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## Appeal Decision

Site visit made on 25 April 2018

**by Debbie Moore BSc (HONS) MCD MRTPI PGDip**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 June 2018**

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**Appeal Ref: APP/T5150/C/17/3181133**

**141 and 141A Church Lane, London NW9 8JX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr K Jesani against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 21 July 2017.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to two dwellings.
- The requirements of the notice are:
  - i. cease the use of the premises as more than one dwelling;
  - ii. remove all kitchens, except one, and all, [sic] partitions/walls, doors, items, equipment and materials associated with unauthorised use from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (a) and (f) of the Town and Country Planning Act 1990 as amended.

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

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### The appeal on ground (d)

1. The issues to be considered on the appeal on ground (d) are:

- whether the appellant has shown on the balance of probability that the use of the property changed to use as more than one dwelling on or before 21 July 2013<sup>1</sup> and that this use then continued for at least four years after the date of change, without any substantial interruption; and if so,
- whether that breach of planning control was concealed in a manner which should result in the appellant being deprived of the immunity offered by s171B(2) of the 1990 Act as amended because:
  - there was positive deception in the planning process;
  - the deception was intended to undermine the planning process;
  - the deception did undermine the planning process, and;
  - the developer stands to profit directly from the deception<sup>2</sup>.

2. In this type of appeal, the onus of proof is firmly upon the appellant. In *Gabbitas*<sup>3</sup> the Courts have held that the relevant test of the evidence on matters in relation to 'legal' grounds of appeal is the balance of probabilities.

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<sup>1</sup> Four years prior to the issue of the enforcement notice.

<sup>2</sup> Each of the bullet points set out in the second issue is derived from the Supreme Court's ruling in *Welwyn Hatfield Borough Council v SSCLG* [2011] UKSC 15.

<sup>3</sup> *Gabbitas v Secretary of State for the Environment* [1985] JPL 630.

The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

3. The appellant states that 141 Church Lane was subdivided to create 141A Church Lane in 2006, which was subsequently used as a separate dwellinghouse. I have been provided with a signed tenancy agreement, an associated letting agreement and property management statements, covering the period 1 September 2006 to 1 March 2007 for 141A Church Lane. A further signed tenancy agreement for the period 9 June 2008 to 8 June 2009 has been submitted, along with a landlord's gas safety certificate dated 21 June 2008 and estate agent invoices dated 1 August 2007 and 19 August 2008.
4. There is no information from the tenants corroborating their residence and no record of any utilities or Council Tax payments. None of the documents supplied show when the single dwelling was subdivided and when 141A became a self-contained dwelling with facilities for day-to-day private domestic existence. Moreover, there are gaps in the tenancy between April 2007 and June 2008, which is a significant break in occupancy and residential use. The evidence in relation to the reasons for that break is very limited.
5. From 2009 onwards, the appellant claims that the property was let informally to friends and family. A statutory declaration made in front of an independent lawyer has been submitted stating that the *141A Church Road, Kingsbury, London NW9 8JX* was in use as a separate residential dwelling from 1 September 2006. Statutory declarations are sworn documents which are worthy of significant weight. Whilst the reference to Church Road rather than Church Lane may be a typo, it is important that the statutory declaration is accurate and precise. The reference to the incorrect address renders the declaration inaccurate in that the appeal property is not clearly identified. There is also inconsistency with other evidence as Council Tax records for the property were not created until March 2016. Irrespective of whether or not the tenants' were liable for Council Tax under the terms of the tenancy, it would be usual for a record to be created when the property was sub-divided and 141A Church Lane was formed. The lack of precision and corroborating evidence reduces the weight I can attach to the statutory declaration.
6. The Council refers to planning application documents, which indicate the change of use commenced in 2015. The planning application form dating from 2015 referred to the change of use not having taken place. However, the Council was aware this was incorrect and amended the description of development, as shown in the decision notice, to acknowledge that the application was retrospective for a change of use of existing two storey side to rear extension to a three bed dwellinghouse<sup>4</sup>. The Council also noted that the application made in 2016, for a change of use into two self-contained dwellings, was retrospective<sup>5</sup>. In July 2016, a further application for a change of use into two self-contained dwellings was made. The accompanying

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<sup>4</sup> Ref 15/1765.

<sup>5</sup> Ref 16/2916.

application form stated that the premises were in use as one house and one duplex flat, and the use commenced in April 2015. I have been provided with a copy of the related appeal decision in which the Inspector noted that the extension was in use as a separate dwelling on 13 June 2017<sup>6</sup>.

7. This evidence shows that the property was subdivided sometime before 2015, and was capable of being used as a separate residential unit but not how it was occupied. The appellant advises that 141A was let informally to friends and family from 2009. There is limited evidence to indicate that this continued without substantial interruption. Moreover, if 141A was used by friends and family it may be that this was part and parcel of the main dwellinghouse, as opposed to being a separate main use.
8. The evidence presented in support of the appellant's claim is incomplete and ambiguous. I conclude on the first main issue that the totality of the evidence presented does not show, on the balance of probabilities, when the material change of use occurred and how 141A has been used for a continuous period of at least four years.
9. Accordingly, the appeal on ground (d) must fail. In view of this conclusion, it is not necessary for me to go on and consider the second of the main issues.

### **The appeal on ground (a)**

10. The appeal on ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice as constituting the breach of planning control. The main issue to be considered is whether the conversion of the property to two dwellings provides an acceptable quality of residential accommodation, with regard to the internal floorspace.
11. The appeal property is an end-of-terrace house which has been extended to the side and rear with a two-storey extension. The property has been converted into two separate units. These comprise the main three-bedroom house (141 Church Lane) and the converted extension, now a self-contained duplex flat (141A Church Lane). I saw from my site visit that the extension was being used a separate self-contained unit, with its own entrance door. The accommodation provides a ground floor kitchen and bedroom, and there are two further bedrooms and a shower room on the first floor.
12. The appellant states that the total floorspace of the duplex flat is 60 square metres (sqm). At present, it contains three double bedrooms and could provide accommodation for up to six people. Policy 3.5 of the London Plan states that housing developments should be of the highest quality internally and externally with reference made to the minimum space standards set out in Table 3.3. These are consistent with the nationally described space standard which requires a minimum gross internal floorspace of 95sqm. Therefore, the accommodation provided in No 141A Church Lane is substandard with regard to floorspace.
13. Planning permission has been granted for the conversion of a single family dwelling into two self-contained dwellings (1 x 3 bedroom and 1 x 1 bedroom) and sub-division of the rear garden, including internal alterations<sup>7</sup>. Although

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<sup>6</sup> Ref APP/T5150/W/17/3171774 dated 13 July 2017.

<sup>7</sup> Ref 17/3192 dated 22 September 2017.

this is a valid fallback position, it would be materially different from the appeal scheme due to the substantial reduction in the number of bedrooms.

14. The appellant claims that the advent of technology and modern furnishings enable better use of smaller spaces. However, as set out above, the floorspace provided in 141A Church Lane is substantially below standard and interior design would not overcome this.
15. The appellant has appealed under ground (f) and has proposed an alternative scheme. This would retain the two self-contained dwellings with alterations to create a one-bedroom duplex with a self-contained courtyard garden. The total floorspace would be 60sqm and would provide accommodation for two people.
16. The alternative scheme would be a one bedroom duplex flat, whereas the Council is enforcing against a three bedroom duplex flat. Although the revised scheme may overcome the issue with regard to the accommodation provided, there is no power for me to grant planning permission for something completely different to that enforced against. S177(1)(a) of the 1990 Act as amended, allows permission to be given to any part of the matters alleged. The alternative scheme would be materially different and, therefore, not part of the matters alleged.
17. In any event, the Council has granted planning permission for an alternative scheme which appears similar to that proposed in this appeal. The appellant may choose to implement that permission. Under s180(1)(a) of the 1990 Act as amended, where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
18. I conclude on this matter that the conversion of the property to two dwellings does not provide an acceptable quality of residential accommodation, with regard to the size of the internal floorspace in 141A Church Lane. The development is contrary to Policy 3.5 of the London Plan, Policies DMP1 and DMP17 of the adopted London Borough of Brent Development Management Policies document (2016), the advice contained in the Supplementary Planning Guidance No 17 "Design Guide for New Development" and the Housing Standards Policy Transition Statement (2015) which, amongst other things, aim to secure high quality residential development and maintain family sized housing.

#### *Other Matters*

19. The appellant has provided evidence in relation to the personal circumstances of his family, which I have considered. Race is a 'relevant protected characteristic' for the purposes of the Equality Act 2010 and the Public Sector Equality Duty. Accordingly, I have had regard to the three aims of the Equality Duty. Upholding the enforcement notice and dismissing the deemed planning application would require the appellant to comply with the terms of the notice. In this instance, I consider that the negative impact on the appellant would not outweigh the conflict with national and local planning policy.
20. The appellant claims that the development has benefits including that it is in keeping with the residential character of the area, it contributes to growth and the local housing supply, is close to services and facilities and incorporates

sustainable design principles. I acknowledge that there are some minor benefits, but these do not overcome the harm identified above.

21. The appellant refers to two appeal decisions that considered the matter of Lifetime Homes standards, which it is argued can be applied flexibly. In this case, the Council is concerned with floorspace and not Lifetime Homes standards and, consequently, the appeal decisions are not relevant.

### *Conclusion*

22. Having had regard to all matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission must fail.

### **The Appeal on Ground (f)**

23. Section 173 of the Act indicates that 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 which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
24. In this case, the purpose of the notice is to remedy the breach of planning control by requiring the use of the property as more than one dwelling to cease. This can only be achieved by the cessation of the use. No lesser steps, including the alternative scheme assessed above, would achieve the statutory purpose behind the notice. Therefore, the appeal on ground (f) must fail.

### **Formal Decision**

25. The appeal is 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 1990 Act as amended.

*Debbie Moore*

Inspector