
Appeal Decision

Site visit made on 8 October 2019

by P N Jarratt BA DipTP MRTPI

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

Decision date: 11 October 2019

Appeal Ref: APP/G5750/C/18/3216374

99 Hatherley Gardens, East Ham, London, E6 3HG

- 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 Valentina Kucinskiene against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 14/02211/ENFA, was issued on 19 October 2018.
 - The breach of planning control as alleged in the notice is the material change of use of an outbuilding to a self-contained unit of residential accommodation.
 - The requirements of the notice are:
 - 1 Cease the use of the outbuilding (as shown edged in blue on the plan attached to the notice) as self-contained unit of residential accommodation.
 - 2 Remove from the outbuilding all fixtures and fittings that solely facilitate the use as a self-contained unit of residential accommodation including, but not limited to, the kitchen and bathroom.
 - 3 Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is 5 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.
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Decision

1. The appeal is dismissed and 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.

The appeal site and relevant planning history

2. The appeal site is on the corner of Hatherley Gardens and Frinton Road in a residential area. No. 99 Hatherley Gardens is a two-storey end of terrace property with a commercial use on the ground floor front with a flat to the rear and another at first floor level. To the rear of the property is a small yard divided into two with pedestrian access through a gate from Frinton Road. Beyond that is an outbuilding having the appearance of a garage from the street. However, the outbuilding has been converted into a self-contained one room bedsit with kitchen and bathroom facilities and is currently occupied.
3. Two planning applications for the change of use of the premises to wholly residential were approved in 2010 and 2011.
4. There have been protracted discussions with the property owner in respect of the extension and conversion of the outbuilding in 2014 at which time it was

stated that the rear unit would only be used ancillary space for staff working in the salon.

The appeal on ground (a)

5. The accommodation is 22 sqm with minimal external space and natural lighting, having only a single window to its front elevation which limits daylight, sunlight and ventilation. It has a poor outlook onto a yard and to the rear of the host property. The accommodation fails to meet minimum space standards set out in Policy D4 of the London Plan and it represents sub-standard housing. It also affects the character of the area by introducing a more intensive form of residential development in a building not designed for primary residential use through increased activity associated with its unauthorised use.
6. The appellant states that the outbuilding could be extended and altered to create a 37sqm studio that meets the minimum space standards of The London Plan and to provide adequate light, ventilation and outlook. Plans of these proposals were submitted with the appeal.
7. The deemed planning application relates to the operational development or change of use which has been carried out and it derives its terms directly from the allegation, which in this case is a material change of use of an outbuilding to a self-contained unit of residential accommodation. Planning permission, if the appeal were to be successful, can only be granted for those matters and not for a different form of development as proposed by the appellant.
8. I conclude that the change of use is contrary to Policy D4 of the London Plan and Policies SP2, SP3 and SP8 of the London Borough of Newham Local Plan regarding housing quality.
9. The appeal on this ground fails.

The appeal on ground (f)

10. An appeal on this ground is that the steps required to comply with the notice are excessive and lesser steps would overcome the objections. The appellant considers that the proposed remedial work overcomes the reasons for issuing the notice.
11. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
12. The appeal on this ground fails.

The appeal on ground (g)

13. The appellant considers that the time to comply with the notice is too short in view of the need to finance the works, procure a builder and carry out the development. Notwithstanding the fact that the appellant has failed to specify an alternative time period, the concerns about building work are of no

consequence in view of the decision on ground (a). I consider the compliance period adequate to meet the requirements of the notice.

14. The appeal on this ground fails.

Other matters

15. The appellant has criticised the Council for not affording opportunity for a retrospective application or an application for remedial work to be made. Such a criticism is without foundation as the appellant could have submitted such applications at any time but has chosen not to do so.

Conclusion

16. 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.

P N Jarratt

Inspector