
Appeal Decision

Site visit made on 21 March 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 30 March 2017

Appeal Ref: APP/A5840/C/16/3159390
98a Wyndham Road, London SE5 0UB

- 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 S Khan against an enforcement notice (EN) issued by the London Borough of Southwark (the LPA).
 - The enforcement notice was issued on 25 August 2016.
 - The breach of planning control as alleged in the notice is: the material change of use of the property from a former public house to multiple self-contained dwellings, each within use class C3, consisting of one self-contained dwelling on the ground floor and three self-contained dwellings on the first floor, two self-contained dwellings on the second floor and loft.
 - The requirements of the notice are as follows:
 - 5.1 Cease the use of the Property as more than one C3 dwelling.
 - 5.2 Remove all but one of the kitchens (which for the avoidance of doubt shall include the removal of kitchen worktops, sinks, hobs, microwaves, ovens, kitchen shelves, worktops and cupboards, wall tiles, fridges, splashbacks from the property.
 - 5.3 Remove at least three of the six bathrooms from the property (which for the avoidance of doubt shall include the removal of showers, wash handbasins, toilets, plumbing and electricity connections, partition walls and doors) so as to leave not more than three bathrooms remaining in the property.
 - 5.5 Remove the locks from the entrance door to each unauthorised flat.
 - 5.6 Remove from the property any material and debris arising from compliance with the requirements of 5.1 to 5.6 above.
 - The period for compliance with the requirements is 6 Months.
 - The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed. See formal decision below.

Matter of clarification and background information

2. Despite the reference (in part 5 of the EN) to requirements 1 to 6, there are only five requirements (5.1, 5.2, 5.3, 5.5 and 5.6). There is no requirement 5.4. I will, therefore, correct the notice accordingly and I am satisfied that no injustice will be caused by this correction.

3. The detached three-storey appeal property is located on the north side of Wyndham Road and the appeal relates to part of the ground floor (to the rear) and the upper floors (first, second and loft). To the ground floor, at the front, there is a retail unit. The immediate surrounding area is predominantly residential in character comprising mainly of tower blocks of varying heights. There are also pockets of commercial premises in the locality.

4. The LPA indicates that an invalid application for a change of use to a three bed HMO, studio flat and one bedroom flat was received in 2016 and in 2009 another invalid application had been received for the creation of 12 flats. A Planning Contravention Notice (PCN) was issued on 24 May 2016 and on 29 June 2016 a Notice of Entry was delivered and a site visit carried out at two of the unauthorised flats (Nos 4 and 6), followed by a further visit to Flat 3 on 6 July 2016. There was no response to the PCN and the EN was issued on 25 August 2016.

5. Plans dated July 2016 (DP/2841/PP/01 and 02) indicate that 6 flats have been created. The plans were submitted as part of the 2016 invalid application. The LPA indicates that the plans show the arrangement of the building at the time the EN was issued. This appeared to be the same at the time of my site visit, although access to Flat 1 was not available and it was stated to have been unoccupied for some time. However, the other layouts were as shown on the above plans and I have no reason to question the layout of Flat 1. I have proceeded, therefore, on the basis that the flat layouts accord with the above drawings. I am satisfied that this will not cause any injustice to the Council or the Appellant.

6. The property had been inspected by the LPA on 29 June 2016 and 6 July 2016 and again access to all of the flats had not been possible. However the LPA states that Flat 2 was occupied by a mother and two children; Flat 3 by two parents and three children; Flat 4 by a couple and Flat 6 by a mother and daughter. There are no external door bells or intercom system. Refuse appears to be stored on the street in plastic bags and wheelie bins; there is no storage area for bicycles, prams or pushchairs and, other than a small yard to Flat 1, there is no amenity area.

7. As indicated by the LPA the loft bedrooms (to Flats 5 and 6) have only small roof lights in the north facing roof pitch and the rooms at this level have a poor quality of light. The ground floor flat (Flat 1) has a small yard area but limited windows and thus must have very poor outlook. The kitchen space to Flat 1 is shown as being internal without any windows. The flats at first and second floor levels have reasonable daylighting and outlook from the main habitable spaces. However, the kitchen facilities are minimal with poor outlook and all of the rooms are cramped. The LPA has provided figures to indicate that none of the flats meet residential design requirement standards.

The appeal on ground (a)

8. In this ground of appeal it is contended that planning permission should be granted for the works as carried out at the property. The decision must be made in accordance with the development plan unless material considerations indicate otherwise. In this case the most relevant policies are Strategic Policy 7 (Family Homes) and Strategic Policy 13 (High Environmental Standards) of the Southwark Core Strategy 2011 (SCS); saved policies 3.2 (Protection of Amenity), 3.7 (Waste Reduction), 4.2 (Quality of Residential Accommodation) and 5.3 (Walking and Cycling) of the Southwark Plan 2007 (SP) and policies 3.5 (Quality and Design of Housing Developments), 6.9 (Cycling) of the London Plan 2015 (LP).

9. The National Planning Policy Framework (NPPF) is a major material consideration and I have had regard to paragraphs 6 and 7 and to the presumption in favour of sustainable development (paragraphs 11 to 16). Also relevant are the core principles of the planning system set out in paragraphs 17. Of particular relevance are bullet points 4: the need to *'always seek high quality design and a good standard of amenity for all existing and future occupants of land and buildings'*; 11: the need to make *'the fullest possible use of public transport, walking and cycling'* and, 12: *'to take account of and support local strategies to*

improve health, social and cultural well-being'. I have also had regard to Part 6 (Delivering a wide choice of High Quality Homes), Part 7 (Requiring good design) and Part 8 (Promoting Healthy Communities).

The main issues

10. The main issues are firstly, the effect of the development with regard to the necessary housing space standards, secondly the effect of the flatted development on the living conditions of existing and future occupiers and, thirdly, whether or not the development is sustainable with particular regard to the provision of waste and cycling storage facilities.

Housing space standards

11. Having inspected all of the flats, other than Flat 1, I share the Council's concerns about the size and quality of the individual dwellings. The Nationally Described Space Standards, Residential Design Standards SPD 2011 (Technical update 2015), London Draft Interim Housing SPG 2015 requirements set out minimum areas for various sized flats. From the Council's submitted figures, which are not disputed by the Appellant, none of the flats meets the required space standards. Flat 1 provides less than 50% of the required space; Flats 2 and 3 are only around two-thirds of the recommended areas; Flat 4 is 6m² short of the requirement and Flats 5 and 6 are around 50% and 40% less respectively. The development, therefore, fails to meet the necessary space standards for housing development both locally and nationally.

Effect on Living conditions

12. Having seen the flat layout plans and photographs and having inspected all but Flat 1, I agree with the LPA that all of the units are cramped and fail to provide adequate circulation and storage space. The second floor flats have no outlook to the loft rooms other than from roof lights and Flat 3 is single aspect only. The plan for Flat 1 indicates an internal kitchen area and the window positions will result in very poor levels of daylight and sunlight. There is no external amenity space for any of the flats except for the small rear yard to Flat 1. Overall, therefore, the effect on residents' living conditions is significantly harmful. The housing provision is sub-standard in all respects in my view and is contrary to the relevant LP, SCS and NPPF policies requiring good standards of design and residential accommodation.

The sustainability of the development

13. The development carried out cannot be said to be sustainable. There are no facilities for waste collection; no bicycle storage provision and no amenity space. The design of the flat layouts is also very poor and the NPPF indicates that planning permission should not be granted for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. The NPPF also indicates that sustainable development involves seeking positive improvements in the quality of the built environment, as well as in people's quality of life by improving the conditions in which people live by widening the choice of high quality homes. This development fails miserably in respect of all of these factors.

14. I acknowledge that the site lies within a 'developed area' which is residential but I totally disagree with the contention that the proposal satisfies the necessary dimensions of sustainable development. It may well contribute to the Appellant's economic situation but, socially and environmentally the unauthorised units of self-contained accommodation are woefully inadequate. I fail to understand how it can

possibly be argued that the flats comply with local plan standards or that they result in a positive outcome for the quality of the local housing stock.

15. From my inspection of all but Flat 1, it seems to me that the descriptions of the flats: as providing adequate levels of light and outlook; being sensitively designed and being compatible with the existing pattern of development within the area, requires stretches of the imagination well beyond the realms of credibility. Nor can the housing need within the Borough be used as a reason for the provision of such inadequate; poorly designed and sub-standard housing such as this provided at 90a Wyndham Road.

Overall Conclusions on ground (a)

16. I do not consider that planning permission should be granted for this sub-standard housing development. It is contrary to all of the relevant local and national policies referred to above. The Council would not have granted planning permission in the first instance and there can be no justification in granting permission at this appeal stage. The appeal fails on ground (a).

The appeal on ground (f)

17. I have concluded above that the unauthorised development is harmful in terms of the quality of the accommodation and that it is not sustainable in any respect. In the absence of any other submitted acceptable scheme, I agree with the Council that the requirement to cease the use of the property as more than one C3 dwelling is reasonable at this stage. No alternative lesser steps are put forward other than a willingness to continue negotiations. I accept that it is open to the Appellant to put forward a more acceptable scheme. However, this would be a matter between the Appellant and the LPA and cannot be considered in the context of this appeal.

18. At this stage there are no lesser steps put forward which would overcome the harm caused by the breach of planning control. I do not, therefore, consider that the steps as set out in the notice exceed what is required. The appeal also fails on ground (f).

The appeal on ground (g)

19. In the overall circumstances of this case and taking into account the possible schooling needs of the children of occupants and the tenancy agreements, I consider that 6 months does fall short of the time required to comply with the notice. If an alternative scheme is to be put forward and if any existing tenants are to be provided with suitable accommodation, I consider that a compliance period of 12 months is reasonable and necessary. This will give sufficient time for an alternative application to be made if the Appellant wishes the property to provide more than one C3 use. The appeal succeeds; therefore, to this limited degree on ground (g) and I will vary the notice accordingly.

Other Matters

20. In reaching my conclusions in this appeal I have taken into account all of the other matters raised by and on behalf of the Appellant and by the LPA. In particular I have noted all of the references in the Appellant's statement to the statutory requirements relating to planning decisions and the significant material consideration of the relevant NPPF policies; the detailed arguments under each ground of appeal; the policy considerations and the conclusions. I have also taken into account the plans and photographic submissions. However, none of these

carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

21. I direct that the notice be corrected by: deleting the figures and word '5.1 to 5.5 above' in section 5.6, and by substituting therefor, the figures and word '5.1, 5.2. 5.3 and 5.5 above'.

22. The appeal succeeds to a limited degree on ground (g) and I direct that the notice be varied by deleting the figure '6' in part 6 of the notice (TIME FOR COMPLIANCE) and by substituting therefor the figure and word '12 (twelve)'.

23. Otherwise the appeal is dismissed and the enforcement notice is upheld as corrected and varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Anthony J Wharton

Inspector