



Appeal Decision

Site visit made on 7 November 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 11th December 2019

Appeal Ref: APP/H5960/C/19/3221516

12 Bickley Street, London SW17 9NE

- 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 Giles Whitby-Smith against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 6 December 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years, material change of use of the Property from a maisonette and to use as two self-contained flats.
 - The requirements of the notice are to: Cease the unauthorised use of the Property as two self-contained flats and return the Property to its lawful use as a maisonette. Steps to be complied with:
 1. Cease the unauthorised use of the Property as two self-contained flats and return the Property to its lawful use as a maisonette;
 2. Remove the kitchenette (including cabinets, cooking hob, microwave, washing machine, sink and fridge) from the front facing flat at the Property;
 3. Remove from the Property any furniture, fittings and fixtures associated with the unauthorised use; and
 4. Remove from the Property all debris arising from compliance with steps 1 and 3.
 - The period for compliance with the requirements is six (6) weeks.
 - 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. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be:
 - corrected by deleting the words "return the Property to its lawful use as a maisonette" and substituting "return the Property to its layout as a maisonette" in paragraph 5, second sentence and in paragraph 5, third sentence;
 - corrected by deleting the words "steps 1 and 3" and substituting "steps 1, 2 and 3" in paragraph 5; and
 - varied by deleting "Six (6) weeks" and substituting "Six (6) months" as the period for compliance in paragraph 6 due to the appeal succeeding under ground (g).
2. Subject to these corrections and variation the appeal is otherwise 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.

Preliminary Matters

3. A requirement of the notice is "return the Property to its lawful use as a maisonette". While a notice may remedy a breach by making any development comply with the terms of any planning permission, or by discontinuing use of the land or by restoring the land to its condition before the breach took place, it cannot compel land to be used for its lawful use.
4. Accordingly, I am correcting the notice by removing the above wording at each sentence it is used and replacing it with "return the Property to its layout as a maisonette".
5. I am also correcting the notice requirements to ensure that step 4 includes the removal from the property of all debris arising from step 2, since it appears that debris may result from undertaking that step in addition to any debris arising from steps 1 and 3.
6. I am satisfied these changes are minor and would not cause significant prejudice to the parties.
7. A retrospective planning application (Ref: 2018/3622) for use of the appeal property as 2 x 1-bedroom flats for a temporary period of 5 years, was submitted to the Council for consideration on 24 July 2018 (the refused application). The application was refused on 1 October 2018 and the enforcement notice subject to this appeal was subsequently issued.

The appeal on ground (a) and the deemed planning application

Main issues

8. The main issues are:
 - whether or not the development results in the loss of a dwelling suitable for family accommodation; and
 - the effects of the development on the living conditions of the occupiers of the flats, as regards floor space.

Reasons

9. The appeal property comprises a first-floor maisonette in a two-storey terraced building, with its own entrance from the street.
10. According to the officer report on the refused application, the submitted planning statement referred to the maisonette as being 3-bedroomed prior to the appeal development. Homes with 3 bedrooms or more are generally considered to be capable of providing family-sized accommodation.
11. Further, there is broad agreement between the parties as to the gross internal area (GIA) of the original dwelling: the appellant states 78sqm and the Council states 77 sqm. This is above the minimum overall floorspace of 74sqm set out for a 3-bedroomed 4-person flat, categorised as 'family-sized accommodation', in Policy DMH6 of the Wandsworth Local Plan Development Management Policies Document (2016) (DMPD).
12. The appellant submits that the minimum floorspace requirement of 74sqm was not in fact met since the GIA was measured taking into account the ground floor staircase and two stores. I note however that the nationally described

space standard¹, on which the space requirements in Policy DMH6 are based, defines the GIA of a dwelling as “the total floor space measured between the internal faces of perimeter walls that enclose the dwelling” and that this includes “cupboards” and “flights of stairs and voids above stairs” (paragraph 8). Accordingly, it was correct to include such parts of the dwelling in the GIA measurement.

13. I find accordingly that the pre-development dwelling was large enough to constitute family-sized accommodation, and that its suitability in that regard is further strengthened by a reasonably-sized rear garden for exclusive use by a family as well as good access to local services, facilities and public transport.
14. Therefore, the appeal development causes significant harm through the loss of a home that would otherwise be available to meet the housing needs of a family. As such the development is contrary to Policy DMH2 of the DMPD which seeks to prevent the conversion of dwellings which are suitable for families.
15. Each of the new flats created by the conversion fail to meet the minimum GIAs in respect to 1-bedroomed homes, as set out in the nationally described space standard and Policy DMH6 of the DMPD. The appellant has however raised a consideration relating to the occupier of the front flat on disability grounds, stating that a smaller single person dwelling is beneficial due to the particular medical conditions experienced.
16. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. Disability is a protected characteristic for the purposes of the PSED which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to paragraph 61 of the National Planning Policy Framework (the Framework) which requires that the size, type and tenure of housing needed for different groups in the community, including people with disabilities, should be assessed and reflected in planning policies.
17. I have considered carefully the evidence which has been submitted from a GP and a psychotherapist. However, while it is clear that these professionals would have concerns were the occupier to share space or facilities with others, there is nothing in their advice to indicate that there would be any benefit to the occupier through residing in a smaller minimum living space than nationally recognised as necessary to ensure suitable living conditions.
18. Accordingly, I find that the development does not deliver sufficient living space for the occupier of the front flat or of the rear flat causing significantly harm to their living conditions. As such it is in conflict with Policy DMH6 which seeks to ensure residential space standards. The development is also in conflict with the Framework as it does not promote health and wellbeing with a high standard of amenity for existing and future users, as required by paragraph 127.
19. Article 8 of the First Protocol to the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, is engaged due to potential loss of a home for either, or both, of the property’s occupiers due to conflict with planning policy. Therefore, I have undertaken a proportionality assessment and

¹ Technical housing standards – nationally described space standard (2015).

considered whether the objectives of the planning policy could be met by a less intrusive action. However, Policy DMH6 seeks to protect the occupiers of residential dwellings from sub-standard accommodation and its objective cannot otherwise be achieved other than ensuring that minimum standards are met. The effect of the Policy is to benefit the interests and well-being of persons occupying dwellings, and the implementation of its requirements in respect to the appeal property would not be excessive or disproportionate taking all into account, including the circumstances of the occupier of the front flat and the availability of alternative accommodation.

20. I have also considered the case for granting permission for 5 years, or for a shorter period, or granting permission linked to the occupancy of the occupier of the front flat. However, those options would not diminish the significant harm that would be caused to the living conditions of each of the occupiers within the period involved, and it would not be excessive or disproportionate to dismiss the appeal and refuse planning permission on that basis.

The appeal on ground (g)

21. As compliance with the notice might involve the loss of a home for either or both occupiers, and having regards to both the PSED and human rights, I consider that 6 weeks is far too short a time to find accommodation in an area of housing need and given the particular needs of the occupier of the first floor flat.
22. The appellant has requested that the compliance period be varied from 6 weeks to 12 months. However, in my judgement this would be an excessive period for the occupiers to reside in sub-standard accommodation.
23. Taking all into account, and balancing the development's harm with a reasonable time for the occupiers to look for alternative accommodation and time necessary to carry out the works at the property, I will vary the compliance time to 6 months. The appeal therefore succeeds on ground (g) and I will vary the notice accordingly.

Conclusion

24. For the reasons given above I conclude that the appeal should not succeed except to the limited extent on ground (g). I shall uphold the enforcement notice with corrections and variation and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR