The Planning Inspectorate

Appeal Decisions

Site visit made on 22 October 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal A Ref: APP/H5390/C/18/3215470
Appeal B Ref: APP/H5390/C/18/3215471
Basement Flat, 32 Vereker Road, London W14 9JS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Ms Claire Ensor, and Appeal B is made by Mr Bryan Ensor against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
- The enforcement notice was issued on 28 September 2018.
- The breach of planning control as alleged in the notice is:
  Without planning permission, the change of use of the basement floor from resident accommodation (Class C3) to short term lets accommodation (Class C1).
- The requirements of the notice are:
  1. Cease the use of the basement floor flat as short term let accommodation (Class C1).
  2. Reinstate the use of the basement floor as a residential flat (Class C3).
  3. Cease advertising the property as a holiday let for temporary/visitor accommodation.
- The period for compliance with the requirements is 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (e), (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) (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has 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 have lapsed.

Appeal C Ref: APP/H5390/A/18/3215469
32 Vereker Road, London W14 9JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Claire Ensor against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2018/02519/FUL, dated 23 July 2018, was refused by notice dated 20 September 2018.
- The development proposed is the change of use of the basement flat from residential (Use Class C3) to part-time letting.

Decisions

1. It is directed that the enforcement notice be corrected by substituting the plan attached to the notice with the plan attached to this decision. It is also directed that the enforcement notice be varied by substitution in the description of the site address of the word "red" by the word "black", the addition to requirement 1 of the words "except as may be permitted under Sections 25, 25A and 25B of the Greater London Council (General Powers) Act

1973 as amended", and by the deletion of requirements 2 and 3. Subject to these corrections and variations Appeals A and B are 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. Appeal C under Section 78 is also dismissed.

Application for costs

2. An application for costs was made by Ms Claire Ensor against the Council of the London Borough of Hammersmith & Fulham. This application is the subject of a separate Decision.

Appeal on ground (e) – that the notice was not served correctly

3. The enforcement notice is clear in that it is intended to apply solely to the basement flat at 32 Vereker Road. The owners and all those with an interest in that property were properly served with a copy of the enforcement notice. However, it is clear from what I saw on my visit that the plan attached to the notice is incorrect, in that the red line denoting the appeal property also includes the property forming a separate dwelling at 32A Vereker Road, which is accessed from Fairholme Road. The owners of that property have not been served with a copy of that notice. However, on the basis that the notice is not intended to refer to that property, and that a smaller area is involved than that shown on the original plan, I can correct the notice by substituting the plan without causing injustice to any party. Accordingly the appeal fails on this ground.

Section 78 appeal and the Section 174 appeal on ground (a)

Main Issues

4. The main issues are:

   i) the effect of the development on the supply of residential accommodation in the Borough, and

   ii) the effect of the development on the living conditions of nearby residential occupiers with particular regard to noise and disturbance.

Reasons

Effect on housing supply

5. Policy HO1 of the Hammersmith and Fulham Local Plan 2018 (LP) sets out how the Council intends to meet the housing needs of the Borough. One of the ways it intends to do so is by retaining existing residential accommodation. Policy HO2 deals specifically with housing conversion and retention and says that it will resist proposals which would result in a net loss of permanent residential accommodation as a result of redevelopment or change of use without replacement (measured by floorspace), including to short stay accommodation. The proposal would not result in any replacement residential accommodation, and thus it would directly conflict with the above mentioned policies.

6. LP Policy E3 deals with the provision of visitor accommodation and facilities, providing that permission will be granted in particular circumstances, one of

which is where there would be no loss of priority uses such as permanent housing. The use for short-term lettings would conflict with this policy as well.

7. I recognise that the flat is well-located and is likely to be attractive to visitors to the city. I also find below that there are no other overriding planning reasons why the use should not be allowed to continue. However, the Council's policies provide strong protection of existing housing stock, and decisions on appeals must be made in accordance with the development plan unless material considerations indicate otherwise. Whilst this case only involves one small flat, if the appeals were to be allowed, it would make it difficult for the Council to apply its policies elsewhere, the cumulative effect of which would be highly damaging.

8. Notwithstanding the appellants' intentions and personal choices, the basement flat has a lawful use as a separate dwelling and it contributes to the Borough's housing stock. It is a matter of choice as to whether an owner puts it to use as a separate dwelling; they may leave it empty if they wish, a matter which I shall return to in addressing the appeal made under ground (f). However, future owners may wish to use the flat as a dwelling, and once lost from the housing stock, market considerations may well preclude its return. Even on a short-term basis of 2-3 years, this would set a precedent which could have a cumulatively harmful effect.

9. I therefore find that the use for short-term lets has a harmful effect on the Borough's housing stock and conflicts with the development plan policies I have referred to above.

Effect on living conditions

10. I recognise that the use of some properties used for short-term lettings can be unneighbourly. However, I consider that much will depend on the nature of the property concerned; large properties suitable for big groups or with spacious gardens may be especially liable to being used for parties, stag-dos, etc., whilst properties with shared entrances or communal areas may be susceptible to noise and disturbance from comings and goings. However, in this case, the flat has its own separate entrance, accessed directly from the footway outside. It has only one bedroom and has no garden. It is of a high standard of decoration and is well-appointed in terms of fixtures and fittings. The appellants' evidence, which includes information about the cost of stays, shows that the flat is not at the cheaper end of the lettings market, and is more likely to lend itself to more mature guests.

11. My views on this are reinforced by the lack of objection from neighbours, and more pertinently by the support offered by the immediate neighbour at 34-36 Vereker Road. Whilst I recognise that there may be some guests whose behaviour may cause noise and disturbance, the same may be true of occupiers of any residential property. I find that on the facts of this case, the use for short term lets would be unlikely to result in material harm to the living conditions of neighbours, with particular regard to noise and disturbance. Nor would it conflict with LP Policies CC11 or CC13, which respectively deal with noise and pollution, or with LP Policy HO4 which deals with housing quality.

Other matters

12. The appellants suggest that the basement accommodation is not a separate flat. No appeal has been made on ground (c) that there has not been a breach of planning control. I note that some services to the dwelling above are routed through the basement unit, but the appellants confirm that the property has previously been let through Assured Shorthold Tenancies. Notwithstanding that there is some storage in the under stairs store room, from what I saw on my visit, the flat has all the distinguishing features of a separate dwelling, in that it has its own access, together with all the facilities needed for independent living. On the balance of probabilities, I am satisfied that the flat constitutes a separate dwelling, and contributes to the housing stock of the Borough.

13. The requirements of the notice interfere with the right to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy is a matter of legitimate public interest. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the appellants' rights would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

14. I have also taken into account that bookings have been taken for the property into next year. It may be that these bookings can be accommodated within the 90 nights which the varied requirements of the notice allow, which I refer to below. In any event, this does not justify allowing the appeal on this ground.

Conclusion on ground (a) and the Section 78 appeal

15. For the reasons I have explained above, I conclude that planning permission should not be granted and that the appeal on ground (a) fails and that the Section 78 appeal should be dismissed.

Appeal on ground (f) – that the requirements of the notice are excessive

16. The use of a residential property for temporary sleeping accommodation in Greater London constitutes a material change of use in certain circumstances by virtue of the provisions of s.25 of the Greater London Council (General Powers) Act 1973. The Deregulation Act 2015 amended this provision to say that it does not apply in specified circumstances and where the use for temporary sleeping accommodation does not exceed 90 nights in a calendar year.

17. The notice would have the effect of prohibiting all temporary sleeping use. It is well-established law (the "Mansi doctrine"[1]) that an enforcement notice should not preclude lawful uses. As the first requirement of the notice would have the effect of prohibiting use for temporary sleeping accommodation of no more than 90 nights, it would remove a lawful use and offend the Mansi doctrine. I shall therefore vary the notice to protect the lawful use provided by the Greater London Council (General Powers) Act 1973 as amended.

[1] *Mansi v Elstree RDC* [1964] 16 P&CR 153

18. The second requirement of the notice places a positive obligation to reinstate the use of the property as a flat. Sections 173(3) and (4)of the Act say an enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes:

    a) remedying the breach by making any development comply with terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or

    b) remedying any injury to amenity which has been caused by the breach.

19. Thus, whilst it is legitimate to require an unauthorised use to cease, there is no express power to require that a lawful use be reinstated, and in my view, to do so would be excessive. That is a matter of the owner's choice, who may leave the property empty if they so choose. No matter how desirable it may be to accord with policy objectives, the planning system cannot compel a lawful use to be carried out. I shall therefore vary the notice by deleting the second requirement.

20. The third requirement seeks to prohibit the advertising of the premises for short-term lets. Having regard to what I have said in respect of the first requirement, it follows that this requirement is excessive and would interfere with the appellants' lawful rights. I shall therefore vary the notice by deleting this requirement.

21. Accordingly, the appeal succeeds on ground (f) to the limited extent indicated above.

Appeal on ground (g) – that the time for compliance is too short

22. Bearing in mind that I have amended the requirements of the notice to allow 90 days' use for temporary sleeping accommodation, I consider that the compliance period of 4 months is entirely reasonable to comply with the notice. The appellants have argued that they need time to sort out the Council Tax position of the property, but as they started that process some considerable time ago, and no further information has been provided about this matter since the making of the appeal, I find that this is an insufficient reason to extend the compliance period. Accordingly, the appeal on ground (g) fails.

Overall conclusions

23. For the reasons given above, I dismiss the Section 78 appeal, and subject to correcting and varying the enforcement notice, the appeals under grounds (a), (e) and (g) fail. The appeals under ground (f) succeed only to the limited extent indicated above, and, subject to correction and variation, the enforcement notice is upheld.

JP Roberts

INSPECTOR

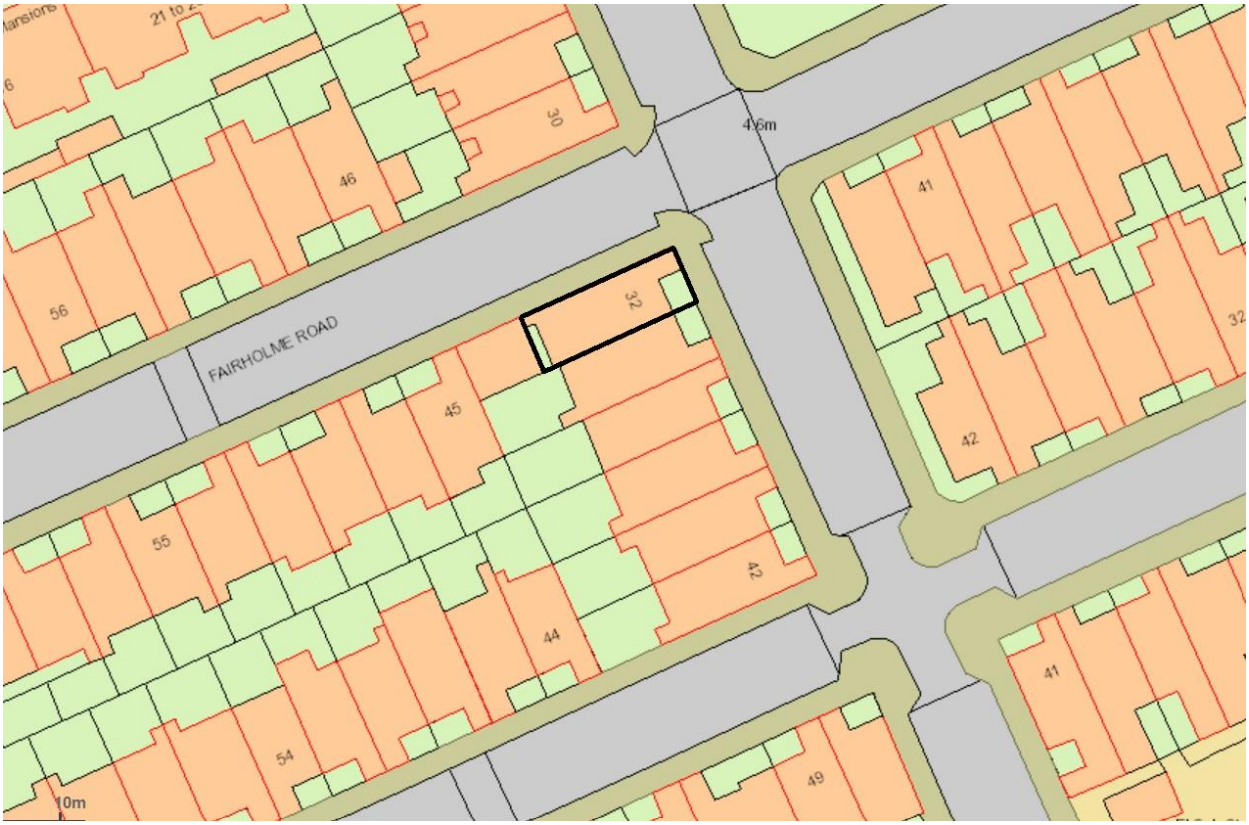
The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 22 November 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

Land at: Basement flat, 32 Vereker Road, London W14 9JS

Reference: APP/H5390/C/18/3215470 and 3215471

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