any event I could not impose any additional steps through variations to the enforcement notice if they were to have the effect of making the notice more onerous. On the other hand, I have already found under ground (a) that it would not be appropriate to impose planning conditions requiring improvement works, as there are no practical steps obviously available that would provide the residential unit with satisfactory living conditions for any occupants.
23. The requirements of the notice do no more than seek the cessation of the unauthorised use and the removal of key items that facilitate the unauthorised use. Only complete compliance with the requirements would give full effect to the notice. In the light of the conflict with development plan policies, it would not be disproportionate to require the appellants to carry out the steps required by the notice. The appeals on ground (f) therefore fail.

Appeals on ground (g)

24. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed. Six months have been given

in the notice. The appellants say that six months from when a decision is made would be sufficient provided that as in ground (f), any further works or improvements required are within reason. My finding under ground (f) has not resulted in any variations to the requirements of the notice. Six months should, in my experience, be sufficient for the requirements of the enforcement notice to be complied with. The compliance period given in the notice is reasonable. The appeals on ground (g) therefore fail.

Andrew Dale

INSPECTOR