



Appeal Decision

Site visit made on 10 May 2018

by Susan Wraith Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2018

Appeal Ref: APP/U5360/C/17/3179110

Land at 11 Sach Road, Hackney, London E5 9LJ

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Boruch Roth [hereafter "the appellant"] against an enforcement notice issued by the Council of the London Borough of Hackney [hereafter "the Council"].
 - The notice ref. 2012/1568/ENF was issued on 23 May 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use from a single family dwelling house to 3 self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as self-contained flats.
 2. Remove all kitchen fixtures and fittings; wall partitioning; and, any other alterations that facilitate the use of the property as self-contained flats.
 3. Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirement is six (6) months.
 - The appeal is proceeding on the grounds set out in s174(2)(a), (d) and (f) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Preliminary matters

2. The appeal was originally made on grounds (a), (d), (e), and (f). Ground (e) was withdrawn before the appeal started. Ground (d) was withdrawn by the appellant in his Statement of Case. I shall, therefore, proceed to consider the appeal only on grounds (a) and (f).
3. The deemed planning application, together with the appeal on ground (a), takes its terms from the allegation as set out in paragraph 3 of the notice being simply the change of use to "3 self-contained flats".
4. I have been referred to case law¹ which held that permission cannot be granted for an alternative scheme that is not part of the matters enforced against, and that under ground (f) it is only the buildings, works or activities in existence when the notice was issued which can benefit from the powers to under

¹ *Ioannou v SSCLG & Enfield LBC* [2014] EWCA Civ 1432

enforce. On the basis of that case it is argued that the appellant's suggested changes to the layout cannot be considered.

5. The case that is before me is, however, distinguishable. Even with the appellant's suggested changes, the development in this appeal would still be "3 self-contained flats" consistent with the allegation and thus (in essence) the development enforced against, albeit with some changes to the layout in two of the flats. I shall, therefore, consider the appellant's suggestions and leave open the possibility of a planning condition (under ground (a)) or variation to the requirements on ground (f), should I find the development with its changes to be acceptable in all respects on its planning merits.
6. My attention has been drawn to a previous appeal decision in 2007 relating to an unauthorised conversion of the appeal property to 4 flats, in which the Council's enforcement notice was upheld and remains extant. That notice required (amongst other things) the permanent cessation of the use of the premises as flats.
7. The appellant in this current appeal is not, however, arguing for four flats and accepts it is highly unlikely that such could ever be seen as acceptable. The previous appeal was decided against a different (earlier) policy background and before publication of the Nationally Described Space Standard² [hereafter "the NDSS"]. Whilst I shall have regard to this earlier decision, I shall determine the current appeal on its own merits in the prevailing planning circumstances.

The appeal on ground (a) and the deemed application

Planning policies

8. I have been referred to a number of development plan policies, comprising policy 19 of the London Borough of Hackney Core Strategy 2010, policies DM22 and DM23 of the London Borough of Hackney Development Management Local Plan (2015) and policy 3.8 of the London Plan. Taken together these policies seek to deliver a mix of dwelling types that respond to local housing needs and do not result in a net loss of family housing.
9. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise³.

Main issue

10. When taking into account the relevant policies and the NDSS I consider the main issue in the appeal to be whether the development provides for an appropriate housing mix, including family housing, towards meeting local housing needs.

Reasons

11. The appellant argues that flat A is a family dwelling. I acknowledge that it provides a double bedroom and two single bedrooms that satisfy the floorspace

² Technical housing standards – nationally described space standard, published by the Department for Communities and Local Government in March 2015, describes internal space standards for new dwellings. These standards are adopted in the London Plan and in Hackney's Development Management Local Plan (2015) as referred to in policy DM22 and the explanatory text to policy DM23.

³ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

requirements of the NDSS, and that it has a gross internal floor area in excess of that required by the NDSS for 3 bedroom 4 person accommodation (2 storey). Additionally, the flat is self-contained, has accommodation on the ground floor and direct access to a garden. The property overall is of a size suitable for residential conversion under policy DM23.

12. I note that the previous Inspector, in 2007, found the basement area to be dark, damp and (at that time) unfit for human habitation. At my site visit I did not gain that impression. It may be, over the years, that building improvements have been undertaken. One of the basement bedrooms is lit by a lightwell and, thus, does not enjoy the same level of daylight/sunlight as many of the other rooms. However, for the purposes of bedroom accommodation within an overall unit that provides light and airy living rooms at ground floor level and access to a garden I do not find, in principle, the basement living conditions to be unacceptable.
13. Therefore, in all the above respects, I find that the residential conversion includes what can be regarded as a "family dwelling" of sorts that satisfies the NDSS and, on the face of it, accords with the criteria of policy DM23 and does not result in a net loss of family housing.
14. However, DM23 is to be interpreted together with other Local Plan policies, in particular DM22 which sets out a preferred housing mix for developments that includes 33% dwellings suitable for "5 person plus". The explanatory text to policies DM22 and DM23 states that there is an acute need to maintain accommodation for larger households (five or more persons) wherever possible and that in more substantial properties (with 180 sq m of floorspace) provision should be made for larger families (5 persons or more). The appeal property (on the floorspace(s) given) would be such a "substantial" property.
15. There is no argument made for any deviation to the preferred dwelling mix set out in DM22 which indicates the need for 1 no. unit to be of a size suitable for 5 or more persons. Reference is made in the evidence to flat A being occupied by a family with ten children. I have no reason to doubt, therefore, that there is a real need for larger family dwellings. The appeal development does not provide for a dwelling with sufficient bed spaces suitable for a larger family when taking into account the NDSS.
16. With regard to flats B and C, they presently provide 2 bedroom 3 person accommodation but both fall short on gross internal floor area as set out in the NDSS. The appellant's proposal is to make some modest changes to the configuration of the floor space including the removal of a wall in flat C and the re-designation of bedroom space in both flats to other living space. This would result in flat B being configured to provide 1 bedroom 2 person accommodation and flat C becoming a 1 bedroom 1 person unit.
17. I am satisfied that the appellant's proposed changes to flat C would result in a dwelling that accords with the NDSS. Flat B would still fall a little short on overall floorspace whereas the standard is the minimum of what is required. Additionally, I am not assured that the changes would provide for an appropriate dwelling mix under policy DM22 which indicates that development should provide for more 2 bedroom (3 or 4 person) units than 1 bedroom units. This is a matter on which I would have sought comments from the parties had I found that a conditional permission might be possible.

18. However, still to resolve is the issue of providing for a larger family dwelling that may well impact upon the overall configuration of floorspace within the property should a future application be made to the Council⁴. I do not consider, therefore, that flats B and/or C can be severed or that a conditional permission could be given for the whole or any part of the development as it is presently configured or as re-configured under the appellant's proposal.
19. As the lack of a larger family dwelling, in itself, indicates a decision against the development it is not necessary for me, in this appeal, to take further the matter of the one bedroom units and their suitability as part of the housing mix.

Other matter

20. I have been referred to another case (2 Muston Road) in close proximity to the appeal site where (I am told) the Council granted permission for 3 flats. However, I do not know the full details of that case and must decide this appeal on its individual merits.

Conclusions on ground (a) and the deemed application

21. I conclude on ground (a) that the development does not provide for an appropriate housing mix that includes a dwelling suitable for a larger family (5 persons or more) towards meeting local housing needs. It is, thereby, contrary to Local Plan policy DM22, Core Strategy policy 19 and policy 3.8 of the London Plan. There are no material considerations that indicate a decision other than in accordance with the development plan. The appeal on ground (a) fails and the deemed application shall be refused.

The appeal on ground (f)

22. In considering the appeal on ground (f) it is necessary, first of all, to identify the purpose for which the notice was issued. S173 of the Act states that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (s173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (s173(4)(b)). In this case the purpose of the notice (in requiring cessation of the use and removal of all fixtures, fittings and alterations) is that of completely remedying the breach. Consideration of the appeal on ground (f), therefore, must focus upon achieving that purpose.
23. Under ground (f) it is argued that the requirement to cease the use as self-contained flats is excessive as planning permission was granted in 2010 to subdivide the property into 2 flats. The Council say that there is no extant planning permission at the site. However, the 2010 permission was in part retrospective covering the retention of the lightwell and alterations to the rear elevation as well as the conversion to two flats. Therefore, I do not rule out the possibility that the 2010 permission was (at least in part) implemented, and that it could remain extant and provide a valid fallback position.
24. However, there are no further details of that permission before me (such as floor layouts for example) that might have shown whether elements of the matter enforced against fall squarely within the permission. Without further

⁴ Any future proposal incorporating a larger family dwelling as part of a conversion of the property would be a matter for the Council in the first instance. I express no view as to the merits of such a proposal.

details I am unable to reach any definitive conclusions and neither am I able to frame any lesser steps to the necessary level of precision.

25. In any event, the enforcement notice strikes at the particular breach involving the change of use of the property to 3 flats. The notice cannot be interpreted to make an offence out of any lawful activity, such as that might arise from an extant permission for example. If there were to be any lawful rights arising from the 2010 permission it would not be necessary to make an express saving in the notice itself in this regard.
26. I have considered the appellant's suggested changes in the context of ground (f) and the other purpose of a notice to remedy any injury to amenity caused by the breach. However, for the reasons I have explained under ground (a) I do not consider these changes would overcome the totality of the harm. Neither can I see that there is any other obvious alternative to the steps that require a complete remedy of the breach.
27. The notice alleges a change of use to three flats and it therefore follows that the breach is remedied by the cessation of that use and removal of the works that facilitated it. Having considered all the arguments I cannot see that there is anything excessive in the steps of the notice that requires variation.
28. For all these reasons the appeal on ground (f) fails.

Conclusion

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Susan Wraith

Inspector