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## Appeal Decision

Site visit made on 6 November 2019

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 November 2019**

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**Appeal Ref : APP/C5690/C/19/3220732**

**Land at 161 Engleheart Road, London, SE6 2EU**

- 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 A Oladokunn against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The notice was issued on 5 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the premises from use as a dwellinghouse to use as two self-contained flats comprising a two bedroom flat at ground floor level and a three bedroom flat at first floor and loft level.
- The requirements of the notice are to 1. Cease the use of the premises as two self-contained flats comprising a flat situated at ground floor level and a flat situated at first floor and loft level, 2. Remove all kitchen fixtures and fittings situated at first floor level of the premises, 3. Remove partitions within the ground floor which enclose the staircase that facilitates the self-containment of the premises as two flats, 4. Make good all damage resulting from compliance with requirements 2- 3 above, 5. (sic) remove all materials, debris, waste and equipment resulting from compliance with requirements 2- 4 above from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

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

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### Ground (a) appeal and deemed application

#### Main Issues

1. The main issues in the determination of this appeal are the effect of the development on (i) housing stock within the Borough and (ii) the living conditions of current and future occupiers of the property with particular regard to the adequacy of the accommodation. I do not consider the effect of the development on the character and appearance of the surrounding area to be a main issue.

#### Housing stock

2. The appeal site is a two storey, mid terraced house in a residential area. The unauthorised development comprises the change of use of the property from a dwellinghouse to two self-contained flats.

3. The development plan (including the London Plan, the Lewisham Core Strategy and Lewisham Development Management Local Plan (the DMLP)) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure an appropriate mix of housing to meet local need. DMLP Policy 3 provides that the Council will refuse planning permission for the conversion of a single family house into flats except where environmental conditions mean that the single family house is not suitable for family accommodation due to being adjacent to noise generating or other environmentally unfriendly uses or lack of external amenity space suitable for family use.
4. The appeal site is not adjacent to noise generating or other environmentally unfriendly uses and does not lack external amenity space suitable for family use. The exceptions in policy 3 are therefore not met and there is nothing before me to suggest that the site is not suitable for family accommodation.
5. The Appellant argues that the development respects the form and structure of the original building and respects the surrounding area. But these arguments concern the character and appearance of the area (which is not a main issue in my determination) and do not concern the housing mix of the area.
6. I am concerned that to allow the conversion would undermine the Council's objective of maintaining a balanced supply of housing stock contrary to the development plan and have a cumulative effect increasing any imbalance in the mix of available housing types. There is no justification before me to outweigh the provisions of the development plan that seek to maintain the stock of family housing in the Borough.

#### Living conditions

7. DMLP Policy 32 sets out internal standards to secure high standard development. The standards include meeting the minimum space standards in the London Plan and the National Technical Space Standard. There is no dispute that the ground floor flat does not meet the relevant standard but the parties disagree as to whether the upper floor flat meets the relevant standards.
8. The Appellant argues that the upper flat apartment compensates for the marginal failure of the ground floor flat to meet the standard. Even if the Appellant is correct that the upper flat meets the space standards the ground floor flat is small and cramped. It provides an inadequate standard of accommodation for its occupiers. The standards of development are to be applied consistently and the development fails to secure high standard development. I do not consider that the property as a whole accords with relevant development plan policies.
9. I conclude that the development causes undue harm to the living conditions of current and future occupiers with regard to the inadequacy of the standard of accommodation and is contrary to relevant policies in the development plan (including policy 32 of the DMLP) and the Framework.

#### Conclusions

10. The development fails to accord with relevant policies in the development plan that seek to maintain a balanced housing mix and causes undue harm

to the living conditions of current and future occupiers with regard to the standard of accommodation.

11. I have considered the local housing need but this does not outweigh my concerns. The absence of objection from occupiers and neighbours is not conclusive as to the absence of harm.

12. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the conditions proposed by the Council in the event that the appeal is allowed but I do not consider any conditions could overcome the identified harm.

13. For the reasons given above the ground (a) appeal does not succeed and planning permission should not be granted on the deemed application.

### **Ground (g) appeal**

14. This ground of appeal is that the period for compliance is unreasonably short. The notice provides for a 6 month compliance period.

15. The Appellant argues that at least 12 months would be a more appropriate period. He says that time is needed to source a reputable builder to undertake the physical alterations and enable the occupiers to find alternative accommodation.

16. The requirements of the notice are not complex or specialist and there is no evidence before me to suggest that they could not be completed in 6 months.

17. The rights of an individual to a home must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account the conflicting considerations of private and public interest. I have balanced the private interests of the Appellant and occupants and the public interest in bringing the identified harm to an end without unnecessary delay. I consider that a period of six months would be a reasonable time in which to expect the requirements to be undertaken. It would strike an appropriate balance so as not to violate individual rights. I shall uphold the enforcement notice.

18. For the reasons given I conclude that a reasonable period for compliance would be six months and I am upholding the enforcement notice accordingly.

19. For the reasons given above the appeal under ground (g) fails.

### **Formal Decision**

20. 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 1990 Act as amended.

*S. Prail*

**Inspector**