



Appeal Decision

Site visit made on 10 December 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/N5090/C/19/3228572

10 Gilbert Grove, Edgware HA8 0HL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jason Ho against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 16 April 2019.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the property by its sub-division into 2 no. self-contained units.
- The requirements of the notice are:
 1. Cease the use of the property as 2 no self-contained flats;
 2. Remove all but one kitchen from the property the works to include the removal of kitchen worksurfaces, kitchen units, sinks and cooking equipment from all but one room.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matter

1. The first requirement is to cease the use of the property as two self-contained flats. This would leave the appellant open to use the property as, for example three flats, while still complying with the requirement. There is no indication that this would occur, and the constraints of the property may prevent this in any event. Nonetheless, to avoid uncertainty I will correct the requirement to delete the number two. I am satisfied I can make this correction without injustice to the appellant or to the local planning authority as the effect of the notice remains unchanged.

The appeal on grounds (b) and (c)

2. In order to succeed in an appeal on ground (b), the appellant must show on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact. In order to succeed on ground (c), the appellant must show on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. As the appeals on (b) and (c) are based on similar reasons I have considered these grounds of appeal together to avoid repetition.
3. It is claimed that the appellant has not sought to divide the property into flats but has only installed and upgraded safety equipment. It is stated that the intended use is as a House of Multiple Occupation (HMO) for two people.

4. Further, the appellant states that the property was a HMO, with two kitchens, when he acquired it in November 2017. I also understand that the premises has a licence for use as a HMO, issued by the Council.
5. Under section 254 of the Housing Act 2004, a building or part of a building is a "house in multiple occupation" if it consists of one or more units of living accommodation not consisting of a self-contained flat or flats¹; and two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities².
6. I saw from my visit that the property contained two units of accommodation that could be separated by an internal dividing door at the foot of the staircase. Both units contained all three basic amenities and, therefore, fall within the definition of a self-contained flat set out in section 254. There is no evidence that this was not the case when the notice was served. The appellant has not shown on the balance of probability that the matters alleged have not occurred, therefore, the appeal on ground (b) must fail.
7. The Town and Country Planning (General Permitted Development) (England) Order 2015 grants deemed planning permission for development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) to Class C4 (houses in multiple occupation)³ within the meaning of Class C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987. For the purposes of Class C4, a house in multiple occupation has the same meaning as in section 254 of the Housing Act 2004.
8. As set out above, I saw that the premises had been subdivided into self-contained flats each containing basic amenities. The appellant has not provided any information to the contrary. The standard tests set out in s254 have not been met and, consequently, the property was not in use as a house in multiple occupation at the date of the notice or thereafter.
9. The change of use of the premises to two self-contained flats constitutes development⁴ for which express planning permission would be required. There is no evidence of any such permission, therefore, the appeal on ground (c) must fail.

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

Main Issues

10. The terms of the deemed planning application are derived from the allegation, hence, planning permission is sought for the use of the property as two self-contained units.
11. The main issues are: (i) whether the flats provide adequate living conditions for the occupants with regard to internal floorspace, outdoor amenity space and outlook and (ii) the effect of the development on the provision of family housing in the Borough.

¹ "Self-contained flat" means a separate set of premises (whether or not on the same floor)- (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

² "Basic amenities" is defined in subsection (8) as (a) a toilet, (b) personal washing facilities, or (c) cooking facilities.

³ Use of a dwellinghouse by not more than six residents.

⁴ Section 55(3)(a) of the Town and Country Planning Act 1990.

Reasons

Living Conditions

12. The appeal property is a modest two-storey terraced property located in an area of similar residential development. The appellant is seeking to use the premises as two self-contained flats. The ground floor flat would comprise one double bedroom with an ensuite shower/WC, a living room and a kitchen with access to a garden, and a further room at the end of the garden. The upper floor flat would comprise two double bedrooms, one with ensuite facilities, a kitchen, living room and separate bathroom.
13. The Council is concerned about the living conditions provided by the flats, in particular, the limited internal floorspace. Minimum floorspace requirements are set out in Policy 3.5 and Table 3.3 of the London Plan (2016), which are consistent with the Nationally Described Space Standards (2015). The standards require a one bedroom flat with two bed spaces to have a gross internal floorspace of 50 square metres (sqm). The appellant's plans show that the ground floor flat (flat one), would be significantly below standard at 34.3 sqm. The garden room would not compensate for this as it is physically detached from the house. Moreover, it is not apparent that the garden room is constructed to residential standards and may not provide adequate levels of insulation and/or heating.
14. The first floor flat (flat two) could be occupied by up to four people. The minimum floorspace required would be 70 sqm, but only 58.5 sqm would be provided. Therefore, both flats would be significantly below the adopted standards. This does not take account of space for internal storage or the additional constraints resulting from the floor to ceiling height in bedroom two of flat two. In addition, flat two would not have access to outdoor amenity space, which would also adversely affect the living conditions of the occupants. There is no information before me to explain how the lack of outdoor space could be mitigated, by proximity to public parks for example.
15. The Council is also concerned about the outlook for flat two. I saw that there is adequate light and outlook to the majority of the rooms, however, this does not overcome my concerns about internal floorspace and amenity space, as set out above.
16. I conclude on this issue that the development would not provide adequate living conditions for the occupants with regard to internal floorspace and outdoor amenity space. It fails to meet the requirements of Policy 3.5 of the London Plan, which requires housing to be of the highest quality internally, Policy CS5 of the Core Strategy⁵ which seeks to ensure development respects local context and character, Policy DM01 of the Development Management Policies⁶ which seeks to ensure development provides quality living conditions for occupiers and DM02 which requires development to conform to national and local standards, including minimum floorspace requirements. The development does not take account of the Council's guidance within its Supplementary Planning Documents: Sustainable Design and Construction and Residential Design Guidance (2016), which set out detailed requirements relating to minimum residential space standards and outdoor amenity space.

⁵ Barnet's Local Plan (Core Strategy) Development Plan Document (September 2012).

⁶ Barnet's Local Plan (Development Management Policies) Development Plan Document (September 2012).

Family Housing

17. The Council is opposed to the development as it results in the loss of family housing. However, I am not provided with any up-to-date evidence of housing need which considers the type of housing required to accommodate different groups in the community. Conversions to flats can provide a valuable source of housing which can contribute to meeting housing needs in the Borough.
18. I accept that there is likely to be demand for family housing but, equally, there is likely to be demand for housing to meet the needs of smaller households. The National Planning Policy Framework (the Framework)⁷ makes it clear that the size, type and tenure of housing need for different groups in the community should be assessed and reflected in planning policies. The circumstances in this case means that the premises provides accommodation for smaller households, thus meeting a housing need in accordance with the wider policies of the Framework, and Policy CS1 of the Core Strategy which sets out the Council's place shaping strategy.
19. The Council also indicates that the development would not respect the character of the surrounding residential development, which I understand is single family dwellinghouses. However, the Council's evidence on this matter is very limited. There is no analysis of the area's character or an explanation of how the development would impact on the area.
20. I consider that the provision of accommodation for smaller households is a significant benefit which outweighs the any conflict with the Council's strategic aims for the provision of housing in the Borough. It has not been shown that the development would adversely impact on the character of the area. Therefore, I find that the development accords with Policy CS5 of the Core Strategy, which seeks to ensure development respects local context and character, Policy DM01 of the Development Management Policies, which seeks to ensure development maintains the character of residential areas through resisting inappropriate flat conversions and the Supplementary Planning Document: Residential Design Guidance, which seeks to enhance local character.

Other Matters

21. The appeal site is within the Watling Estate Conservation Area which has historic significance due to the estate's development as part of a state funded house building programme. The planned layout contributes to the significance of the designated heritage asset.
22. The development has not resulted in any significant alterations to the external appearance of the property. Hence, I am satisfied that the character and appearance of the Watling Estate Conservation is preserved.

Conclusion

23. It is suggested that planning conditions could be imposed to restrict the use of the property. However, the deemed planning application concerns the change of use of the property into two self-contained flats. It would be unreasonable to grant planning permission for that development then seek to restrict the use through planning conditions.

⁷ February 2019.

24. I am not satisfied that conditions would overcome my concerns. Therefore, the appeal on ground (a) must fail.

The appeal on ground (f)

25. Section 173(4) of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the notice is to remedy the breach of planning control.
26. The appellant explains that he wishes to retain the second kitchen, indicating that its removal is onerous as it could be retained and used for some other lawful purpose.
27. The Courts have ruled that where a notice is directed at a material change of use, and requires that certain works be removed, those works must have been integral to or part and parcel of the making of the material change of use. It will not be sufficient if the works had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased.
28. The question of what is necessary to prevent the unauthorised use depends on the facts of the case. As explained above, the evidence does not support the appellant's claim that the property was in use as a house in multiple occupation, the critical factor being the cooking facilities that were installed in each unit. It follows, therefore, that the kitchens were integral to and part of parcel of the making of the material change of use and should be removed to prevent the unauthorised use from continuing. The steps are necessary to remedy the breach of planning control and the appeal on ground (f) must fail.

Conclusion

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Formal Decision

30. It is directed that the enforcement notice is corrected by the deletion of "2 no." before self-contained flats in paragraph 5.1 of the notice.
31. Subject to this correction, 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.

Debbie Moore

Inspector