The Planning Inspectorate

Appeal Decision

Site visit made on 30 October 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/H5960/C/19/3222505
Land at 72 Avoca Road, London SW17 8SL

- 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 Mukadam against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The enforcement notice was issued on 3 January 2019.
- The breach of planning control as alleged in the notice is without planning permission, and within the last four (4) years, the unauthorised material change of use of the property from a single family dwellinghouse to use as two self-contained flats.
- The requirements of the notice are;
  1. Cease the unauthorised use of the property as two self-contained flats and return the property to its lawful use as a single family dwellinghouse.
  2. Remove the additional kitchen at first floor level.
  3. Remove from the property any dividing walls, furniture, fittings and fixtures associated with the unauthorised use.
  4. Remove from the site all debris arising from compliance with steps 1 to 3.
- The period for compliance with the requirements is eight weeks.
- 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice be varied by:

   - Deleting 'and return the property to its lawful use as a single family dwellinghouse' from step (1) of the requirements of the notice; by

   - substituting 'six months' as the period for compliance.

2. Subject to these variations, 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 ground (a) appeal and the deemed application

3. The ground of appeal is that planning permission should be granted.

Main issues

4. The main issues are as follows:

   - The effect of the development on the supply of family size dwellings in the Borough; and

- Whether the ground floor flat provides satisfactory living conditions for occupiers, with regard to daylight/sunlight and outlook from the rear bedroom.

Supply of family size dwellings

5. Policy DMH2 of the Wandsworth Local Plan Development Management Policies Document 2016 (DMPD) relates to the conversion of dwellings and sets out a number of requirements. Part (a) of the policy states that where dwellings have less than 150 square metres habitable floorspace, their conversion will only be permitted where the property is unsuitable for families.

6. In this case, the Council maintains that the original end of terrace dwelling had a habitable floorspace of less than 150 square metres. Part (b) of DMPD policy DMH2 states, amongst other things, that extensions added since the end of 2008 will not be taken into account in determining existing floor space. The Council identifies that various extensions were added after 2008, and refers variously to a pre-existing floor area of 142.9 square metres, and 106.6 square metres without the extensions. The appellant states that the building presently has a floor area of 167.7 square metres. However, the evidence indicates that the dwelling had a habitable floor space of less than 150 square metres in 2008, and the development therefore conflicts with Part (a) of policy DMH2.

7. The appellant argues that the dwelling was unsuitable for occupation by a family due to its location close to a busy main road and adjacent to a public house. However, I note that the site is set slightly away from the main road on a side road in a predominantly residential area. In any event I have seen no firm evidence that the main road results in an environment that is unsuitable for families. With regard to the public house, while I appreciate that this could give rise to noise and disturbance, particularly in the evenings and at weekends, no detailed evidence has been put forward that demonstrates that this is at a such a level that makes the building unsuitable for occupation by a family.

8. Even if the larger pre-existing floor space of 167.7 square metres were to be correct, under part (b) of Policy DMH2, at least one family-sized unit would need to be provided, with access to a dedicated rear garden. The development has created two flats with access to a garden, that exceed the minimum internal space standards for two bedroom flats, and as a result could accommodate a small family. However, both the flats are below the required size of 150 square metres, as identified by the Council to provide family sized accommodation. I appreciate that the flats contribute to the mix of dwelling sizes in Avoca Road, but this does not override the identified need for small family houses.

9. The development has therefore resulted in the loss of a small family dwelling. As a result, it is harmful to the supply of family dwellings in the Borough, and conflicts with DMPD Policy DMH2, insofar as it seeks to restrict the conversion of dwellings with less than 150 square metres of habitable floorspace.

Living conditions

10. The bedroom towards the rear of the ground floor flat has no windows but has a fully glazed door at the end of its rear wall, leading onto a lightwell. A single storey rear extension to the appeal property, which has been partially inset

from the side boundary, encloses two sides of the lightwell with a tall parapet wall. The boundary with the neighbouring property is marked by a fence, and that property also has a single storey rear extension.

11. Due to the proximity of the extension, fence and neighbouring extension, the outlook from the bedroom is onto walls and a fence, with no clear view of the sky from within the bedroom. The neighbouring extension further restricts the outlook from within the lightwell and when standing close to the door within the bedroom.

12. As a result of the enclosing effect of the extension and fence, the room was poorly lit and gloomy. While limited access to sunlight is not unusual in a single aspect bedroom, the low level of daylight reaching the room and the very restricted outlook result in inadequate living conditions for a habitable room.

13. For these reasons, I find that the ground floor flat does not provide satisfactory living conditions for occupiers, with regard to the daylight and outlook from the rear bedroom. Consequently, it is in conflict with DMPD Policies DMS1, DMH2 and DMH4, which seek, amongst other things, to ensure that developments do not harm the amenity of occupiers and provide a satisfactory environment.

Other Matters

14. The Council has raised a concern with the headroom in the bedroom in the loft space, but this did not form part of its reason for issuing the enforcement notice. The issue of the quality of the work that has been carried out and waste being left on the street are not matters that have any bearing on my decision. Various concerns have been raised in relation to works affecting private land, including the formation of a door, installation of pipes and storage of waste, but these are private matters to be resolved between the parties.

15. The appellant refers to an appeal that was allowed on a site in a different Borough in 2005[1], where the Inspector found that although the proposed flats did not meet minimum internal space standards, no harm to living conditions of occupiers resulted. This is not comparable with this case, where I have identified harm to the supply of small family houses and unsatisfactory living conditions in relation to outlook and daylight. It does not therefore indicate that permission should be granted.

Planning balance

16. The appellant argues that the presumption in favour of sustainable development should apply. It is not however suggested that the development plan is out of date, nor that the Council does not have a deliverable five year supply of housing land. The 'tilted balance' in paragraph 11 of the National Planning Policy Framework (the Framework) is therefore not engaged.

17. The development has resulted in an additional dwelling in an accessible location that meets and exceeds internal space standards and has brought economic benefits in terms of sustaining local businesses and social benefits. I recognise that London Plan policy 3.3 states that Boroughs should seek to achieve and exceed the relevant minimum borough annual average housing target. However, these matters do not outweigh the harm I have found to the supply of small family houses, and from the failure to provide satisfactory living

[1] Ref APP/Q/5300/A/04/1154177

conditions for occupiers. The development is therefore in conflict with DMPD policies DMS1, DMH2 and DM4. No material considerations have been identified that would warrant making a decision other than in accordance with policies in the development plan.

18. For the reasons given above I conclude that the appeal on ground (a) should fail and the deemed application for planning permission should be refused.

Ground (f) appeal

19. This ground of appeal is that the steps for compliance with the notice are excessive, although the appellant has not suggested any lesser steps. I note however that the requirement to return the property to its lawful use exceeds what is necessary to remedy the breach. Therefore, a requirement to simply cease the use as self-contained flats is sufficient and I shall vary step (1) accordingly.

20. In conclusion, I shall vary step (1); and to this limited extent the appeal on ground (f) succeeds.

Ground (g) appeal

21. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The appellant states that 8 weeks is insufficient for occupiers to find alternative accommodation, and for the works to then be carried out, as the works will be noisy and disruptive. Time is also needed to prepare alternative proposals for the building, for it to be converted into two with a reconfigured layout.

22. It would be appropriate to allow some additional time for occupiers to look for alternative accommodation and for the consideration of an alternative proposal for the building. However, I recognise that there is a balance between bringing the identified harm to an end without unnecessary delay, and the interest of the appellant. I have seen no evidence that the works required in order to comply with the notice are likely be particularly lengthy. I therefore conclude that 6 months would be sufficient to allow occupiers to look for alternative accommodation and for the consideration of an alternative proposal for the building.

23. To this extent, the ground (g) appeal succeeds and I will vary the notice accordingly.

N Thomas

INSPECTOR