
Appeal Decisions

Site visit made on 10 September 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Appeal Refs: APP/F5540/C/18/3210421 and APP/F5540/C/18/3210422 450 London Road, Isleworth TW7 5AD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Rohan Mohindra and Mr Viraj Mohindra against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 31 July 2018.
- The breaches of planning control as alleged in the notice are the change of use of the property to two self-contained flats and the installation of hardstanding to the front of the property.
- The requirements of the notice are:
 - i. Cease the use of the property as two self-contained flats.
 - ii. Remove all but one of the kitchens and associated facilities (i.e. all kitchen facilities to include the following items: kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood). In addition to the above items all water and gas piping and all waste connections to all but one of the kitchens.
 - iii. Remove all but one of the bathrooms and bathroom associated facilities (i.e. shower/bathing facilities, WC, wash basin and pedestal. In addition to the above items all water piping and waste connections).
 - iv. Remove the hardstanding to the front of the property and replace with soft landscaping.
 - v. Remove all the resultant debris from the land.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since with respect to Appeal B, the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a correction.

Preliminary Matter

1. The breach of planning control alleged in the enforcement notice relates in part to the installation of a hardstanding to the front of the property. As a matter of fact the hardstanding area has been installed to the front and side of the property. There are no appeals on ground (b), that the breach has not occurred as a matter of fact, and consequently it is my view that the enforcement notice should be corrected without causing injustice to either party.

The appeals on ground (c)

2. The ground of appeal is that the matters alleged do not constitute breaches of planning control. The onus of proof is on the appellant. The property has been divided into two self-contained flats. Such a material change in the use of the property requires planning permission which is not granted by the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). The evidence before me indicates that planning permission has not been granted by the local planning authority for the change of use to two self-contained flats.
3. In addition, the area of hardstanding comprises operational development within the meaning of s55 of the Act, for which s57 indicates, planning permission is required. The development does not comprise development for which planning permission was granted by way of the provisions of the Schedule 2, Part 1, Class F (hard surfaces incidental to the enjoyment of a dwellinghouse) of the GPDO because the property in question is not a single dwellinghouse but rather has been converted to two separate dwellings.
4. The appellants have presented insufficient evidence to indicate why there have been no breaches of planning control. The appeals on ground (c) fail.

The appeals on ground (d)

5. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In support of this ground the appellants have submitted insufficient relevant evidence for me to conclude other than at the time the enforcement notice was issued the Council was not prevented from doing so by the passage of time. The appeals on ground (d) fail.

The appeals on ground (a)

6. The ground of appeal is that planning permission should be granted. The main issues are:
 - i. Whether the principle of the change of use of the property to two self-contained flats is acceptable;
 - ii. Whether the flats provide satisfactory living conditions for occupants with particular reference to internal and external space;
 - iii. Whether the development provides adequate cycle parking and facilities for the storage of waste and recycling; and
 - iv. The effect of the hardstanding on the safety of highway users.

Principle and living conditions

7. Policy SC6 (Managing Building Conversions and Sub-Division of the Existing Housing) of the Local Plan Volume One 2015-2030 (the LP) states that the Council will manage the conversion of buildings and the subdivision of the existing housing stock to contribute to the Borough's housing supply without having an adverse effect on the character of an area and the amenities of residents. The evidence before me shows that the original internal floor area of the house is approximately 69.5 square metres (sq m) which is significantly below the 130 sq m threshold set out in the development plan. Policy DC6 supports the conversion of larger existing houses to flats where the original

- floor area is in excess of 130 sq m. The existing floor area of the property is above the threshold, but the conversion of properties that have been previously extended to create a total floorspace of at least 130 sq m is not supported by policy. This is because in cases such as that, the impact of multiple occupation on the residential amenity and character of the surrounding established residential area is likely to be harmed.
8. The ground floor flat has a floor area of approximately 58.04 sq m and is considered to be family-sized because it is a two bedroom four person flat. As such, according to the Nationally Described Space Standards (NDSS) set out in the London Plan a two bedroom four person unit should have an area of at least 70 sq m. Consequently, although on the ground floor of the property, the ground floor family unit is well below the minimum space standard and as such it is found to provide cramped and sub-standard living conditions for occupants.
 9. The first floor flat also has an additional bedroom in the roof space and therefore is a three bedroom two storey residential unit. According to the NDSS the unit should measure at least 93 sq m whereas it actually measures only approximately 82.09 sq m which is significantly below the minimum space required. As such the accommodation is cramped and substandard for the satisfactory living conditions of occupants.
 10. Policy SC5 (Ensuring Suitable Internal and External Space) of the LP states that flats and other residential conversions should provide private and communal space for every flat. In this particular case the ground floor flat should have 7 sq m private amenity space and the first floor flat 8 sq m private amenity space. In addition, a total of 50 sq m communal amenity space should be provided less a reduction for the area of private space provided for each flat. The evidence shows that the ground floor flat has access to the original garden area of the site which measures approximately 31 square metres. In addition, the first floor has no access to private or communal external amenity space. The garden area itself is significantly below the minimum standard of 50 sq m which is required for both flats. Therefore, the lack of adequate amenity space for both residential units results in there being poor quality living accommodation for residents. There are other areas of public open space close to the site, but that does not overcome the concerns I have with respect to amenity space for general domestic purposes.
 11. Therefore, on these issues I conclude that the principle of the change of use of the property to two self-contained flats is unacceptable and the flats fail to provide satisfactory living conditions for future occupants with particular reference to internal and external space. Therefore, it conflicts with the provisions of Policies SC5 and SC6 of the LP and the London Plan.

Cycle parking, waste and recycling facilities

12. Policy EC2 of the LP relates to developing a sustainable local transport network and states that all developments should incorporate measures and facilities to promote cycling in accordance with the London Plan. The London Plan states that each residential unit with more than one bedroom should provide two cycle parking spaces. Consequently, the current development should provide four spaces and these should be in a secure, covered and convenient location close to the entrance to the building. No cycle parking is provided to the front or side of the site which are the only areas accessible to the first floor flat.

Although the appellants contend that cycle spaces could be provided there is insufficient evidence that they could be in a secure and convenient location with covering. Consequently, the conversion to two flats fails to provide adequate cycle parking contrary to Policy EC2 of the LP and the London Plan.

13. Policy EQ2 of the LP relates to sustainable waste management and states that the Council will expect all developments to incorporate suitable arrangements for waste management. That should include the location, size and design of waste and recycling facilities and transport access to those facilities. No such facilities are provided and insufficient evidence is submitted to show how satisfactory provision could be made. As such the development fails to provide adequate facilities for the storage of waste and recycling, contrary to Policy EQ2.

Hardstanding

14. London Road is a heavily trafficked main road with a bus services and at my site visit I observed that this part of London Road is situated within a controlled parking zone with residential permit holders only allowed to park half up the highway. There is a marked parking bay outside the appeal site and also a cycle lane in the main carriageway. The site does not have a dropped kerb which would in this case require planning permission. The hardstanding area that has been constructed to the front and side of the property is currently accessible via a vehicle movement that requires mounting the existing kerb. In addition, to the immediate west of the site there is a boundary wall which means that a satisfactory visibility splay of 2.4 metres by 2.4 metres either side of the entrance to the site with no obstructions above 0.6 metres high cannot be achieved.
15. There is inadequate space within the appeal site for manoeuvring vehicles and as such a vehicle using the hardstanding is required to either enter or leave the site in reverse. Such a manoeuvre is hazardous given the constant flow of traffic, the presence of parked cars close to the site, bus movements and the presence of pedestrian and cyclists. Therefore, on this issue I conclude that the hardstanding has a harmful effect on the safety of highway users. As such it conflicts with Policy EC2 of the LP and the Council's Residential Crossovers and Off-Street Parking Policy.

Other matters

16. In support of the appeals on ground (a) my attention has been drawn to other flat developments in the locality that have been approved by the Council. However, I do not have the full details of those cases or the circumstances that led to those proposals being accepted and so cannot be sure that they represent a direct parallel to the appeals before me.

Conclusion

17. For the reasons given above and taking into account other matters raised I conclude that the development unacceptably conflicts with the development plan, so the appeal on ground (a) fails and the deemed planning application will be refused.

The appeals on ground (f)

18. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of the enforcement notice are out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the restoration of the property to a single dwelling as existed before the unauthorised change of use took place the purpose is to remedy the breach. That can only be achieved in this case by ceasing the unauthorised use and undoing the works associated with that breach as set out in the notice.
19. In addition, since the notice also requires the removal of the hardstanding and its replacement with soft landscaping that requirement is also to remedy the breach. Any measures short of that would not achieve the purpose.
20. S173(5) of the Act gives power to require the carrying out of building or other operations for the purposes of remedying the breach. The notice is directed at a material change of use and therefore requires the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, so that the land is restored to its condition before the change of use took place. The notice does not preclude the appellants from doing what they are lawfully entitled to do in the future once the notice is complied with, including alternative uses that may constitute permitted development or be authorised by making a planning application. This may include installing alternative bathroom facilities to serve the occupants of a single residential property, for example.
21. The requirements of the notice would restore the premises back to its condition before the breach took place; that lawful use being as a single dwellinghouse. Any measures short of those set out in Section 5 of the notice would not achieve that overall purpose. In this respect, the appeals on ground (f) fail.

The appeals on ground (g)

22. The ground of appeal is that the time given to comply with the requirements is too short. The 3 months given would be sufficient to cease the use of the property, remove the kitchen and associated facilities, remove the bathrooms and associated facilities, remove the hardstanding and remove all resultant debris from the land.
23. Although not particularly clear, the appellants appear to have been seeking additional time until May 2019 to complete the works in order to secure a four year period since the property was converted. However, because the enforcement notice was issued on 31 July 2018, the necessary immunity period could not be achieved.
24. I have also noted that the time extension was requested in order to ensure the obligations of an Assured Tenancy Agreement were met. At the time of my site visit the flats were both vacant and appeared to have been vacant for some time and therefore the removal of the kitchens would not result in the breach of any contractual obligations as far as I can identify.

Formal decision

25. I direct that the enforcement notice should be corrected by adding to paragraph 3 the words "and side" between the words "front" and "of" in the

second paragraph. Subject to this correction I dismiss the appeals and uphold the enforcement notice.

A A Phillips

INSPECTOR