



Appeal Decisions

Site visit made on 2 July 2019

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

an Inspector appointed by the Secretary of State

Decision date: 9 August 2019

Appeal A: APP/N5090/C/18/3200534

Land at 1st and 2nd Floors, 39 Wilton Road, London N10 1LX

- 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 Ms Maria Fecci of Progressive Purification Systems Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 13 March 2018.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of the 1st and 2nd floors into 2 x self-contained flats.
- The requirements of the notice are:
 1. Cease the use of the 1st and 2nd floors as 2 x self-contained flats;
 2. Restore the 1st and 2nd floors back into the state in which they were prior to the breach, as per proposed plan number 003A of planning permission reference C05272C, dated 22.02.1989, including the removal of all but 2 bathrooms or shower rooms, and the removal of all but 1 kitchen;
 3. Permanently remove all constituent materials resulting from the works in 2 above from the property.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Appeal B: APP/N5090/C/18/3200537

Land at 1st and 2nd Floors, 41 Wilton Road, London N10 1LX

- The appeal is made under section 174 of the 1990 Act as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Maria Fecci of Progressive Purification Systems Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 13 March 2018.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of the 1st and 2nd floors into 2 x self-contained flats.
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 3. Permanently remove all constituent materials resulting from the works in 2 above from the property.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the 1990 Act as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Appeals A and B on ground (d)

Preliminary Matters and Main Issue

1. In 'legal' grounds of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. 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 their evidence alone is sufficiently precise and unambiguous.
2. Nos 39 and 41 Wilton Road both comprise 3 self-contained flats. In each property, one flat is situated on the ground floor, one flat is situated at the rear of the first floor and one flat is located over the first and second floors.
3. The allegations concern a material change of use of the first and second floors of Nos 39 and 41 into two self-contained flats. Although not expressed in those terms, it is the use of the premises that constitutes the alleged breach as opposed to the works that resulted in the sub-division. Therefore, the main issue in each case is whether the appellant has shown, on the balance of probability, that there was a material change of use of the first and second floors of the property to two self-contained flats on or before 13 March 2014 and that this use continued for four years after the date of change without any significant interruption. The four year period applies to each flat within each property.

Evidence No 39

4. A copy of a plan which appears to have been submitted for Building Regulations purposes, dated 4 February 1987, shows two flats located over the first and second floors in the property. The appellant has also provided the official copies of title from HM Land Registry relating to the Ground Floor Flat, 39a Wilton Road, and the first/second floor flat, 39b Wilton Road. These confer a 99 year lease for each flat from 1 January 1987. Both are dated 14 April 1987. The appellant states that this evidence indicates the conversion took place sometime between 4 February and 14 April 1987.
5. Assured Shorthold Tenancy (AST) documents have been submitted as follows, for the Ground Floor Flat:
 - Mr A Mezenner and Ms M Ziar, 12 months from 12 December 2012;
 - Mr P Turgunov, 6 months from 25 March 2017;
 - Mr E Lako and Mrs E Lira, 6 months from 28 August 2017 and then 6 months from 28 February 2018.
6. For the First Floor Rear Flat:
 - Mr J Puporka, 12 months from 22 July 2013;
 - E Rahova, 6 months from 25 May 2018.
7. And for the First Floor Flat:
 - Mr D Bullock, 12 months from 13 January 2014;
 - Mr N Mihaila, Mrs A Popescu, Mr I Jacota, Miss N Mihaila, 12 months from 3 April 2017;

- Mr E Moli and Ms R Alvares, 6 months from 25 February 2017 and then 6 months from 25 October 2017.

Evidence No 41

8. The appellant has provided the official copies of title from HM Land Registry relating to 41 Wilton Road. This details the lease of the first and second floor flat and a ground floor maisonette, both for 125 years from 25 March 1989. The appellant states this evidence indicates the conversion took place before the grant of the leases.
9. AST documents have also been submitted as follows, for the Ground Floor Flat also known as 41a Wilton Road:
 - Mr and Mrs Vartek, 12 months from 18 December 2010;
 - Smart Home Lets, 12 months from 3 November 2017;
 - Ms D Ashton, 12 months from 18 January 2019.
10. First Floor Back Addition No 41:
 - Mr Baldwin, 12 months from 10 November 2013;
 - Miss L Ndreko and Mr L Ionut, 6 months from 1 July 2017;
 - M Cairns and S Hunter, 12 months from 2 March 2019.
11. And for 41b Wilton Road:
 - Ms Connolly, 6 months from 12 January 2011;
 - Mr A Latter, 6 months from 10 July 2017;
 - Mr E Cekaj, 12 months from 26 March 2018.
12. In addition, there is an invoice from a solicitor detailing costs associated with possession proceedings for the ground floor flat, 41A Wilton Road.
13. Finally, an affidavit has been provided by the appellant, dated 16 April 2019. In this document it is stated that conversion of both properties was completed by 1990, and each residence has been rented out since early 1991.

Reasons

14. The ASTs do not cover the whole of the relevant period for each of the upper floor flats in Nos 39 and 41. There are significant gaps in the timeline, which the appellant accepts. This is explained as loss of documentation, delays in finding a new tenant and tenancies continuing to a statutory periodic tenancy. It is argued that the void periods do not amount to significant interruptions as there were efforts made to let the premises throughout those periods.
15. Nonetheless, the coverage provided by the ASTs is limited and this information does not support a finding that each of the flats targeted was occupied as residential accommodation for a continuous period of four years. Moreover, not all the ASTs are signed and dated by relevant parties, and duly witnessed.
16. Even if the coverage were complete, there is no information from the tenants corroborating their residence and no record of any utilities or Council Tax payments. Furthermore, there are accepted void periods, which may amount to a break in occupancy and residential use. The evidence needs to show the reasons for that break but also what had been done to support the claim that the properties were available for occupation and tenants were being sought.

17. The other information submitted indicates that the conversion took place but does not show how the properties were used and occupied. Similarly, the affidavit carries significant weight but it lacks detail and clarity in respect of how each property was used and occupied throughout the relevant period.
18. Overall, the appellant's evidence is imprecise and ambiguous.

Conclusion

19. I conclude that the totality of the evidence presented does not show, on the balance of probabilities, when the material change of use occurred and how the upper floors of both properties have been used as two self-contained flats for a continuous period of at least four years.
20. For the reasons given above I consider that the appeals on ground (d) should not succeed.

Appeals A and B on ground (a) and the deemed planning applications

Background and Main Issues

21. Planning permission was granted in 1987 for the conversion of the properties into a total of four self-contained flats¹. As explained above, each house now accommodates three separate flats.
22. The main issues in both appeals are: (i) the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance, and; (ii) whether the flats provide adequate living conditions for the occupants with regard to internal floor space and private amenity space.

Reasons: neighbouring occupiers

23. Nos 39 and 41 Wilton Road form a pair of semi-detached houses situated on a road of similar properties within a residential area. There is a variety of house types along Wilton Road, including purpose built flats. I saw that some of the properties nearby had been converted into flats. The appellant indicates that the proportion of converted properties is about one third. Nonetheless, many properties remain as a single dwellings.
24. The use of the properties as six self-contained flats is highly likely to generate more activity than the approved four flats. The comings and goings of individuals occupying six flats, with varied working patterns, leisure interests and social activities is likely to be significantly greater than such activities generated by the occupants of four flats. In addition, the occupants of the separate units at the appeal premises are more likely to have different social groups. If there are more flats, it is likely that there would be more visitors to the property, thus contributing to the activity associated with the use.
25. The appellant argues that the approved plans show four double bedrooms and one single were approved in each property, which could accommodate nine people. The current configuration could accommodate a maximum of ten people. While the overall numbers of occupants may be comparable, it is the division of properties which causes the issue. As explained above, occupants of separate units of accommodation are more likely to engage in different activity at different times of the day than people living together in a shared flat.

¹ Ref C05272C dated 22 February 1989.

26. The appellant insists that the use has been operating for several years without detriment to residential amenity. A lack of statutory nuisance does not necessarily mean the development is acceptable. Moreover, I have had regard to the letters of neighbouring residents who describe noise and disturbance at the properties due to the intensified use.
27. Overall, I consider that the use of the properties as six flats would place stress on the local area due to noise and disturbance resulting from the activity of an increased number of occupants living in separate units of accommodation. Therefore, I conclude that the development would have an adverse effect on the living conditions of neighbouring occupiers with regard to noise and disturbance, contrary to Policy DM01 of Barnet's Local Plan (Development Management Policies) (adopted 2012) which seeks to protect Barnet's character and amenity.

Reasons: Standard of Accommodation

28. The first floor flat in each property has one double bedroom and could accommodate two people, while the first/second floor flats have three double bedrooms and could accommodate six people.
29. Policy 3.5 of the London Plan states that housing development 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 50sqm for a one-bedroom, two-person flat and 95sqm for a three-bedroom, six person flat.
30. The appellant concedes that scaled survey plans have not been submitted and the information provided is approximate. Although it is argued that the layout of both first floor flats is well-planned, the accommodation appears significantly substandard with regard to floorspace and contrary to Policy 3.5. Similarly, it seems that the floorspace of the three-bedroom flats is marginally below standard.
31. I appreciate that space standards should be applied flexibly. However, I am not satisfied that the layout of the first floor rear flats, as constructed in both properties, provides adequate living conditions for the occupants with regard to internal floor space.
32. The Council argues that amenity space should be provided. This is not possible in the development due to site constraints. I accept that the approved flats would not have access to outdoor space, so the unauthorised development would be no worse in that respect.
33. I conclude on this matter that the development does not provide an acceptable quality of residential accommodation, with regard to the size of the internal floorspace. The development is contrary to Policy 3.5 of the London Plan, Policies DM01 and DM02 of the Local Plan, Policies CS1 and CS5 of the Core Strategy (adopted 2012) and the Council's adopted Supplementary Planning Document: Residential Design Guidance (October 2016), which promote good design and a quality residential environment.

Other Matters

34. The tenants' rights under the European Convention on Human Rights, which is incorporated into the Human Rights Act 1998, must be considered. Article 8 deals with the right to respect for family life and the home. Dismissal of these appeals will require the tenants to vacate their current home, with no immediate alternative accommodation. This would represent an interference with their home and family life. However, the conflict with local planning policy which would arise, in particular the fact that the use would be incompatible with the surrounding development, is considerable.
35. I am satisfied that the legitimate aim of conforming with planning policy and avoiding detriment to neighbours' living conditions cannot be achieved by any means which are less interfering with the tenants' rights. I appreciate that this decision will lead to stress and uncertainty for the tenants. However, I consider that the six months compliance provided by the notices is an adequate length of time for the tenants to find somewhere else to live. As such, the interference with home and family life is proportionate and necessary in the circumstances and would not result in a violation of their rights under Article 8.

Conclusion

36. I accept that the development is well located for access to goods and services, it makes a minor contribution to the local housing supply and provides a mix of accommodation for which there is likely to be a need. In addition, there would be no external changes, the parking arrangements remain as approved and there is adequate bin storage. However, these benefits do not outweigh the harm set out above.

Overall Conclusions

37. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

Appeal A

38. 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.

Appeal B

39. 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.

Debbie Moore

Inspector