
Appeal Decisions

Site visit made on 4 July 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 17 July 2017

Appeal Ref: APP/N5090/C/16/3149608 (Appeal A) **48a Sunningfields Road, London NW4 4RL**

- 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 Mrs Vivienne Mervis of Vivienne and Rachel against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 31 March 2016.
- The breach of planning control as alleged in the notice is without planning permission, the subdivision of the property into three self-contained flats.
- The requirements of the notice are 1. Cease the use as three self-contained flats. 2. Permanently remove all but one set of kitchen facilities (units, sinks, cookers and food preparation area) from the property. 3. Permanently remove all but one bathroom per floor from the property.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation.

Appeal Ref: APP/N5090/W/16/3166819 (Appeal B) **48a Sunningfields Road, London NW4 4RL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Hilton Mervis against the decision of the Council of the London Borough of Barnet.
- The application, Ref 16/6671/RCU, dated 20 October 2016, was refused by notice dated 15 December 2016.
- The development proposed is described as 'Conversion to 3 No flats'.

Summary of Decision: The appeal is allowed and planning permission is granted as set out below in the Formal Decision.

Appeal A

The Notice

1. An enforcement notice must enable every person who receives a copy to know exactly what in the Council's view constitutes the breach of planning control. In this case the description of the development in the notice does not allege that there has been a material change of use. The 'subdivision' of a property into a number of smaller units is not an activity within the meaning of

development set out in section 55 of the Town and Country Planning Act 1990 (the Act). It is open to me to correct the allegation in the notice to put it in order but this can only be done provided there is no injustice or prejudice to either party. I consider this can be achieved as it is clear from the appellant's appeal submissions that he has not been misled by the incorrect framing of the allegation. I will therefore direct that the notice is corrected in this respect.

The ground (f) appeal

2. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the use of the building as self-contained flats should cease. The purpose of the notice must therefore be to remedy the breach of planning control.
3. In this case the ground (a) appeal and the deemed planning application have lapsed. Consequently, the appeal under ground (f) cannot be turned into something else by arguing, for example, about the proximity of the development to Sunny Hill Park. Accordingly I have been unable to take account of the general planning considerations raised by the appellant as these are more appropriate to an appeal on ground (a).
4. The appellant does, though, suggest a lesser step of raising the ceiling height in the loft studio flat by fitting a large roof light over the lounge area, which is the principal living area of the flat. Whilst this is welcome, I find this would not remedy the breach of planning control. This is because the breach of planning control is the making of the material change of use to three flats. Increasing the ceiling height would not undo that initial action and would not address all of the harm caused by the development set out in the four reasons for issuing the notice.
5. The appellant also argues that it is excessive to require the removal of all but one set of kitchen facilities and all but one bathroom per floor. This is because the property is located in an area where there is a large Jewish population and it is likely subsequent occupiers would be Jewish. For cultural and religious reasons Jewish people require two kitchens within a property and in terms of supporting elderly people a downstairs bathroom is useful.
6. Whilst I recognise these circumstances, bathrooms and kitchens also provide the facilities for day to day living. They enable the use of each floor of the property as a self-contained unit of accommodation when previously the Council advise the property was a single dwelling house. The appellant fails to explain why it would be necessary to retain a third kitchen and the Council's requirements would still leave a bathroom on the ground floor of the property, not just a toilet, which would address the appellant's second point.
7. Finally, the appellant suggests that a lesser step could be to convert the property into either two flats or a house in multiple occupation, which potentially could overcome the planning difficulties at less cost and disruption. It seems to me that this point is really about seeking more time to develop an alternative proposal, which I consider next. This is because the appellant

makes reference to the Ioannou case¹ and recognises that within the appeal there is no power to grant planning permission for a different scheme from that described in the allegation.

8. In any event, if I were to allow the appeal on ground (f) then I would need to vary the requirements of the notice in such a way that unambiguously sets out what needs to be done. The appellant has not adequately identified this particular lesser step other than by submitting a single plan which shows the re-building of one wall and the re-naming of some rooms and as such I am not able to vary the requirements.
9. It is necessary though to vary the notice as it is not essential to specify that use as three flats should cease, merely that use as separate residential units should cease.
10. The appellant has not shown what lesser steps would still achieve the Council's purpose in issuing the notice. I therefore find that the steps required by the notice do not exceed what is necessary to remedy the harm caused and the appeal on ground (f) fails.

The ground (g) appeal

11. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to cease the use and carry out the physical works specified in the steps. The basis of the appellant's appeal though is to increase the compliance period to 12 months to allow the appellant time to explore with the Council different uses for the property. The background to this request is that the appellant is aggrieved and submits that the notice was issued prematurely when he understood he was still in discussion with the Council to resolve the matter. In addition, he argues that the unauthorised use causes no harm to third parties; the ground floor tenant has children and believes it would be hard to find an alternative flat; and the lease on the loft studio flat does not expire until October 2017.
12. I find to extend the period of time to a year would be tantamount to the grant of a temporary planning permission which would not be appropriate. Whilst the appellant's first point is understandable, the Council's view is that he did not submit a valid application by the deadline. With regard to there being no harm to third parties, this is incorrect. This is because the second reason for issuing the notice states, in the absence of contravening evidence, the use is likely to result in harm to living conditions, by reason of noise and disturbance from increased comings and goings.
13. The outcome of the appeal is that the current occupiers of each flat would lose their home. Therefore, there needs to be a reasonable period of time for them to look for alternative accommodation. I consider the five month period specified by the Council is mindful of this as it allows for tenants to receive two months' notice and an extra three months to find a new home. In addition, the tenancy on the loft studio flat would have expired before the notice came into effect.
14. The Council has issued the notice because it considered it was expedient to do so and that decision has not been challenged by the appellant. The time given

¹ Ioannou v SSCLG [2014] EWCA Civ 1432

to comply with the requirements of the notice is just that, to comply with the requirements, not to enter into discussions about alternative schemes, though there is nothing to prevent the appellant from doing that in parallel. I consider that the five month period is reasonable as it allows for notice to be given to the tenants in order to cease the use and for the physical works to be carried out once the flats are vacated. The appeal on ground (g) therefore fails.

Conclusion and Formal Decision (Appeal A)

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation.
16. It is directed that the enforcement notice be corrected by the deletion of the word 'subdivision' and the substitution of the words 'material change of use' in paragraph 3 of the notice and varied by the deletion of the word 'three' in paragraph 5(1) of the notice. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

Preliminary Matter

17. Both the appellant in the initial application and the Council in its decision notice describe the development as being the 'conversion' of the property into three flats. 'Conversion' is not an activity within the meaning of development set out in section 55 of the Act. I shall therefore deal with Appeal B on the basis that it is for the material change of use of the property into three self-contained flats (retrospective application).

Main Issue

18. The main issue is the effect of the development on the living conditions of existing and future occupiers, having regard to the standard of accommodation.

Reasons

19. The appeal concerns a two storey, semi-detached property that has been extended at the rear and at roof level to create three flats with a two bedroom flat on the ground floor and a studio flat on the first and second floors. The site lies within a residential area which contains a variety of properties.
20. The Council are satisfied that acceptable levels of light, outlook and privacy have been provided for all three flats. In addition, the studio within the loft space meets the minimum standard required for gross internal floor area (GIA) as set out in Table 3.3 accompanying Policy 3.5 of The London Plan (TLP)². However there are two matters which remain of concern to the Council, namely the ceiling height within the loft studio and the omission of private outdoor space provision for both studio flats. I shall therefore confine my detailed considerations to these matters.
21. The parties agree that the ceiling height is 2.1m and that Policy 3.5 states new homes should have adequately sized rooms which take account of the need to provide a home as a place of retreat. Table 3.3 sets out a minimum ceiling

² The London Plan, The Spatial Development Strategy for London, Consolidated with Alterations since 2011, March 2016

height of 2.3m is required for at least 75% of the GIA. The Mayor of London's Housing Standards 2016 set out the minimum level of quality and design that new homes should meet and strongly encourages ceiling heights of at least 2.5m. This is to provide housing of adequate quality in terms of light, ventilation and sense of space as much of London's housing stock is high density with many flats. The application of the standards provides some flexibility but notwithstanding this, the 2.1m ceiling height is contrary to Policy 3.5 and fails to have regard to the accompanying guidance.

22. However, the loft flat has been well designed and this accords with Policy DM01 of the Council's Local Plan (LP)³ which requires high quality development. On entering the flat there is a small hallway with space for shoes and coats. The stairwell receives light from a roof lantern and at the top of the stairs access is provided into a large, open plan living area and a separate bedroom and bathroom. There are two roof lights in the bedroom area, a fitted wardrobe, a double bed, a chest of drawers and bedside tables. Part of the roof slopes in the bedroom area but this only infringes approximately 1.5m of the depth of the floor where it is not possible to stand. The majority of the sleeping area is available for circulation and access even when the roof lights are open as they do not jut into the room. In addition to the entrance from the landing, double doors have also been installed in the bedroom. These open onto the living area and enable cross ventilation as well as providing a sense of space which offsets any perceived harm from the 2.1m high ceiling height in the sleeping area.
23. The 'L' shaped living area is laid out as a kitchen/dining/lounge which is lit by two windows. The smaller window provides light, outlook and ventilation for the compact kitchen area. Although small, the area is, nevertheless, furnished with everything required for day to day living including a dishwasher, washer/dryer, fridge freezer, hob, oven, microwave, sink and worktops. The larger window comprises a pair of floor to ceiling, inward opening, French windows which also have a panel of glazing either side with a top opening light. These not only provide light but also a generous outlook from the lounge over a Juliet balcony. The lounge is large enough to accommodate a small sofa, a desk and a table and chairs without appearing cramped. I consider the design of the glazing in this part of the flat, together with the well-planned layout of the kitchen, which leaves a large regular space for the lounge, offsets any perceived harm from the 2.1m ceiling height.
24. The Council refer to a previous appeal decision on another development of three flats in the borough⁴ to support their position. However, this development can be distinguished from the current appeal in that the layout of the loft flat in that instance had two areas of restricted roof height. There was a roof slope over the sleeping area and a roof slope in the lounge outside of the rear dormer area. As a result, the Inspector commented in that case that the restricted ceiling height in the habitable areas would be oppressive with limited flexibility in how the rooms could be laid out. This led her to conclude that the development would result in cramped accommodation with limited circulation space. That is not the case in the current appeal where there is only one area of roof slope and a regularly-shaped, open plan living area that enables the flexible layout of furniture and as such I give that appeal decision limited weight.

³ Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012

⁴ Ref: APP/N5090/W/16/3156422

25. Overall I find that the appellant has created a home which is a place of retreat with a dual aspect and access to plenty of natural light. Despite the low ceiling height, the appellant's attention to detail in the layout of the flat has resulted in an airy and spacious development. This is a material consideration to which I attach significant weight in the circumstances of this particular appeal.
26. The second area of concern to the Council is the lack of any outdoor space provision for the studio flats. The ground floor flat has access to a large rear garden but there is no access to it from either within the converted property or from outside adjacent to the flank wall. This is because the layout of the ground floor means that there is no space to provide access internally and the property abuts the side boundary. The former front garden area is hard surfaced and provides space to store refuse bins and to park cars.
27. Policy DM02 of the LP states that development will be expected to comply with various standards set out in other documents, including for open space the Council's Supplementary Planning Document (SPD)⁵. This states that options for the provision of private open space for flats can include communal open space around a building, roof terraces and balconies. Where the standard of 5 sq m of space per habitable room is not achievable and an innovative design solution is not possible, the Council will seek a planning obligation. In addition the Mayor of London's Housing Standards require the provision of a minimum of 5 sq m of private outdoor space for one and two bedroom units. I find the lack of private outdoor space is contrary to Policy DM02 and fails to have regard to the accompanying guidance.
28. However, given the constraints on site, the appellant has provided inward opening French windows to both flats. I consider these are a pragmatic solution that at least goes some way towards acknowledging the objectives behind and the requirements of development plan policy in this matter, as well as the relevant standards. In addition, opposite the front entrance to the property is a pedestrian pathway that runs along the side of the school playground and leads into Sunny Hill Park. This is a large area of public open space that is an attractive feature for recreation and leisure. The appellant submits that the proximity of the park and occupation of the units by single people should be given weight as material considerations.
29. He includes a copy of a letter from a previous occupier of the flat who stated that he had no interest in a garden and made use of Sunny Hill Park. There are also letters from two estate agents who marketed the flats. One stated that in his experience occupiers of upper floor flats did not make much use of outdoor space and as a result they were often not maintained. I find that the estate agent's remarks are quite generalised as other occupiers might maintain outdoor space if given the chance. I therefore give the comment little weight whereas the previous occupier's comments do support the appellant's argument and I therefore give it moderate weight.
30. In addition, the appellant refers to a previous appeal decision that refers to this matter on a site elsewhere in the borough which concerned the development of a two bedroom flat.⁶ The Inspector commented that the proposed flat would be likely to appeal to single persons who may have less need for private outdoor space than a family. Whilst this might be the case, that site can be

⁵ Barnet's Sustainable Design and Construction SPD adopted October 2016

⁶ Ref: APP/N5090/W/15/3011564

distinguished from the current appeal as the proposal included a balcony for the flat. I therefore give it little weight.

31. The Council submit that the lack of any private outdoor space compounds the unacceptable living conditions for existing and future occupiers in the loft studio flat caused by the low ceiling height. They refer to a previous appeal decision⁷ for a development of two flats above a shopping parade in the borough. There was no outside space provision in that case and the Inspector concluded, even with access to a nearby park, that this was not acceptable. This case though, can be distinguished from the current appeal in that the proposed flats were two bedroom units above commercial premises in close proximity to a main road. I consider the need for private outdoor space would have been greater in that case as there were no balconies and they could potentially have been occupied by families.
32. Overall I find that the use of French windows and Juliet balconies compensates for the lack of private outdoor space as each flat has a wide outlook over a line of mature gardens which results in a pleasant view. This together with the proximity of the site to the park and likely occupation by single people is a material consideration to which I attach significant weight in the circumstances of this appeal.

Conditions

33. No conditions have been suggested by the Council in the event of planning permission being granted and since the development being granted planning permission was substantially complete when the application was submitted, none are necessary.

Conclusion and Formal Decision (Appeal B)

34. I have found that the low ceiling height and the lack of private open space are contrary to the requirements of the development plan. However, there are other material considerations which mean, on balance, I conclude the appeal should be allowed.
35. The appeal is allowed and planning permission is granted for the material change of use of the property into three self-contained flats (retrospective application) at 48a Sunningfields Road, London NW4 4RL in accordance with the terms of the application, Ref 16/6671/RCU, dated 20 October 2016, and the plans submitted with it.

Overall Conclusion

36. My understanding of section 180(1) of the Act is that now that planning permission has been granted for the development alleged in the notice, by virtue of my decision on Appeal B, the requirements of the upheld notice cease to have effect so far as they are inconsistent with that permission.

D Fleming

INSPECTOR

⁷ Ref: APP/N5090/W/16/3154868