The Planning Inspectorate

Appeal Decision

Site visit made on 27 July 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 08 August 2017

Appeal Ref: APP/N5090/C/16/3163604
Land at 89 Burleigh Gardens, London N14 5AJ

- 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 Veli Bunul against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 17 October 2016 under ref. ENF/00777/16.
- The breach of planning control as alleged in the notice is:
  "Without planning permission the conversion of the property into three self-contained residential dwellings".
- The requirements of the notice are set out as follows:
  "1 Cease the use of the property as three self-contained flats.
  2 Permanently remove all but one kitchen from the property, including the removal of kitchen units, sinks, cookers and food preparation areas.
  3 Permanently remove all but one bathroom from the property, including the removal of the toilet, bath/shower and basin."
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.

Decision

1. It is directed that the enforcement notice be corrected and varied by:

   (i) Deleting the text "shown edged and hatched black on the attached plan" in paragraph 2 and deleting the plan titled "SITE PLAN" attached to the enforcement notice.

   (ii) Deleting the text pertaining to paragraph 3 in its entirety and substituting therefor: "Without planning permission, the making of a material change of use of the property to use as three self-contained flats."

   (iii) Deleting the word "three" in the first requirement at paragraph 5.

   (iv) Altering the text "toilet, bath/shower and basin" in the third requirement at paragraph 5 to "toilets, baths/showers and basins".

2. Subject to these corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and matters relating to the enforcement notice

3. The appeal concerns an extended two-storey, semi-detached house with further accommodation in the loft. The property is situated within a largely residential street not far from the district centre at Southgate in the neighbouring borough of Enfield. A recently constructed building at the far end of the back garden is not before me in this appeal.

4. The enforcement notice has an attached site plan. This plan, which is referred to in paragraph 2 of the notice, is incorrect as it actually depicts no. 87 Burleigh Gardens. This does not appear to have caused any confusion to the recipients of the notice or skewed the public consultation arrangements for this appeal. I note that third party representations have been received from the neighbouring occupier at no. 87 Burleigh Gardens. The identification of the wrong area on the plan has not caused any misunderstanding. It seems that all parties have focussed on the precise site address given at paragraph 2 of the notice. This site address is clearly defined on the ground. The inaccurate plan can be deleted altogether leaving the site to be described in words alone.

5. The notice alleges that there has been a "conversion." This term is imprecise. It may denote a material change of use and/or works that enable the change. In this case the former must apply as the notice primarily requires that the unauthorised use of the property should cease. In correcting the allegation to refer to a material change of use, I take the opportunity to also refer to "self-contained flats" to match the wording of the notice's first requirement.

6. A requirement to cease a use as "three" self-contained flats, as set out in the notice's first requirement, presents problems. It introduces confusion as to whether it could allow use as two or four flats. The appropriate wording is to simply cease the use of the property as self-contained flats. This part of the notice should be varied accordingly.

7. In the notice's third requirement, in seeking to require the removal of all but one bathroom, it is clear that the component bathroom facilities referred to afterwards should have been written in the plural, just as the kitchen facilities are in the second requirement. My decision provides for such a variation to the notice.

8. I am satisfied that the intended corrections and variations as outlined in paragraphs 4-7 above will not alter the notice in substance, make it more onerous to comply with or cause any injustice to the parties.

The appellant's suggestion to reduce the number of flats

9. Within the appeal on ground (a), the appellant says that he can accept any planning condition to alter the floor layouts, reduce the flat numbers or alter the subdivision of the rear garden. Within the appeal on ground (f), the appellant explains that the design, layout and number of flats are still negotiable with the Council. There is no dispute that the property was being put to use as three self-contained flats when the notice was issued, along the lines of the plans submitted with the appeal. No plans have been submitted for a scheme for two flats but I presume that this is the appellant's offer reading his written representations.

10. The appeal on ground (a) and the deemed application for planning permission under section 177(5) of the 1990 Act as amended are tied to the breach of

planning control alleged in the enforcement notice. This is mirrored by the power to grant planning permission under section 177(1) of the 1990 Act as amended which is limited to a power to grant planning permission in relation to the whole or any part of the matters stated in the notice as constituting the breach. It is clear that something other than the grant of planning permission for all or part of the matters alleged in the enforcement notice to constitute the breach of planning control would be required to achieve a different scheme for two flats. I have no power to consider a grant planning permission for two flats under ground (a) or the deemed planning application.

11. A ground (f) appeal is not the appropriate process to secure the reduction in the number of flats from three to two at the appeal site. In short, the ground (f) appeal could not be relied upon to bring about what in effect would be the grant of deemed planning permission for an alternative development which was not in existence when the enforcement notice was issued. I have no power to consider a scheme for two flats under ground (f).

12. The judgment delivered by the Court of Appeal on 31 October 2014 in the case between the Secretary of State for Communities and Local Government and Ioannou would appear to confirm the approach outlined in both paragraphs 10 and 11 above, even though it concerned a five-flat scheme and an alternative three-flat scheme.

The appeal on ground (a) and the deemed planning application

13. In assessing whether planning permission ought to be granted for what is alleged in the enforcement notice, the main issues for consideration are the effects of the development upon the character of the area and upon the residential amenity of the occupiers of the flats with regard to internal noise transmission.

14. Burleigh Gardens is a typical suburban street in the borough of Barnet. It is characterised by predominantly semi-detached, two-storey dwelling houses occupied by single families. There are front gardens and more generously-sized rear gardens. This location possesses a strong local character and streetscape.

15. The conversion of existing dwellings to flats has the potential to damage the quality of the environment and detract from the character of established residential areas. In seeking to protect Barnet's character and amenity, Policy DM01 of Barnet's Local Plan Development Management Policies 2012 (DMP) says that the conversion of dwellings into flats in roads characterised by houses and the loss of houses in roads characterised by houses will not normally be appropriate.

16. The conversion of this dwelling house in this street is therefore not acceptable in principle when assessed in accordance with DMP Policy DM01. The Council further explains that on this road Council Tax records show no details of other properties containing flats and that there have been no planning applications for flat conversions on this road. Acceptance of the development would therefore be at variance with the established character of this suburban area and conflict with DMP Policy DM01.

17. The introduction of three separate households into what was a single dwelling house clearly has the potential to result in an over-intensive use of the property. There would be extra activity through more comings and goings of people,

increased car movements and deliveries and additional noise and disturbance. Taking this into account, along with some of the detailed objections from the neighbouring occupier at no. 87 (a property which shares a drive with the appeal property), the location of the entrance to the rear ground floor flat and the multiple bed spaces I saw in some of the rooms at the property, it seems to me that the overpopulation of the building, arising from its material change of use to three flats, has negative consequences that further detract from the character of this neighbourhood, especially as perceived by other local residents on a daily basis. This further conflicts with DMP Policy DM01.

18. The appellant has provided no detailed written evidence to demonstrate that the internal conversion of the building has fully addressed the matter of sound insulation. Moreover, the Council points to an absence of records under the Building Regulations for the development. According to the submitted plans the potential for noise transmission between the flats is greatest where the first floor flat is stacked with a "living/dining kitchen" over the front studio flat on the ground floor below. This is likely to result in noise and bothersome disturbance to those ground floor occupiers. Internal noise is an important environmental consideration for flat developments and the failure to address it conflicts with DMP Policy DM04.

19. The development therefore has unacceptable effects upon the character of the area and the residential amenity of the occupiers of the flats with regard to internal noise transmission. The appellant's representations do not really address these main issues that are derived from the reasons for issuing the enforcement notice at paragraph 4 therein.

20. I turn to other matters raised. The Council clearly gave a reasonable period of time (28 days) for an application for planning permission to be submitted. The appellant says that the flat conversions are designed to meet the requirement of the local authority but this assertion is not expanded upon. The Council did not raise specific planning objections relating to car parking space, cycle storage facilities, external amenity space or internal floor areas.

21. The drawbacks identified under the main issues bring the development into conflict with development plan policies. I find no other material considerations of sufficient weight to justify a grant of planning permission for three flats. The appeal on ground (a) and the deemed planning application cannot therefore succeed.

The appeal on ground (f)

22. The appellant's representations do not really explain how the steps required to comply with the requirements of the enforcement notice are excessive or suggest any lesser steps which would overcome the objections. The material change of use of the property to a lesser number of flats (two flats) would comprise development requiring planning permission. Having regard to my observations in paragraphs 9-12 above, I do not have the power to consider a two-flat scheme, if that is what is being offered as a lesser step, under ground (f).

23. The purpose of the enforcement notice is aimed at remedying the breach of planning control. It is not simply seeking to remedy the injury to amenity caused by the breach. The purpose can only be achieved in this case by ceasing the use of the property as flats and by removing works or items introduced to facilitate

the occupation of the building as a number of self-contained flats. That is what the steps in this enforcement notice do. For instance, in seeking the removal of all kitchens, except one, the property would be put back to its condition before the breach took place; that is as a single dwelling house.

24. The requirements of the notice do no more than seek to remove what has been done to facilitate the unauthorised material change of use; they go no further. Thus, the appeal brought under ground (f) must fail as the requirements do not exceed what is necessary to remedy the breach of planning control that has occurred.

Andrew Dale

Inspector