
Appeal Decision

Site visit made on 21 March 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 29 March 2017

Appeal Ref: APP/T5150/C/16/3158145

6 Victoria Avenue, Wembley, London, HA9 6QE.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Aftab Mohammed against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/16/0389, was issued on 4 August 2016.
- The breach of planning control as alleged in the notice is the material change of use of the premises to two flats.
- The requirements of the notice are to: 1) cease the use of the premises as two flats; 2) Remove all kitchens except ONE, and all bathrooms except TWO, from the premises and all other items, equipment and materials associated with the unauthorised use of the premises and alter the internal layout to the condition before the unauthorised change of use took place by ensuring that no bedrooms are on the ground floor of the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of the Decision: The appeal is dismissed, the notice is upheld and planning permission is refused.

Preliminary matters

1. The Council advises that the saved policies in the Brent Unitary Development Plan (2004), as referred to in the reasons for issuing the notice, are no longer relevant as they have been superseded by the provisions of the Development Management Policies Plan (adopted November 2016). The appellant's agent acknowledges this emerging plan and I will refer to the policies in this plan where relevant to the appeal.

Appeal on ground (e)

2. The appeal is lodged by Mr Aftab Mohammed and his agents for the appeal say that the owner of the property (implied to be Mr Mohammed) was not served with a copy of the notice. The Council advises that Mr Aftab Mohammed was not listed as an owner of the property with the Land Registry and therefore his name was not revealed on the Council's search prior to the serving of the notice. However, the Council says that in the planning application form for the development which preceded the notice, Mr Aftab Mohammed is stated to be the contact for the appellant company "Aim Designs" whose address is specified on the application forms. The Company Secretary of "Aim Designs" is one of the parties on whom the notice was served at the company's address.
 3. It therefore appears to me that reasonable steps were taken by the Council to properly serve the notice on the occupiers of the property and persons with an
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interest in it and that Mr Mohammed should have been aware of the notice from his position at "Aim Designs". Further, as Mr Mohammed was able to lodge an appeal in good time and appoint professional agents, he has not been substantially prejudiced by the failure to directly serve a copy of the notice on him. I am therefore satisfied that any failure to serve a copy of the notice on the appellant falls within section 176(5) of the Act. The appeal on this ground therefore fails.

Appeal on ground (a)

Main Issues

4. The main issues are the effect of the change of use to two flats on the housing stock reflecting the housing needs of the Borough; and secondly whether the accommodation within the flats is of a reasonable standard.

Background

5. The appeal site comprises a semi-detached house which lies in a street of similar properties in a mainly residential area. The property has been extended with a 'hip to gable' main roof extension and a ground floor single storey extension to the rear. The appellant says that prior to being extended the property had three bedrooms including a 'box' room and a floor area of about 77 sq.m. At the time of my visit, the property had been split horizontally into two flats: the ground floor one has a floor area of 73 sq.m; while the first/second floor one a floor area of 77 sq.m.

Effect on housing stock

6. Policy CP21 of the Brent Core Strategy (2010) indicates that the plan seeks to maintain a balanced housing stock by (in part) protecting existing accommodation that meets known housing needs and by ensuring that new housing appropriately contributes towards the wide range of household needs.
7. Policy DMP17 of the Development Management Policies (Nov.2016) relates to the conversion of family sized dwellings and indicates that a conversion to two or more dwellings will only be allowed where the existing house is 130 sq.m or more and the conversion results in at least one three bedroom dwelling. An exceptional case is recognised where the amenity of the existing house is so deficient that family occupation is unlikely.
8. In this case the Council accepts that the first part of Policy DMP17 is met in that the overall premises now exceed the 130 sq.m threshold specified. However, the conversion scheme does not result in either of the flats having three bedrooms. The evidence also shows that the original property had a large garden and therefore the stated exception on lack of amenity does not apply. I therefore find that Policy DMP17 applies to the property and there is a general presumption against the conversion of the family house into smaller units.
9. I recognise that both of the two flats could be used by small families and that now there is much greater floorspace and an overall greater number of bedrooms than contained in the original family dwelling. However, the policy has identified a particular housing need within the Borough for family sized accommodation which require premises with three bedrooms or more and the accommodation provided in either flat could at best be described as 1.5

bedroom space and this would be substantially short of the type of space identified as a priority.

10. The appellant says that the blanket application of the policy is not justified as it appears that many of the other family houses in the street and wider locality have not been converted to flats and that family houses still prevail. However, there is no clear evidence provided on the local housing stock to verify this or to establish that there are particular housing needs locally to justify an exception to the policy. Further, the appellant says that the policy should be applied flexibly but to do so too loosely in the absence of clear justification would negate its purpose, and set an undesirable precedent, particularly at a time when this part of the development plan has only recently been adopted following Examination.

Nature of the accommodation

11. Turning now to the second issue regarding the nature of the accommodation, the size of the flats is set out in paragraph 5 above. I find that the space in each flat just exceeds the standards for 2 bedroom/3 person accommodation set out in Table 3.3 of the London Plan regarding 'Minimum space standards for new dwellings'.
12. The Council queries the restricted ceiling height in the second bedroom of the upper flat but while I did not see this room at the site visit, from the evidence supplied by the appellant I do not consider that the reduced ceiling height would be a practical problem for reasonable use as a secondary bedroom in normal circumstances. In terms of the second bedroom to the ground floor flat, while this was not in use as a bedroom at the time of my visit the size of the room appeared to be reasonable for use with a cot or small single bed and the room had an exterior window with a pleasant aspect including views of the sky and there was sunlight entering the room. Both of the flats also had access to the shared rear garden.
13. On the evidence submitted and my observations at my site visit, I am satisfied that the two flats afford reasonable accommodation for the likely occupiers.

Planning balance

14. Bringing together my conclusions on the main issues, I have found that while the space created in the two flats would provide reasonable accommodation for the occupiers the conversion, the change of use undertaken has resulted in the permanent loss of a family house and although the overall space has been increased, neither flat would provide sufficient space for family occupation as defined in Policy DMP17. As such the loss of a family house would be in conflict with the provisions of this policy.
15. I recognise that it has not been demonstrated that there would be other environmental problems associated with the two flats. Further, it is national policy to facilitate sustainable development and the National Planning Policy Framework seeks to significantly boost the supply of housing which the appeal scheme would make a small net contribution towards. Nevertheless, the NPPF requires authorities to plan for a mix of housing based on current and future demographic trends and the up-to-date development plan, as applying locally, indicates that family housing should be retained as a priority.

16. Overall, the evidence submitted with the appeal does not provide a clear case of a different housing need existing locally for smaller flats to justify an exception to the policy.
17. I therefore find that there are no other considerations which outweigh the conflict with the development plan when this is considered as a whole. The appeals therefore fails on this ground and I will refuse planning permission on the deemed application.

Appeal on ground (f)

18. The appeal on this ground is mainly on the basis that the small bedroom in the ground floor flat can be made slightly larger by incorporating some space from the kitchen /living room. However, in the planning assessment I have found that the actual space provided with the flats is not substandard. Therefore, the proposed amendment to the small bedroom would not make a material difference to the consideration of this issue. Further, such modest change would not affect the critical issue on the loss of a family sized dwelling in the first place.
19. Overall on this ground I find that the lesser steps put forward would not overcome the objections as they would not remedy the breach of planning control which is the purpose of the notice, and the steps required are the minimum necessary to achieve this. The appeal on this ground therefore fails.

Conclusion

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

Decision

21. 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.

David Murray

INSPECTOR