



Appeal Decision

Site visit made on 13 November 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/N4720/C/18/3216066

8 Savile Road, Chapeltown, Leeds LS7 3ES

- 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 Mr Dean Ducasse against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 25 October 2018.
- The breach of planning control as alleged in the notice is the material change of use from residential (Class C3) to a mixed use of: (Class C3), self-contained residential use (Class C3) in the basement and holiday letting/commercial (leisure or business) use (sui generis).
- The requirements of the notice are to cease the use of the property for holiday letting/commercial (leisure or business) and cease the use of the basement as a self-contained flat.
- The period for compliance with the requirements is twenty eight days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

The appeal on Ground (d)

1. The ground of appeal is that at the time the notices were issued it was too late to take enforcement action. With respect to this appeal which relates to an alleged sui generis mixed use of the property and according to s171B of the Act, 10 years continuous use starting from the date of the breach is required, so the material date is 25 October 2008.
2. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. I am aware that, following the judgement of *Gabbitas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
3. The appellant contends that the basement flat has been tenanted continuously since May 2014 and has provided some documentation to support this, including copies of tenancy agreements. However, the allegation relates to a mixed use residential and holiday letting/commercial mixed use and consequently the relevant period is ten years. Therefore, irrespective of the Council's evidence the appellant has failed to demonstrate that the mixed use

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

alleged in the enforcement notice has occurred continuously since the material date and therefore the appeal on ground (d) must fail.

The appeal on ground (a)

4. The ground of appeal is that planning permission should be granted. The main issues are:
- i. whether the development provides satisfactory living conditions for existing and future occupants with particular reference to natural light, outlook and sense of enclosure, the provision of external amenity space, bin storage and cycle storage facilities;
 - ii. the effect on the living conditions of the occupants of neighbouring residential properties with particular reference to noise and disturbance;
 - iii. whether the development makes adequate provision for the parking of vehicles; and
 - iv. the effect on the character and appearance of the area.

Reasons

Living Conditions

5. The basement property is accessed from the rear yard of 8 Savile Road which is accessed off Back Savile Place. There are steep steps down from the shared yard area into the property. The basement property has very limited natural light from a small rear kitchen window and from a bedroom window/light well to the front of the property onto Savile Road. The internal design of the property seeks to maximise the natural light by providing a void within the wall between the bedroom and living area which allows some light ingress from the bedroom window/light well. There is also some limited light ingress from the relatively small kitchen window and kitchen door.
6. Nonetheless, the property suffers from a lack of natural light which is to the detriment of the living conditions of existing and future occupants. This concern is amplified by the particularly poor outlook from the property. The view from the kitchen window is directly towards a wall at close quarters. The outlook to the front of the property through the bedroom window is also very limited given the below ground level situation. Given the poor levels of natural light and poor outlook and layout, the additional consequence is the overall sense of enclosure experienced from within the property.
7. The outdoor amenity space associated with 8 Savile Road is very limited. To the rear there is a small yard area which serves both the main family dwelling and also the basement flat. It is clear from the evidence submitted that there is no designated outdoor amenity space for the basement flat for general residential functions such as sitting outdoors or hanging out washing, for example. At best, the small yard could be shared with the occupants of the main family property No 8, but this would not be a satisfactory arrangement due to concerns relating to privacy and the shared use of the limited space for day-to-day domestic requirements. Consequently, the provision of external amenity space is unsatisfactory.

8. The evidence presented is that the rear yard area is used for bin storage. The development of an additional mixed use basement unit requires additional waste disposal and recycling facilities, which would further reduce the usability of the yard area. Given the lack of outdoor space, it is likely that bins would be stored in the rear passage, Back Savile Place, or elsewhere in the highway, which is not a satisfactory arrangement. At present there is no on-site cycle storage provision and providing such spaces in accordance with the Council's requirements would further compromise the existing limited outdoor amenity space.
9. Given the above I conclude that the development fails to provide satisfactory living conditions for existing and future occupants with particular reference to natural light, outlook and sense of enclosure, the provision of external amenity space, bin storage and cycle storage facilities. As such it conflicts with Policy P10 of the Leeds Core Strategy 2014 (the CS), Policy GP5 of the Leeds Unitary Development Plan Review – Volume 1: Written Statement adopted July 2006 (UDP Review). Together, these seek to ensure new development delivers high quality inclusive development that respects and understands places and delivers quality of life and wellbeing.
10. With respect to the living conditions of neighbouring properties, the development does give rise to increased levels of activity in the immediate locality as a consequence of the comings and goings associated with the additional residential property and holiday letting. Although I consider the likely increase in the levels of activity, noise and disturbance to be relatively low, there is some concern that given the confined space in close proximity to the entrance to the property, the fact that access requires crossing part of the small shared yard area and the close proximity of the property to other residential properties, the additional activity would be noticeable by the other occupants of No 8, in particular. As such, the development has a harmful effect on the living conditions of the occupants of neighbouring residential properties with particular reference to noise and disturbance. Therefore, it is contrary to Policy P10 of the CS and GP5 of the UDP Review which seek to ensure that new development is of a high quality and development should respect and understand places and deliver quality of life and well-being for residents.

Parking

11. There is no off-street parking provision at the appeal site. In addition, the property has its main frontage onto Savile Road and rear access off Back Savile Place. The terraced dwellings in the locality do not have designated off-street car parking and therefore the properties rely on parking on Savile Road or other streets in the immediate vicinity. Given the dense residential development in the area there is a high demand for the limited on-street provision, although at the time of my mid-week site visit there were spaces available nearby on Mexborough Road. However, this is a snapshot at a particular time and it is likely that at other times of the day such as early morning or later afternoon and evening there is greater demand for on-street car parking spaces.
12. The Council's guidelines recommend off-street provision of two spaces for a two bedroom house and one space for a one bedroom property. Therefore, the established residential use of the property would require two spaces and the

development the subject of this appeal increases the demand by at least one. Given the saturation levels of on-street car parking any increase in the demand would lead to increased competition for a finite number of spaces. I noted at my site visit that vehicles were blocking Back Savile Place and, in these particular circumstances, the increase in the demand for car parking spaces is likely to give rise to a risk of vehicles parking in unsuitable and potentially unsafe locations.

13. On this issue I conclude that the development does not make adequate provision for the parking of vehicles and is contrary to the provisions of Policy GP5 of the UDP Review and the Street Design Guide Supplementary Planning Document which, among other objectives, seek to ensure that adequate parking provision is made for new development and development should take account of planning considerations such as access and highway congestion.

Character and appearance

14. The intensification of the use of the property that has resulted from the development that has taken place has an effect on the local area in terms of increased levels of activity such as general comings and goings from the property, additional noise, vehicles and demand for car parking. The area in which the property is situated is a well-established residential area and, although I understand that some properties may have basement dwellings or may have been converted to flats, the prevalent character is one of terraced family dwellings.
15. The development that has taken place erodes this character to a degree and places additional pressure on the dense residential pattern of development and local services and facilities, such as car parking. Consequently, the provision of a basement property used for residential and commercial purposes is uncharacteristic of the area and harmful to its overall residential character. I have taken account of the Council's concerns regarding precedent, but there is insufficient evidence before me that other types of development such as this are likely to occur, locally. In any case, I have determined the current appeal on its own merits and on the evidence presented with respect to this particular property and set of circumstances.
16. Nonetheless, on this issue I conclude that the development is harmful to the character and appearance of the area and contrary to Policy P10 of the CS, GP5 of the UDP Review and the Framework which, among other objectives, seek to ensure that new development respects its surroundings and is appropriate to its context.

Other matters

17. I have noted the appellant's frustration at the way his case has been dealt with by the Council and is concerned that the Council has sometimes given him poor advice, but this does not have a bearing on the determination of the current appeal which I have assessed on its planning merits. He has also questioned whether other similar properties have been the subject of investigation and enforcement action by the City Council. That is a matter for the appellant to take up with the Council as I have determined this case on its own merits based on the evidence submitted.

Conclusion

18. 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.

Formal Decision

19. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

A A Phillips

INSPECTOR