



Appeal Decision

Site visit made on 1 May 2018

by Stephen Hawkins MA MRTPI

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

Decision date: 04 June 2018

Appeal Ref: APP/N5090/C/17/3180829

Land at 5 Manor Way, London NW9 6JD

- 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 Jenny Dong against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 5th July 2017.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of the property to 6 self-contained flats.
- The requirements of the notice are:
 - 1 Cease the use as 6 self-contained flats.
 - 2 Revert the property back to approved plans, 1 Ground Floor Plan PL/PP/2679-03, of approved planning application reference 16/222/HSE 2 First Floor Plan PL1/PP/2513-4 of approved planning application reference H/02330/14, 3 Roof Plan PL/PP/2679-04 of Certificate of Lawfulness reference 16/2133/192.
 - 3 Permanently remove all constituent materials resulting from the works in 1 and 2 above from the property.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice as corrected is upheld.

Preliminary Matter

1. Step 1 of the enforcement notice requires the use of the property as six self-contained flats to cease. The appellant could have been in no doubt that this required the alleged breach described in the notice to cease. Step 2, which effectively requires the interior of the property to be returned to its condition prior to the breach taking place, provides reinforcement in this respect. Even so, the reference to a specific number of flats in step 1 lacks an element of precision, as it does not explain what would happen if the property were to be used for a greater or lesser number of flats. Consequently, I intend to correct the notice by deleting reference to the number of flats from the requirements. In doing so, I am satisfied that there would be no injustice caused to the appellant or the Council.

Ground (a) appeal

Main Issues

2. The main issues are:
 - The effect of use of the appeal property as six flats on the character and appearance of the area.

- Whether suitable living conditions have been provided for the existing and future occupiers, having regard to the size of the flats and the availability of external amenity space.

Reasons

Character and appearance

3. The appeal property is an enlarged semi-detached house in use as self-contained flats, with three flats on the ground floor, two flats on the first floor and one in the roof space. The area at the front of the property is entirely hardsurfaced and is used for the parking of vehicles.
4. The street on which the property is located is largely made up of houses forming part of a wider residential area consisting of housing of a similar architectural style and age. An interested local resident referred to a nearby property used as two flats and some other properties in the locality used as Houses in Multiple Occupation (HMO). As well as other incidences of front gardens given over to vehicle parking, there were many cases of kerbside parking along the street. Nevertheless, my overall impression of the surrounding area was predominantly of properties maintained in good order and in single family occupation. This contributes significantly to the quiet suburban character and consistently pleasant appearance of the surrounding area.
5. Although the property might currently have five occupants, each of the flats could be occupied by more than one person. Most of the occupiers are likely to possess their own vehicle, having regard to the suburban location of the property. Therefore, the area at the front of the property is likely to be entirely occupied by parked vehicles belonging to the occupiers of some of the flats, particularly at evenings and weekends. As the parking area is only capable of accommodating four vehicles, some occupiers of the flats are likely to be unable to access the parking area, thereby leading to increased incidences of vehicles being parked on the street near to the property. The vehicles of visitors to the flats, including deliveries, are also likely to be parked on the street close to the property at times. Further, although it was not obvious during my visit it is not unreasonable to assume that each flat has separate refuse and recycling storage facilities which are likely to be located towards the front of the property for ease of collection.
6. I understand that the flat conversion involved no external physical alterations to the property. Given its size, the property could be occupied as a single dwelling by a large family and the occupiers might take in a lodger. However, it is unlikely that the occupiers of a single dwelling would all have their own individual vehicles, or that they would generate a comparable number of visitors as six flats. It is also unlikely that the occupiers of a dwelling would require refuse and recycling storage facilities on a similar scale to six flats. Therefore, the flats are likely to have resulted in a significant increase in vehicle parking at the property and in the street, as well as a significant increase in refuse and recycling storage at the front of the property. This has all led to the property and its environs having a substantially more car-dominated and cluttered appearance, which is entirely at odds with the well-ordered suburban surroundings.

7. The occupiers of a single dwelling are likely to have similar working patterns and leisure interests. This provides potential for shared trips which in turn can limit the number of movements to and from the property. Activities such as food shopping are also likely to cater for the all of the occupants of the property and not involve multiple individual trips. However, the above factors are unlikely to apply in respect of the occupiers of the separate flats, who will probably each be making their own individual journeys to access work and leisure opportunities and to undertake routine activities such as food shopping. Moreover, the occupiers of the flats are likely to be coming and going at different times of the day and night, depending on their work patterns and leisure interests. Consequently, the flats are also likely to have resulted in a significant increase in noise and disturbance being experienced in the locality from the additional vehicular and pedestrian comings and goings to the property. This is entirely at odds with the quiet suburban characteristics of the area.
8. As a result, the development has caused unacceptable harm to the character and appearance of the area. Therefore, the development fails to accord with Policy DM01 of Barnet's Local Plan Development Management Policies (DPD), as it is not based on an understanding of local characteristics, it does not preserve local character or respect the appearance of surrounding buildings and streets and it involves a dwelling being converted into flats where the street is characterised by houses. The harm to the character of the area is also inconsistent with the Council's Residential Design Guide (DG). Moreover, the development is inconsistent with a core planning principle of the National Planning Policy Framework (the Framework), as it does not take account of the character of the area.

Living conditions

9. All of the flats have quite modest floor areas. In most cases, there is little circulation space left after a bed and some basic items of furniture have been accommodated. On the basis of the appellant's figures the flats are all well below and in most cases less than half of the minimum internal floor area of 37m² for a one bedroom one person flat, set out in Policy 3.5 of the London Plan (LP). Consequently, the flats provide cramped and restricted living spaces for their occupiers.
10. The appellant suggested that reducing the number of units from six to five would improve the occupiers' living conditions. Drawings submitted with the appeal showed two bedrooms and a communal living area and kitchen on the ground floor, with two bedrooms on the first floor and one bedroom in the loft. Each of the bedrooms would have ensuite facilities but they would share the kitchen and living area. In my view, this would amount to use of the property as a small HMO. I note that the Council issued a licence under the Housing Act for the use of the use of the property as a small HMO in June 2017. The use as a small HMO does not form any part of the breach of planning control described in the notice. Therefore, use of the property as a small HMO would not constitute a part of the development for which permission has been sought under the deemed planning application pursuant to ground (a). Planning permission cannot be granted for a different development to that described in the notice. Accordingly, I am unable to consider whether planning permission should be granted for the alternative scheme. In any event, even if there were an alternative scheme comprising five self-contained flats, the units would still

have restricted floor areas and as a result would not overcome the above objections.

11. The Council's Sustainable Design and Construction Supplementary Planning Document (SPD) requires the provision of 5m² of private outdoor amenity space per habitable room for flats. Whilst the property has a lengthy rear garden, none of it is allocated to the flats. Moreover, the garden is overlooked by the flats at the rear of the property. Therefore, none of the flats have access to any useable private outdoor amenity space in which they might undertake the activities which might normally take place in a residential garden such as cultivating ornamental plants, drying washing or informal recreation and relaxation. The absence of any private outdoor amenity space serves to reinforce the restrictive nature of the accommodation for the occupiers of the property.
12. Consequently, the development provides unsuitable living conditions for the existing and future occupiers. Therefore, as well as failing to accord with the minimum space standards in LP Policy 3.5, the development fails to accord with Policy CS1 and Policy CS5 of Barnet's Local Plan Core Strategy as it does not create an attractive environment to live in. Whilst I found no failure to accord with DPD Policy DM01 in this respect, the development also fails to accord with DPD Policy DM02 having regard to the conflict with LP Policy 3.5 and the lack of consistency with the SPD. By failing to minimise the impact on the amenity of future residents and by not providing access to a garden which meets the SPD requirements, the development is also inconsistent with the DG. Moreover, the failure to provide a good standard of amenity for the existing and future occupants is inconsistent with a core planning principle of the Framework.

Conclusion on ground (a)

13. The flats cause unacceptable harm to the character and appearance of the area and provide unsuitable living conditions for the occupiers, thereby failing to accord with the Development Plan. As a result, the appeal does not succeed and planning permission will be refused.

Ground (f) appeal

14. According to s173 of the Act, there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173 (4) (a)) is to remedy the breach of planning control that has occurred. The second (s173 (4) (b)) is to remedy any injury to amenity caused by the breach. The ground (f) appeal concerns whether the steps required to be taken by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
15. The Council did not specify which of the above purposes it sought to achieve in this case. However, its reasons for issuing the notice concern the effect of the flats on the character and appearance of the area and the living conditions of the occupiers. The notice requires removal of all of the flats as opposed to a reduction in their number. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the land to its condition before the breach took place.
16. The alternatives of using the property as a small HMO or as five self-contained flats have been dealt with under the ground (a) appeal. No other lesser steps

have been suggested or are apparent which would remedy the breach of planning control. Consequently, the requirements in the notice do not exceed what is necessary to remedy the breach and the ground (f) appeal must fail.

Ground (g) appeal

17. This ground of appeal concerns whether the time given to comply with the requirements of the notice is too short. The notice specified a six month compliance period. The appellant considered that this should be extended to twelve months in order to allow for the remedial works to be carried out and allow re-housing of the occupiers.
18. No details have been provided of the terms and length of the occupiers' tenancy agreements or of any period of notice that is required to be given in order to terminate those agreements. Therefore, there is no firm evidence before me to suggest that there would be any breach of the tenancy agreements if the occupiers had to vacate the property within six months.
19. Furthermore, I have not been provided with any firm evidence which might suggest that there is a shortage of accommodation similar in terms of its type and cost to these flats within the Borough. Consequently, there is nothing to suggest that the occupiers would face particular difficulties in finding somewhere else to live.
20. I appreciate that the remedial works required would largely have to be carried out after some or all of the occupiers had vacated the property. However, the works appear to be mostly non-structural and being internal, they are not weather dependent. The works are relatively small scale and they would be reasonably straightforward operations for an experienced building contractor to undertake and complete within a reasonably short timeframe. Such contractors are unlikely to require a long period of notice before they could carry out the works.
21. Taking all of these factors into account, six months strikes the appropriate balance between remedying the planning harm identified in the notice whilst allowing the occupiers sufficient time to find alternative accommodation and allowing the appellant to undertake the remedial works to the property. It would also allow an adequate opportunity for the appellant to conclude discussions with the Council concerning the suggested alternative use of the property as a small HMO. Therefore, six months is a reasonable period for compliance. Accordingly, the ground (g) appeal must fail.

Formal Decision

22. It is directed that the enforcement notice be corrected by deleting the number '6' in step 1 of the requirements. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR