

Appeal Decisions

Site visit made on 26 January 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 28 February 2017

Appeal A ref: APP/Y5420/W/16/3154021

136 Carlingford Road, London N15 3ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr Luke Thomas against the decision of the Council of the London Borough of Haringey.
- The application ref HGY/2015/3604, dated 2 December 2015, was refused by notice dated 29 January 2016.
- The development proposed is described in the application form as follows: *'This is a retrospective application for the material change of use from a single family dwelling to two self-contained flats'.*

Summary of Decision: The appeal is dismissed.

Appeal B ref: APP/Y5420/C/16/3154028

Appeal C ref: APP/Y5420/C/16/3154027

136 Carlingford Road, London N15 3ER

- 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 Mr Luke Thomas (Appeal B) and Mr Sam Thomas (Appeal C) against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 6 June 2016.
- The breach of planning control as alleged in the notice is the material change of use of a single dwellinghouse to one x 1 bedroom and one x two bedroom flats.
- The requirements of the notice are to:
 - (1) Cease the use of the property other than as a single family dwellinghouse.
 - (2) Remove all fixtures and fittings that facilitate the use of the premises as two self-contained flats.
 - (3) Clear and remove any debris from the site resulting from compliance with requirements (1) and (2) above.
- The period for compliance with the requirements is 4 months.
- Appeal B is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal C is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, ground (a) and 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 in Appeal C.

Summary of Decision: The enforcement notice is varied on ground (f), but otherwise both appeals are dismissed and the enforcement notice upheld as set out in the formal decisions below.

Procedural matters

1. The Planning Inspectorate did not notify the appeal parties about the linking of section 78 to s.174 appeals, but this oversight has caused no prejudice, because the reasons for refusal of retrospective planning permission are substantially same as those stated in section 4 of the notice. Both parties have addressed merits of the scheme and planning considerations in s.78/ground (a) are the same. On 14 February 2017, the appeal parties were made aware of the linked appeals. It makes perfect sense that I determine all three appeals; that is what I will do.

Appeals A and B – S78 and ground (a)

2. The common **main issues** are: (1) Whether the development results in the unacceptable loss of a dwellinghouse and (2) Whether the change of use results in overdevelopment of the property, having particular regard to standard of accommodation.
3. No. 136 is a two-storey end of terrace property located within a predominantly residential area. It is positioned in proximity to the street's junction at Stanmore Road. Mr Thomas purchased the property in 2009 as a two bedroom dwelling and, after extensive refurbishment, converted the building. One flat is occupied by Mr Luke Thomas and family while the other by his brother and family.
4. The purpose of policy SP2, housing, Haringey's Local Plan (LP) 2013, is to set out strategic approach to housing. Also of relevance are policies found in Unitry Development Plan 2006 (UDP). I find no significant conflict between these local planning policies and the National Planning Policy Framework (NPPF).
5. The Pre-submission Development Management Development Plan Document (DPD) 2016 has been submitted to the Secretary of State for examination. Policy DM16 seeks to establish a family housing protection zone where conversion of dwellings into flats will be resisted, unless certain criteria are met. Having regard to NPPF paragraph 216, while it shows travel of direction, I consider limited weight can be given to this emerging policy because it is yet to be found sound and might change in the future.

Reasons

Loss of dwellinghouse

6. Mr Thomas claims that no. 136 would not constitute family accommodation as set out in The London Plan¹, which indicates homes particularly suited to families are those with more than two bedrooms. The glossary states family housing is generally defined as having three or more bedrooms. I reject Mr Thomas' claim because the undisputed evidence is that the property was a two-bedroom dwelling prior to its purchase and subsequent subdivision. There is nothing before me to indicate the property had not been occupied by people forming a single household. My own observations are that, due to its size and layout, the building together with its curtilage is suitable for family accommodation.

¹ The London Plan Consolidated with Alterations since 2011 (2016).

7. There may well be bigger three and four bedroom properties in the locality; the evidence is that the road has a significant amount of dwellings converted into flats. Evidently, the unauthorised use has resulted in the loss of a family dwelling. Theoretically at least a family could occupy each unit, but I consider the flats' size too small and inadequate. Practically, they cannot provide the same level of accommodation for family housing. I appreciate occupiers find the available accommodation acceptable, but in my assessment the conversion of this property into flats is at odds with the purposes of creating neighbourhoods of choice, high quality and diverse housing, which should be achieved without the loss of family housing.
8. The evidence presented does not substantiate the argument that the loss of this family dwelling has no effect on the supply of family dwellings in the locality or Borough. On the contrary, the LP and UDP suggest there is a specific need for this type of accommodation hence the move towards designating family housing protection zones. Should the property revert to its lawful use, it is likely that it would be available for use as a single-family dwelling. The change of use has the potential to undermine the LP strategy. The unjustified loss of this family dwelling is unacceptable and conflicts with objects of LP policy SP2, and is at odds with national policy found in paragraph 50 to the NPPF.

Effect on living conditions

9. Essentially, Mr Thomas claims that the one and two bedroom flats provide good standard of accommodation and are suitable for current occupiers' use; each flats layout being depicted in the plans submitted. It should however be borne in mind that planning permission runs with the land and, irrespective of who occupies the flats currently, it is reasonable to examine the general characteristics of the land use and any environmental consequences.
10. I have reviewed all of the plans and detail submitted with the application for planning permission. The undisputed evidence is that the gross internal floor area of the flats is marginally below standard set out in policy 3.5 of The London Plan. Table 3.3 sets out minimum space standards for new dwellings, including those created because of a change of use. The submission is that the development does not represent intensification of the property's residential use. For the following reasons, I profoundly disagree with this planning assessment.
11. In practice, the design, shape and layout of the flats significantly reduce the amount of useable floor space. In terms of quality the flats are perceived as being overly contrived, because domestic furniture further reduces the amount of space available for free circulation and movement. There is inadequate space to store possessions or undertake normal activities such as socialising. The flats are perceived as too cramped and substandard because of their configuration, irrespective of the available private amenity space in the rear garden.
12. The site is sustainably in terms of access to public transport and local amenities. In addition, planning permission for the conversion of no. 160 Carlingford Road into flats was granted in 2012, but the Council point out local planning policy has materially changed with the emphasis put on protecting family houses, given the excessive amount of conversions in the locality. I do not consider the grant of planning permission at no. 160 is a strong

justification to permit this appeal scheme. This is because the design and layout of the flats results in two separate dwellings that are substandard. Potentially, the lack of adequate useable floor space could have knock-on effects on the health and wellbeing of existing and future occupants, and to my mind, that type of land-use outcome is not acceptable in the public interest.

13. I conclude that the change of use has a materially harmful effect upon the living conditions of existing and future occupiers. Accordingly, the development enforced against conflicts with UDP policy UD3 and guidance in NPPF paragraphs 17 and 56.

Conclusion on ground (a)

14. I do not consider suitably worded conditions will address shortcomings identified above, including conflict with development plan policy. For the reasons given above I conclude that the appeal should not succeed on the deemed application.

Appeals B and C – ground (f)

15. Mr Luke Thomas and Mr Sam Thomas need to show that the steps specified in the notice exceed what is required to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach. It is necessary to consider whether the requirements exceed what is necessary to remedy the breach (s.174(2)(f)). Section 173(5) gives power to require the alteration or removal of buildings or works, or the carrying out of building or other operations, for the purposes of remedying the breach. The terms and reasons for issuing the notice confirm it seeks to remedy the breach of planning control by restoring the building to its condition before the breach occurred.
16. The claim is that the only physical element that requires removing to remedy the breach is the removal of the entrance door to flat two at first floor level. Family members occupy the flats and with this door removed the layout would be an appropriate arrangement. I disagree. The notice is directed at a material change of use, but it can require the removal of works integral to and solely facilitating the unauthorised use. Building operations have been carried out in order to physically subdivide the whole premises into two self-contained flats. Each flat includes living space; bedroom, kitchen and bathroom facility and has the necessary facility for independent cooking, washing and sleeping. Internal subdivision, additional kitchens and bathrooms have sustained the use of the premises as two separate flats.
17. I therefore find there is a fundamental and crucial link between rearrangement of the property's layout, installation of additional kitchens and bathrooms and the subsequent use of the whole building as two self-contained flats. In my considered opinion, the former facilitates the latter. The nature and scale of the building operations suggest that the additional kitchen and bathroom is integral to use of the property as two flats. There is no evidence before me to suggest that this operational development is in connection with a lawful use of the property. The notice can legitimately require the undoing of these facilitating works. I do not find step (2) excessive and the phraseology is clear and precise.

18. Notwithstanding my finding above, step (1) states the following: *Cease the use of the property other than as a single family dwellinghouse*. This goes beyond the scope of the notice, because it seeks to enforce against uses or activities that have not occurred. It also appears to restrict lawful use rights. It is sufficient to cease the unauthorised use and that reflects the notice's objective. The property's use can revert to single dwelling by operation of law. The substitution of this particular requirement does not cause injustice to any party as it has not caused any confusion. This variation does not make the notice any more onerous than first issued.
19. In conclusion, I find that the lesser steps advanced by Mr Luke Thomas and Mr Sam Thomas would not achieve the purpose behind the notice. Step (1) (2) and (3) are not excessive to remedy the breach. Step (1) should be varied and no injustice arises. Since I am varying the terms of the notice, ground (f) succeeds to this limited extent only.

Appeals A, B and C - conclusions

20. Having regard to all other matters, I conclude that the appeals should not succeed. I shall uphold the enforcement notice subject to a minor variation, and refuse to grant planning permission on the deemed application.

Formal decisions - Appeal A

21. The appeal is dismissed.

Appeal B

22. It is directed that the enforcement notice be varied by the deletion of all of the text in section 5, sub-paragraph (1), what you are required to do, and the substitution therefor of the following text: *Cease use of the building as self-contained flats*. Subject to this variation, 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 C

23. It is directed that the enforcement notice be varied by the deletion of all of the text in section 5, sub-paragraph (1), what you are required to do, and the substitution therefor of the following text: *Cease use of the building as self-contained flats*. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

For the avoidance of any doubt, the steps required to comply with the enforcement notice now read:

- (1) *Cease use of the building as self-contained flats,*
- (2) *Remove all fixtures and fittings that facilitate the use of the premises as two self-contained flats, and*
- (3) *Clear and remove any debris from the site resulting from compliance with requirements (1) and (2) above.*

A U Ghafoor

Inspector