



Appeal Decision

Site visit made on 2 November 2016

by Susan Wraith Dip URP MRTPI

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

Decision date: 13 February 2017

Appeal Ref: APP/N5660/C/16/3146003

392 Wandsworth Road, London SW8 4TW

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by E & A South London LLP against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The notice was issued on 28 January 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised use of the premises as 8 self-contained flats; comprising 2 flats at third floor level, 2 flats at second floor level, 2 flats at first floor level, 1 flat in the ground floor level of the rear extension and 1 flat in the lower ground floor level of the rear extension.
 - The requirements of the notice are:
 - a) Cease the use of each of the unauthorised 8 self-contained flats and remove all partitions, divisions, kitchen units and appliances which facilitate the unauthorised use.
 - b) Remove all associated waste, debris, materials and equipment from the premises resulting from compliance with the above step.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in s174(2)(a), (f) and (g) of the Act. 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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Decision

1. It is directed that the enforcement notice be corrected, at paragraph 3, by deletion of "use of the premises" and substitution of "material change of use of the premises to use ..."; and varied, at paragraph 5a), by deletion of "which facilitate the unauthorised use" and substitution of "installed to facilitate the change of use". Subject to this correction and variation 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 Act.

Preliminary matters

2. Before I proceed to consider the merits of the appeal I must first of all ensure that the notice is in good order. The allegation in paragraph 3 of the notice is framed as a "use of the premises". However, "use" in itself is not development. The act of development concerned is the "material change of use" of the premises. As the deemed application takes its terms from the allegation it is important that the allegation is correctly framed. I shall correct the notice in
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this regard under the available powers of s176(1)(a) of the Act. I am satisfied that no injustice will be caused to either party in me so doing.

3. The appellant is proposing the retention of the 8 self-contained flats but with the re-positioning of some internal walls, replacement of baths with showers, alterations to the lower ground floor flat flank window and removal of an internal wall together with proposals for refuse/recycling and cycle storage and boundary treatments. The Council raises the question of whether a development incorporating these changes and details (which it considers to be an alternative proposal) can be considered within the scope of this appeal.
4. S177(1)(a) of the Act provides, on the determination of an appeal, for the granting of permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates. The words "in relation to the whole or any part" are significant here. Where changes and further details are put forward, if what is being proposed includes "any part" of the matters alleged in the notice then I cannot see why such a proposal could not fall within the scope of the deemed application.
5. In this case the number of self-contained flats remains the same (eight) as does much of their internal layout and configuration. Whilst, in the proposal, the lower ground floor flat becomes a studio flat and some external and internal changes are to be made, the scheme provides for the retention of a sizable part of the development alleged in the notice. The appellant's proposals do not, as a matter of fact and degree, amount to something completely different from that enforced against. I am satisfied, therefore, that these proposals can be considered under ground (a) and within the scope of the deemed application.

The appeal on ground (a) and the deemed application

Planning policies

6. The development plan for the borough of Lambeth comprises the Lambeth Local Plan (2015) [hereafter "LLP"] and the London Plan 2016 [hereafter "LP"]. The LP was published after the issuing of the enforcement notice. It replaced the earlier consolidated version. There are no material differences in its policies insofar as those cited in the enforcement notice are concerned.
7. Of all the policies I have been referred to in LLP and LP I consider the following to be particularly relevant to the issues in this appeal.
8. Policies H1, H4 and H6 LLP and policies 3.3 and 3.8 LP seek to maximise the supply of additional homes and provide a mix of housing types and tenures including family sized accommodation. Policy 3.5 LP seeks to achieve minimum space standards for new dwellings. Policy H5 LLP seeks good design for new residential development, including conversions, and the provision of external amenity space for all units.
9. Policies EN5 LLP and 5.12 LP seek to ensure flood risk is managed, policy Q12 LLP seeks to ensure adequate and well integrated provision is made for refuse and recycling storage and policies Q13 LLP and 6.9 LP seek the provision of cycle storage which is safe, secure and fully integrated. Policy Q2 LLP aims to achieve

a high level of amenity including in terms of visual appearance, daylight/sunlight, outlook and outdoor amenity space.

10. Policies H2 LLP and 3.11 LP encourage the provision of affordable housing. Policy H2 states that on sites providing fewer than 10 units a financial contribution towards the delivery of off-site affordable housing will be sought.
11. Reference has been made to the National Planning Policy Framework [hereafter "the Framework"] which sets out the Government's planning policies for England and how it expects these to be applied at local level. Section 6 concerns the delivery of a wide choice of quality homes. Section 7 is concerned with requiring good design which contributes positively to making places better for people. Section 12 is concerned with conserving and enhancing the historic environment. The Framework is a material consideration for this appeal.
12. The development plan policies referred to above are up-to-date, post-date the Framework and are in general conformity with it.
13. "Technical housing standards – nationally described space standard" [hereafter "the Technical Standards"], published by Government in March 2015, is to be used in the interpretation of policy 3.5 LP and is a material consideration for this appeal.¹
14. Housing Supplementary Planning Guidance March 2016, London Plan [hereafter "the SPG"] provides guidance on the implementation of the housing policies in the LP. Whilst published after the enforcement notice was issued it has been referred to in the appeal submissions and is a further material consideration for the appeal.
15. Since the making of the appeal an Order of the Court of Appeal dated 13 May 2016 gave legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014 [hereafter "WMS"]. This national policy sets out circumstances where contributions for affordable housing should not be sought, including where developments are for 10 units or less and have a maximum gross floorspace of no more than 1,000 square metres.² National policy as expressed in the WMS is also a material consideration for this appeal.
16. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.³

Main issues

17. Having regard to the Council's reasons for taking enforcement action, the planning policies, statutory duties and the submissions made by the parties I consider the main issues in this appeal to be:
 - a. Whether the development provides for satisfactory living conditions for the occupiers with particular regard to internal living space; and
 - b. Effect of the development upon the interests of providing for mixed and balanced communities.

¹ Planning Practice Guidance on Housing: optional technical standards, at paragraphs 018 -023, gives further guidance on applying the nationally described space standard.

² Further guidance on the implications of the WMS is given in the Planning Practice Guidance section on Planning Obligations at paragraph 031.

³ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

Internal living space

18. All of the flats have one bedroom. The appellant says the flats are typically occupied by young professionals and suitable for single person occupation. Irrespective of whether or not the flats are occupied by single persons, the size of each of the bedrooms provides for two bedspaces.⁴ The overall gross internal floor area [hereafter "GIA"] falls considerably short of 50 square metres, that being the figure for one bedroom two bedspace accommodation set out in the Technical Standards.
19. In respect of flat 1 (the lower ground floor flat) the appellant has proposed removal of the wall between the bedroom and living space. This would, in effect, result in a studio flat which could reasonably be considered as a single person flat. Its GIA would be in accordance with the Technical Standards. When taking into account that the occupier would also have use of a small private outdoor area, I consider flat 1 would provide for satisfactory living conditions in terms of internal space.
20. With regard to the rest of the development, the appellant proposes the repositioning of the dividing wall between flats 5 and 6, and between flats 7 and 8, and the installation of showers instead of baths throughout. This would result in GIAs meeting or slightly in excess of the minimum standard for single bedspace units, except for flat 2 (the ground floor flat) which would still fall a little short. However, the units would not be single bedspace units because they would still be of two bedspace design.⁵
21. The appellant suggests that a condition could be imposed to limit occupation to single persons. I have not been told whether any of the flats are occupied by more than one person presently. Such a condition may have implications for current occupiers that would need to be addressed. Where a condition relates to development already carried out it is often necessary to set out a series of measures and timescales for the implementation of the condition and for its continuing effect. There is no further detail of what the appellant has in mind regarding how the condition would be put into place and monitored going forward. From what is before me, it is difficult to see how an effective condition could be framed.
22. More fundamentally, I have concerns about the reasonableness of such a condition. It would not be unusual for a single person household to change in composition, for example in circumstances where an occupant started to co-habit, on the birth of a child, through needs to care for a dependant or through an occupant's own needs for live-in care. Whilst such life changes may influence a person's choice about where they live over time, the effect of the suggested condition would be that an occupant could no longer lawfully reside in their home from the point at which such an event occurred. That would be unreasonable. Additionally, the practicalities of enforcing such a condition give cause for concern, not least because a breach (if it occurred) could be impossible to detect.

⁴ The Technical Standards (at paragraph 10) state that a two bedspace room (i.e. a double or twin bedroom) has a minimum floor area of 11.5m² and is at least 2.75m wide. All of the bedrooms meet or exceed these standards with the exception of flats 7 and 8 which fall slightly below the 11.5m² floor area but still have the appearance of two bedspace rooms.

⁵ At paragraph 6 of the Technical Standards it is explained that relating internal floorspace to the number of bedspaces is a means of classification for assessment purposes. It does not imply actual occupancy or how the rooms are to be used.

23. The development, in its internal layout and arrangement of space, is fundamentally unsatisfactory in planning terms. Such development cannot usually be made acceptable by a condition. When taking into account national guidance for the imposition of conditions⁶ the suggested condition would fail the “enforceable” and “reasonable” tests and would not be a valid condition in the circumstances of this case.
24. Even if occupation could, in some way, be limited to single persons I would still have concerns about the amount of internal space within most of the flats. Due to the site constraints there are very limited options for private outdoor amenity space. In such situations the SPG advises that additional indoor space, to an equivalent amount of the private outdoor space standard, should be provided.⁷ Most of the flats would have no access to private outdoor space meaning that all living activities would be confined to the interior of each of these flats.
25. The appellant has referred to the possibility of using the front flat roof (over the former PH) as outdoor amenity space for flats 3 and 4. Positioned adjacent to a busy main road such use would be less than ideal in terms of noise and privacy. The proposed balustrade with spear finials and heavy poles is not of appropriate design within the conservation area. The proposal would also involve the alteration of window openings to form doorways. This would be detrimental to the integrity of the building’s architecture on its front elevation. On what is before me in this appeal, there is no acceptable proposal for outdoor space at flats 3 and 4, or for any of the other flats with the exception of flat 1.
26. As there is inadequate internal space within the flats to compensate for the lack of external space and, when taking into account also that the Technical Standards are intended to be minima and should be exceeded where possible, I consider these flats would fall short on internal space leading to cramped accommodation and (in that respect) would fail to provide for satisfactory living conditions even if in single person occupancy.
27. I acknowledge that there is an area of public open space (Heathbrook Park) nearby and that a payment towards the provision and upkeep of public open space in the area would be payable under the Community Infrastructure Levy [hereafter “CIL”]. However, this does not make up for the lack of private amenity space, the need for which is more closely associated with day to day living activities, and which should be provided within the flats in the event of their being insufficient outdoor provision.
28. On this first main issue I conclude that the development does not provide for an acceptable amount of living space within the flats and that the harm cannot be overcome by the imposition of conditions. The development therefore fails to accord with policy 3.5 LP and policies Q2 and H5 LLP, the Technical Standards and guidance on quality in housing development as set out in the SPG.

⁶ Advice on the Use Of Planning Conditions is given in the Planning Practice Guidance at paragraphs 001-029. Paragraph 206 of the Framework also sets out the tests for the imposition of conditions.

⁷ Housing Supplementary Planning Guidance March 2016, London Plan 2016, in its Chapter on Quality (Standard 26) states that, in exceptional circumstances where site constraints make it impossible to provide private open space for all dwellings, a proportion of dwellings may instead be provided with additional internal living space equivalent to the area of the private open space requirement. This area must be added to the minimum GIA.

Housing mix

29. The development (in its proposed form) will comprise seven one bedroom two bedspace units and a studio flat (one bedspace), all of similar size. The development does not provide a balanced mix. It barely provides a mix at all.
30. Policy H4 LLP states that a balanced mix of unit sizes is expected in all residential developments, including conversions, and that the mix should include family-sized accommodation.
31. The explanatory text to the policy advises that rigid application of these requirements may not be appropriate in all cases and individual site circumstances including location, site constraints, viability and the achievement of mixed and balanced communities may also need to be taken into account. In all cases proposals will be expected to demonstrate that the provision of family-sized units has been maximised.
32. The building is located within a conservation area. Its architecture is of townscape merit contributing positively to the character and appearance of the area. The site cannot provide for off street parking and there are limited options for outdoor private amenity space. These are constraints upon the development potential of the site.
33. However, I cannot see why these site circumstances would prevent the space inside the building from being arranged to provide for a wider mix of dwelling types. Neither am I persuaded that family housing would be unsuitable when taking into account the sustainable location of the site, close to public transport and also within easy reach of Heathbrook Park and other facilities. Nor would the issue of noise transference be insurmountable if the units were more varied in size and layout and no longer vertically stacked.
34. Where development does not accord with an up-to-date policy of a development plan, clear and robust justification is usually called for if the proposed development is to have any prospect of success. However, in this case there is no financial, marketing or viability evidence to support any deviation from the policy. Neither has it been demonstrated that there is any particular need for this specific type of housing in the furtherance of achieving a mixed and balanced community.
35. On this second main issue I conclude that the development does not provide a sufficient mix of unit sizes including family-sized accommodation. The development is insufficiently justified and is contrary to policies H4 and H6 LLP, and 3.8 LP.

Other matters

36. A unilateral undertaking accompanied the appellant's evidence which offered a contribution towards the provision of off-site affordable housing. The Council had not confirmed its agreement to the amount. Subsequently the appellant asked that the undertaking be treated as withdrawn. Whilst the proposal does not accord with policy H2 LLP, in that it does not provide for an affordable housing contribution, it is in conformity with current national policy as expressed in the WMS which indicates that an affordable housing contribution should not be sought in the case of small scale developments. Government's intention is to encourage the bringing forward of smaller sites in recognition of the positive contribution such developments can make towards boosting

housing supply. The WMS is a material consideration of significant weight and one which indicates a decision other than in accordance with the development plan insofar as the issue of affordable housing is concerned. The absence of an affordable housing contribution would not have been decisive had I found the development to be acceptable in all other respects.

37. Flat 1, at present, does not enjoy an adequate level of daylight/sunlight within its living quarters. The appellant has proposed removal of an internal wall, the insertion of a larger window in the flank elevation and reduction in height of the boundary wall and installation of railings. The provision of a larger window would reflect the existing character of the building, as would the proposed boundary treatment, subject to satisfactory detailing. With such alterations, which could be covered by conditions, a satisfactory level of sunlight/daylight could be achieved in a manner which would not detract from the character and appearance of the area or the architecture of the host building.
38. The site is within Flood Zone 3. A Flood Risk Assessment has been undertaken which demonstrates that the risk of flooding to the site is relatively low. A number of mitigation measures are recommended, including that the boundary wall is of solid design, the access gate is of flood proof design to a height 200mm above ground level and that water-tight seals are provided to all external doors and windows to the lower ground floor. Other internal flood resilience measures and management measures are also recommended. These matters could be satisfactorily addressed through the imposition of planning conditions and without harm to the character and appearance of the building and area.
39. The proposed refuse and recycling storage facilities are sufficient in size, appropriately positioned and easily accessible for all users. Subject to satisfactory details of design, materials and ventilation these facilities would be acceptable and could be provided in a manner compatible with the building and the area.
40. Regarding cycle storage, the appellant proposes one space at lower ground floor level adjacent to flat 1 and seven spaces adjacent to the flank wall towards the front of the building, enclosed by a railing. As an alternative, the appellant suggests up to four spaces could be provided internally, within the ground floor corridor, thus reducing the need for external cycle stands. This alternative would, to my mind, be preferable in order to provide some spaces under cover and with a better level of security, and to reduce visual impact externally. The details for such a scheme, including details for the railing to enclose the external spaces, could be covered by a planning condition.
41. I am told the property was previously in use as two flats, each in multiple occupation. The appellant argues that the property could revert to its former use in the event of an unsuccessful appeal. There is no financial or viability evidence to indicate that there is a realistic prospect of such use. Nevertheless I have considered the possibility. In terms of achieving a balanced community there is no evidence, one way or the other, as to whether multiple occupancy or one bedroom accommodation would be the better option. However, reversion of the property to its former use would resume the status quo. It could leave open the possibility of another conversion scheme coming forward more closely aligned to policy standards and with a balanced housing mix. To that extent the fall back position which has been advanced by the appellant is preferable.

42. I acknowledge that the present occupiers are content with the accommodation and the way in which it is managed. Representations have been made to that effect. However, planning decisions must be made in the wider public interest. The housing developments of today will affect the lives of all those who occupy them over many years into the future. That is why standards have been set and reinforced by policy and that is where the weight of the considerations in the decision must lie.
43. Both parties agree that the development is a chargeable development for the purposes of CIL. That would be a matter for the Council and the appellant if the appeal is allowed. It is not a matter which I need to take further in the consideration of the appeal.
44. I have considered the effect of the development upon the character and appearance of the Wandsworth Road conservation area having regard to the statutory duty which is upon me under s 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.⁸ The conservation area is characterised by a mix of commercial, residential and industrial buildings within the Wandsworth Road corridor. Many of the buildings are of high architectural quality, including the appeal building which is of stock brick ornamented in a restrained Italianate style and considered to be of townscape merit. I find that the external alterations involved in this development could be undertaken in a visually acceptable manner that would be compatible with the character and appearance of the area and the host building.⁹ In these circumstances the alterations would have a neutral effect and, thus, would preserve the character and appearance of the conservation area.
45. I acknowledge that investment has been made in the repair and maintenance of the historic fabric of the building and that the development has brought into use this building of merit within the conservation area. Additionally the development makes a small contribution towards housing supply. Whilst these considerations weigh in the development's favour they carry only limited weight, not least because it is possible similar benefits could be delivered through a scheme which more closely accords with policy. There is no evidence to the contrary.
46. I have taken into account all other matters raised including that there is no detrimental effect upon the living conditions of neighbours, that there is unlikely to be any additional demands upon on-street parking, that a fire protection system has been installed to comply with Building Regulations, that the flats are dual aspect and (in the main) enjoy a good level of daylight/sunlight, that there has been no loss of family housing, that the communal areas are to a good standard and that there has been demand for the flats. However, these are neutral factors in my decision. None of these other matters raised make any less the harm I have identified in my consideration of the main issues.

Conclusion on ground (a) and the deemed application

47. Issues including daylight/sunlight, flood risk, refuse and recycling storage and cycle storage could be adequately addressed through the imposition of

⁸ S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. It imposes a statutory duty on the decision maker to apply this test when considering development proposals within a conservation area.

⁹ Subject to satisfactory details being submitted to and approved by the Council pursuant to conditions.

conditions. These issues (as with a number of other issues) are neutral in the overall balance, weighing neither in favour nor against the development. I find no conflict with the policies of the development plan in respect of these matters. Neither do I regard the absence of affordable housing to be a decisive issue.

48. However, the development does not provide satisfactory living conditions for occupants due to the flats having insufficient internal space; neither does it satisfactorily provide for a mix of housing types including family housing. Whilst making a small contribution towards housing supply, and resulting in investment and use of a building of merit within the conservation area, those limited benefits are not outweighed by the substantial harm that arises in terms of living conditions and housing mix. The identified harm cannot be overcome by the imposition of conditions.
49. The development does not accord with the development plan when read as a whole. There are no considerations which indicate a decision other than in accordance with the development plan. The appeal on ground (a) fails.

The appeal on ground (f)

50. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity that has been caused by the breach.¹⁰ The words "as the case may be" indicate that the main purpose of the notice should fall within one or the other category.
51. In this case, as the notice requires the cessation of the use and the removal of the internal works which facilitated it, the purpose of the notice is one falling within the first limb of ground (f) i.e. to remedy the breach. The appeal on ground (f) is limited to the consideration of the steps necessary to achieve that purpose.
52. The appellant argues that there is a fall back position as the accommodation could be re-instated to two flats for multiple occupancy use. The appellant considers it unreasonable to require all partitions, divisions, kitchen units and appliances to be removed in these circumstances.
53. When comparing the existing plans to the floor plans prior to conversion, the two layouts have little in common in terms of kitchen positions and partition walls for example. On the evidence it is more likely than not that the partitions, divisions, kitchen units and appliances were installed as part and parcel of the conversion of the building to eight flats. It follows, therefore, that their removal is necessary to remedy the breach.
54. Nevertheless, the Council accepts that any partitions or facilities that pre-existed the conversion could be retained. There is no detail before me to indicate the position of any pre-existing facilities or precisely what is being proposed for retention to enable me to vary the notice specifically in that regard. However, the wording of requirement a) in paragraph 5 does not differentiate between the pre-existing items (if any) and those installed as part of the material change of use. I shall, therefore, vary the notice to make clear that the requirement applies only to the latter.

¹⁰ These provisions are set out in s174(1)(f) of the Act. They reflect the purposes of an enforcement notice that are set out s173(4).

55. I have considered in the round whether there is any obvious alternative to removal of all of these items. However, there is none that I can identify. The appeal on ground (f) succeeds only to the extent of the variation referred to above.

The appeal on ground (g)

56. On ground (g) it is argued that the period of six months specified is too short as significant alterations would be required and tenants would need to find alternative accommodation. The appellant suggests that eighteen months would be a more suitable time period.

57. The physical works which the notice requires are not of a structural nature. Even when allowing for the engagement of a builder and the programming of the works I consider six months to be a reasonable timescale in respect of the actual works.

58. I acknowledge that, in complying with the requirement to cease the use, a number of tenants will need to re-locate. A longer time period would be helpful to the appellant and tenants in that regard. However, I must also consider the wider public interest which is best served by timely enforcement action to remedy the harm which has been identified. I consider that a period of six months strikes the right balance between these conflicting public and private interests without placing a disproportionate burden upon the appellant and occupiers.

59. The appeal on ground (g) fails.

Conclusion

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

Susan Wraith

Inspector