
Appeal Decisions

Site visit made on 8 May 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 11 May 2017

Appeal Refs: APP/E5330/C/16/3156455 and 3156457
20 McCall Crescent, London SE7 8HS

- 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 Mahendra Kandel and Mrs Ishware Kandel against an enforcement notice issued by the Royal Borough of Greenwich (the LPA).
 - The enforcement notice was issued on 13 July 2016.
 - The breach of planning control as alleged in the notice is: the sub-division of the single dwelling house situated on the land into two self-contained dwellings.
 - The requirements of the notice are as follows:
 - i) Cease the use of the dwelling house situated on the land into two self-contained dwellings.
 - ii) Remove all fixtures and fittings associated with one of the kitchens located on the ground floor of the premises, leaving a single remaining kitchen to serve the whole house.
 - iii) Remove any internal stud partition walls and doors which have been inserted in order to facilitate the use of the building as two self-contained dwellings.
 - iv) Remove from the land all building material, rubble and equipment arising from the compliance with points (i) to (iii) above.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on grounds (a), (d), (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 appeals are dismissed but the notice is varied. See formal decision below.

Matters of clarification and background information

2. The appeal property is located in a primarily residential area, comprising mainly of terraced and semi-detached properties. The property is not a listed building and does not lie within a conservation area. It originally comprised a single family house with 3 reception rooms and 4 bedrooms. It has been extended by the addition of a two-storey rear extension; a single storey side extension and a front bay window extension. Permission was also granted for a brick wall, railings, vehicle access gate and pedestrian gate to the front.

3. The small rear extension with small kitchen and bathroom was constructed in 2011 and these facilities are stated to have been provided to enable the appellants' parents to have separate kitchen accommodation when they visited from Nepal. On their return to Nepal the appellants retained the second kitchen and bathroom and sub-divided the house to create a self-contained one-bedroomed unit which utilised one of the reception rooms as well as the kitchen and bathroom. This was separate unit was then let and there is evidence that an Assured Shorthold Tenancy (AST) agreement was entered into with a tenant on 21 May 2012.

4. Another AST indicates that a new tenancy agreement commenced on 15 July 2012 and it is stated that this second tenancy agreement has continued on the basis of a '*periodic tenancy*' as defined by the Housing Act 1988. The flat is now vacant and it is stated that the tenants moved out in January 2017 prior the coming into force of a Prohibition Order (PO) served by the Council. At the time of my visit most of the kitchen fittings (with the exception of a kitchen sink and a fridge) had been removed from the separate one bedroomed unit. However, I must deal with the enforcement notice on its face.

The appeals on ground (d)

5. An appeal under this ground is made on the basis that, at the time the notice was issued, it was too late for the Council to take enforcement action against the matters alleged. In this case the onus is on the appellants to conclusively show that the sub-division of the property took place on or before 13 July 2012 and that the use of the property as two self-contained dwellings has been continuous for a four year period from that date until 13 July 2016.

6. I note that the two AST agreements are dated as indicated above. On the basis of these documents alone and a '*periodic tenancy*' continuing, I acknowledge that that this rear part of the premises could have been let between July 2012 and July 2016. I also noted that the rear unit did provide all of the facilities for a separate dwelling (full kitchen, shower room, bedroom and living area).

7. However, as indicated by the Council there is no corroborative evidence such as utility bills, TV licences; bank statements; tenancy deposit scheme or other such documentation to indicate that the rear unit was occupied totally and separately for a continuous 4 year period.

8. I agree with the Council, therefore, that the two AST agreements cannot, by themselves, be relied upon to prove a separate 4 year continuous use of the property as two separate dwellings. Furthermore, in relation to this appeal under ground (d), the Appellants' evidence contradicts the claim that that they have been used two separate flats or units of accommodation.

9. The letter of 24 March 2016, to the Senior Planning Enforcement Officer refutes the Council's claim that that the extension is a stand-alone purpose built flat and also indicates that the space is '*purely a part of the house that remains sterile from the activities which go against the parents' practices*'. The letter goes on to indicate that the parents will be visiting again soon and that they would be living in this part of the property once more.

10. From all of the representations it is my conclusion that the property has been used as two separate units of living accommodation. But it has not been conclusively shown, on the balance of probabilities, that this use has been continuous without any significant break for the full necessary 4 year period. The appeal fails, therefore, on ground (d); the use of the property as two separate units of residential accommodation is, therefore, unlawful and the Council was not precluded from taking enforcement action in this case.

The appeals on ground (a)

11. The main issues relate to the division of the property into two separate dwellings; the effect on the character of this part of Greenwich and the effect on the living conditions of any occupants of the separate units of accommodation.

12. On the first point, Policy H2 of the Royal Greenwich Local Plan Core Strategy with Detailed Policies (the CS) seeks to protect small and medium sized family

dwelling from being inappropriately sub-divided or converted. Although it is a policy primarily aimed at ensuring that an appropriate housing mix of types and sizes is provided, it also aims to ensure that the existing character of different areas within the Borough are protected.

13. Having inspected the property and the surrounding area, I share the Council's concerns about the effect of this particular sub-division of No 20 McCall Crescent. Most of the surrounding dwellings are separate dwelling houses. The introduction of a second dwelling within No 20, in my view, unacceptably alters the character of usage of the main dwelling and detracts from the residential qualities of the immediate surroundings. The tight and tortuous access and separate entrance to the rear unit, in my view, detracts from the character of the area as well as being harmful to the living conditions of any occupants. It is contrary to policy H5.

14. This CS policy requires a high quality of housing design and an integrated environment. This means that any new housing provision, no matter how large or small, must be also be consistent with the London Plan housing policies and must provide an acceptable living environment for any occupants. Along with other policies in the CS, it is consistent and up-to-date with the National Planning Policy Framework (NPPF). I have particularly had regard to sections 6 (Delivering a wide choice of high quality homes) and 7 (Requiring good design) of the NPPF.

15. As indicated by the Council and from my own inspection, the sub-division fails on many counts to accord with the requirements of the relevant CS policies and the Council's adopted Residential Extensions, Basements and Conversions Guidance SPD. The Council served a Prohibition Order under the Housing Act 2004 and the tenants moved out in January 2017.

16. It is clear that the conversion does not provide a safe and secure access to the rear flat: it does not provide appropriate insulation; there is inadequate natural light and outlook to/from the living area; there is poor fire protection and the accommodation overall is cramped. I agree with the Council that this is not a suitable conversion by which to provide a separate flat. It is contrary to all of the relevant local and national policies relating to the provision of suitable housing and good design. It is harmful and unacceptable for any occupants.

17. At paragraph 64 the NPPF states that planning permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions. The conversion is far from a 'quality design' and, for the reasons set out above, I do not consider that planning permission should be granted for the use of the rear unit as a separate dwelling. The appeal also fails, therefore, on ground (a).

The appeals on ground (f)

18. To be successful on this ground of appeal it must be shown that the requirements are excessive and that lesser steps would overcome the planning objections. However, in my view, the requirements of the notice would clearly remedy the breach. Most of the kitchen fittings have already been removed and the aim of the requirements is to ensure that the rear unit would not have all of the necessary facilities required for day to day living.

19. Whilst acknowledging that the rear unit was initially required for use by the appellants' family members it has, nevertheless, been let and used as a separate unit of residential accommodation. I acknowledge that there are cultural and religious reasons why the Nepalese occupants (whether relatives or not) might require separate cooking facilities. I also acknowledge that planning permission

would not be required for additional kitchen or bathroom facilities within a single family dwellinghouse.

20. However, the retention of two kitchens would be the determining factor which would allow the continued use of No 20 as two separate dwellings as opposed to just one. Therefore, irrespective of the specific family and economic circumstances of the appellants, I do not consider that the requirement to remove one of the kitchens is excessive. However, I consider that the kitchen sink in the rear unit (the only remaining element) should be allowed to remain.

21. It is reasonable, in my view, that the rear extension can continue to provide additional shower room and utility space for a single dwelling house. As indicated on behalf of the appellants, planning permission would not be required for such works in relation to them being provided for a single dwelling house. I shall, therefore, vary the notice accordingly to allow the kitchen sink/unit only to remain in place. The appeals succeed to this very limited degree, therefore, on ground (f).

The appeals on ground (g)

22. Having considered all of the submissions and having inspected the property, it is clear that the appellants have relied in the past on the rental of the rear flat as part of their income, as well as using the property for use by the extended family. I have concluded above that permission ought not to be granted for any formal use of the property as two separate units of accommodation.

23. In the overall circumstances, I consider that a 6 month period is an adequate period in order to comply with the notice. Indeed some of the requirements have already been carried out. There are no tenancy complications since the flat is vacant and the alterations to return the property to a single dwelling are simple and straightforward. I do not consider that it is appropriate to extend the period to 12 months and so the appeals also fail on ground (g).

Other Matters

24. In reaching my conclusions I have taken into account all other matters raised by and on behalf of the appellants and by the Council. These include the initial grounds of appeal; the detailed statements and the appellants' final comments. However none of these carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other matter of such significance so as to change my decision that the appeals should be dismissed

Formal Decisions

25. I direct that the notice be varied by adding the words '*with the exception of the sink/unit*' after the words '*fixtures and fittings*' and before the word '*associated*' in the requirement numbered (ii) in part 5 of the notice (WHAT YOU ARE REQUIRED TO DO).

26. Otherwise the Appeals are 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 Act.

Anthony J Wharton

Inspector