



Appeal Decision

Site visit made on 26 September 2019

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 January 2020

Appeal Ref: APP/P5870/C/18/3218654 52 Oldfields Road, Sutton SM1 2NU

- 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 M Alim against an enforcement notice issued by the Council of the London Borough of Sutton.
 - The enforcement notice was issued on 21 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the subdivision of an existing single family dwelling house into 2 (two) self-contained flats.
 - The requirements of the notice are:
 - (i) Cease the use of the property as 2 (two) self-contained units (flats).
 - (ii) Restore the property to the state it was prior to the breach of planning control by removing the upstairs kitchen, including all cooking facilities, sinks, worktops and kitchen units.
 - (iii) Remove from the land all building waste and materials arising from compliance with requirements (i) and (ii) above.
 - The period for compliance with the requirements is six months after this notice takes effect.
 - 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 the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of six months and the substitution of nine months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Background

3. In 2016 planning permissions were granted for a single storey rear extension to the bungalow, then apparently used as a single family dwellinghouse, and also the conversion of its loft space and formation of a dormer extension. It is understood that both these developments were subsequently implemented. Following this, in July 2018, planning permission was refused for the conversion of the property to one 2-bed and one 3-bed self-contained flats.
4. It is unclear from the information before me whether the latter application was retrospective, but the property underwent conversion, regardless. The

Council's decision was not appealed and the Council subsequently considered it expedient to issue an enforcement notice.

The Appeal on ground (a) and the Deemed Planning Application

Main Issues

5. These are:

- 1) whether the development provides for a satisfactory standard of accommodation for its future occupiers;
- 2) whether adequate off-street car parking space is available for the benefit of the flats' occupiers; and
- 3) the effect of the development on the living conditions of neighbouring occupiers.

Reasons

Standard of accommodation

6. Policy 10 'Loss of Housing and Conversions' of the Sutton Local Plan (SLP) allows for the conversion of residential dwellings with a minimum floorspace of 125 sqm, but providing that the property falls within a locally designated 'Area of Potential Intensification', which relates to sustainability. Although the recently permitted extensions have increased the bungalow's floorspace significantly, the policy explains that the said threshold relates to a dwelling's unextended state. In this instance the Council has estimated that the appeal property, prior to it being extended, would have had a total floorspace of approximately 70 sqm. In the circumstances neither of the said criterion is met, and the development is thereby in conflict with the SLP.
7. In terms of individual flat sizes, including those resulting from conversions, policy 3.5 of the London Plan (LP) sets out prescribed minimum floorspace standards for such. The size of the 3-bed ground floor flat at approximately 99sqm exceeds the standard, but the 2-bed, first floor unit falls significantly short in this respect. Although the stated standards are 61 sqm for a 2-bed, 3-person flat, and 70 sqm for a 2-bed, 4-person flat, the upper floor unit measures only some 40 sqm.
8. In terms of external garden space, from my site visit's observations, it would seem that only the ground floor flat has direct access to the rear garden. The appellant indicates that there is also a side pedestrian access, but the arrangement seems somewhat impracticable and it is unlikely that the rear garden could be considered as a communal facility. Neither am I convinced as to the appellant's point that the upper floor occupants could use the front garden area for sitting-out purposes. Given the property's location off a busy, main road, this would not be an attractive proposition.
9. That said, it is likely the case that the larger ground floor flat would make greater use of the garden. In such instances, local public open space can sometimes be seen to mitigate a shortfall in provision, although I have not been provided with any details of such.
10. The appellant indicates he does not dispute any of the measurements provided by the Council. Given this, and also my observations, I am therefore taking

these figures as a roughly accurate representation. As such, the said shortfalls are not marginal.

11. On this first main issue I therefore conclude that the development does not provide for a satisfactory standard of accommodation, and is in material conflict with SLP policies 9 and 10, LP policy 3.5 and relevant advice contained within the Council's Supplementary Planning Document 14 'Creating Locally Distinctive Places' (SPD).

Car parking

12. Given that the site has a low public transport accessibility level (PTAL) of 2, it is likely that the occupiers would have private motor vehicles and parking space would be required. Submitted plans would indicate that there is off-street space available at the rear of the property to accommodate three cars. Situated behind the rear garden wall, this space, though, is of limited width and tapers. As such, if three vehicles were to be parked within, the front two vehicles would be hemmed in and unable to exit.
13. Access through to the rear garden via the doorway in the wall might suit the occupiers of the ground floor flat, but the upper floor occupiers would likely have the inconvenience of walking some distance round to the property's common front entrance. In the circumstances I find that the suggested parking arrangement is neither practical nor convenient.
14. On this main issue I therefore conclude that the development is unable to provide a satisfactory and workable on-site parking arrangement, contrary to the aims of SLP policy 37.

Living conditions

15. The Council considers that the property's conversion into two flats results in undue noise and disturbance due to the property's intensification and increased comings and goings of its occupiers. As mentioned, there is a common front entrance to the property and, notwithstanding my findings as to the workability of the car parking arrangements, it is not particularly unusual for people to also access their homes from the rear, if possible. Indeed, the road to the rear of the property has a series of garages which would illustrate that this form of access is not uncommon.
16. In the circumstances, I am satisfied that the development is not harmful to the living conditions of neighbouring occupiers and, in this particular regard, there is no material conflict with the objectives of SLP policies 10 and 29.

Other considerations

17. The appellant comments that the development adds to the Council's housing stock and has drawn my attention to the government's Housing Delivery Test (HDT). The Council, for its part, says that since 2009 the Borough has met its annual housing target in 7 out of 9 years. Indeed, in referring to the HDT figures, I note that the 2018 measurement shows that the Council significantly exceeded its target.
18. Given that the property was previously in use as a single family dwellinghouse, the net increase would be one unit and, moreover, from my findings, would involve the inclusion of an under-sized unit in relation to prescribed standards.

I therefore afford little weight to the contribution that the development would make to the Council's housing stock.

Conclusion on ground (a)

19. Although I have found that the development does not unduly affect the living conditions of neighbouring occupiers, I have, though, found material harm on the other two issues which significantly outweigh this. Accordingly, I conclude that the appeal on ground (a) should not succeed and the deemed planning application is refused.

The Appeal on ground (f)

20. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach.
21. It is necessary to first establish what the Council is seeking to achieve by the notice. In requiring for the use to cease the primary purpose of the notice must be to remedy the breach and what must be considered is whether the requirements exceed what is necessary to achieve that objective.
22. The appellant indicates that the removal of the kitchen facilities is an excessive step because it could create cost should an alternative use of the premises be considered, such as a House in Multiple Occupation (HMO). It is also argued that the upper floor could be occupied as an annexe, and additional kitchen facilities might therefore be needed. As an alternative, the appellant says that the reinstatement of one single external access would achieve the Council's objective.
23. The requirements are aimed at remedying the breach of planning control by restoring the property to its condition before the breach took place. Whilst I understand why the appellant wishes to keep the facilities in place these were installed to facilitate the unauthorised use.
24. The Courts have held that where an enforcement notice is issued alleging a change of use its requirements may demand the removal of works integral to and solely for the purpose of facilitating that use. There is no evidence that the works were undertaken for a different and lawful use and, on the contrary, there is no doubt that the works referred to in the requirements have facilitated the unauthorised use. In such circumstances I find their removal is necessary and proportionate to remedy the breach of planning control.
25. An enforcement notice must not prevent, or purport to prevent, a property owner from doing something he/she is lawfully entitled to do without planning permission. Notwithstanding the appellant's view that the building might be used in future as an HMO an enforcement notice's purpose is remedial, and it is not to verify alternative future uses.
26. I conclude, therefore, that the appeal on ground (f) should not succeed.

The Appeal on ground (g)

27. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers that a six month period is too short and believes that a more reasonable period for compliance would be nine months.
28. In his representations the appellant says that a period of six months would bring about stress and inconvenience to the occupiers who would need to find alternative accommodation. Having considered this, I am of the view that the cessation of use combined with the remedial works required could likely take longer than the time period which the Council has stipulated. An increased compliance period of nine months would not be unreasonable in the circumstances.
29. I therefore conclude that the appeal on ground (g) should succeed, and the notice is varied, accordingly.

Overall Conclusion

30. For the reasons given, the enforcement notice is varied to take into account the extended period for compliance. Otherwise the appeal fails and the notice is upheld.

Timothy C King

INSPECTOR