
Appeal Decision

Site visit made on 2 December 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 7 February 2020

Appeal Ref: APP/H5960/C/19/3229780

Land at 113 Lessingham Avenue, London SW17 8NG

- 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 Ms S Ali on behalf of Greenhomes Investment Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The enforcement notice was issued on 3 April 2019.
- The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, material change of use from single family dwellinghouse to two self-contained flats.
- The requirements of the notice are 1. Cease the unauthorised use of the property as two self-contained flats; 2. Remove the additional kitchen and dining at first floor level; and ensure that the floor plans accord with the approved floor plans of planning permission ref: 2016/6243; 3. Remove any dividing walls, fixtures, fittings or equipment associated with the unauthorised use from the property; and 4. Remove from the site all debris arising from compliance with steps 1 and 3.
- The period for compliance with the requirements is six 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 s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

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

Background and Main Issues

1. The appeal property was granted planning permission for alterations in connection with the use of the garage as habitable accommodation, and part single, part two-storey side/rear extension permission under reference 2016/6243 (2017 Permission). The 2017 Permission related to a single dwelling and the accommodation in the garage was not permitted to create a separate unit.
2. The property was subsequently converted into two flats and planning permission was refused for this change of use pursuant to a retrospective application submitted under reference 2018/6144 (2018 Application). It is this change of use which is the subject of the enforcement notice.
3. The main issues are: the effect on the supply of family housing in the Borough; and whether adequate living conditions are afforded for occupants of the ground floor flat, with particular regard to sunlight/daylight and outlook.

Reasons

Family housing

4. Policy DMH 2 of the Local Plan Development Management Policies Document (2016) (DMPD) details the Council's policy in relation to residential conversions. DMH 2(a) states that conversions of dwellings with less than 150 square metres of existing habitable floor space will only be permitted where the property is unsuitable for families.
5. The explanatory text to this policy details that extensions carried out since 2008 will not be included within the calculation of existing habitable floor space (reflecting the date of the Council's analysis of residential conversions). This text recognises that conversions play an important role in increasing the number and variety of dwellings in the borough, but emphasises that this should not be at the expense of family housing.
6. The appeal property had a habitable floorspace of some 84 square metres in 2008, and even following the 2017 Permission, only had some 121 square metres, below the DMH 2 threshold. The host property is located within a typical residential street and has a rear garden and there is nothing to suggest that it is not suitable for families. Accordingly, the alleged change of use results in the loss of a family home in conflict with Policy DMH 2.
7. DMH 2(b) indicates that conversions of dwellings of 150 square metres or more of habitable floor space will only be permitted subject to certain criteria including that at least one family-sized unit is provided, with access to a dedicated rear garden. The appellant suggests that the two bedroom unit on the ground floor could provide accommodation for a family on this basis. However, the size stipulation in this part of the policy means that it is not relevant to the present case and in any event, 'family-sized unit' is defined in the DMPD as having 3 bedrooms or more, and not two bedrooms as proposed.
8. Weighing in favour of the alleged change of use, this provides one additional net residential unit. This is in the context of development plan policy seeking to support the creation of new homes and the National Planning Policy Framework (2019) (Framework) seeking to significantly boost the supply of homes. The appellant cites also the 2014 Strategic Housing Market Assessment (SHMA) as evidence of the demand for one and two bedroom properties. The fact that the units have been occupied since conversion indicates demand for the development.
9. Drawing these considerations together, the change of use has resulted in the loss of one family unit as defined in the DMPD but has also led to the net gain of one residential unit. However, I have borne in mind that the SHMA pre-dates the DMPD and the explanatory text to Policy DMH 2 specifically emphasises that boosting the supply of homes should not be at the expense of family housing.
10. Indeed, the appellant's argument in relation to net gain and demand for one and two bedroom properties could be made in support of any proposal to subdivide and cause the loss of family homes; the case could thus be made too often. I appreciate that Council Tax records show no similar developments within this postcode, but that will cover a relatively small area whereas the local plan can be taken as reflecting the wider position. The 'net gain'

argument does not therefore justify the conflict with policy or harm caused in this case by the loss of a family home.

11. Policy DMH 3 of the DMPD cited by the appellant would appear to relate to the mix of housing required in new housing development. It is not therefore directly relevant to the proposal here for a conversion where Policy DMH 2 is of key importance in seeking to preserve family housing.
12. I conclude then on the first main issue that the appeal development has an adverse effect on the supply of family housing in the Borough and would conflict with Policy DMH 2 for the reasons outlined above.

Living conditions

13. The appeal property currently comprises two flats, with the ground floor flat set up as two double bedrooms and the first floor flat set up as two double bedrooms also. The rear ground floor bedroom (labelled as 'bedroom two' on the plans submitted with the 2018 Application) has an en-suite bathroom which has its own skylight window. This is not though a habitable room, even if for use only by those sleeping in the bedroom to which it is en-suite. The bedroom itself has only one skylight window and is awkwardly configured so that the majority of the bedroom space derives little benefit from that window in terms of outlook and sunlight/daylight.
14. Although I note comments that the window is south-facing, nonetheless the arrangement of bedroom 2 results in a gloomy and oppressive space. The fact that the room is of a good size and the remainder of the accommodation within the ground floor flat is of a good standard does not overcome this harm.
15. The development does not in this way afford adequate living conditions for occupants of the ground floor flat, with particular regard to natural light/sunlight and outlook. In this way, it conflicts with Policies DMS 1 and DMH 4 of the DMPD which indicate that new development should not harm the amenity of occupiers through unsatisfactory outlook or sunlight/daylight.

Other Matters

16. The appeal property is located within the Totterdown Fields Conservation Area. No party has expressed a view as to the effect of the development of the conservation area. However, given that this is a change of use with no external works, I find that it would preserve the character and appearance of the conservation area and cause no loss of significance to the heritage asset.

Conclusion on Ground (a) Appeal

17. Although the development is located within an accessible location and offers a net additional residential unit, it would cause the loss of a family home in conflict with Policy DMH 2, which is a relevant and up to date policy. There would also be policy conflict and harm related to living conditions as outlined. No material considerations are put forward such as to outweigh the harm identified. I find thus that the change of use would not accord with the development plan read as a whole. The appeal on Ground (a) therefore fails and planning permission is refused in respect of the deemed application.

Appeal on Ground (f)

18. The appeal on this ground seeks to show that the steps required to be taken by the notice exceed what is necessary to remedy any breach of planning control identified or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
19. The purpose of the enforcement notice in this case is to remedy the breach. This is because this is what would be achieved by compliance with the requirements of the notice. Planning merits and amenity considerations have been dealt with under the ground (a) appeal above.
20. The appellant proposes in respect of the ground (f) appeal that the kitchen fittings in the first floor flat be permitted to remain. The justification given is that the appellant might wish to change the use of the property to a small house in multiple occupation pursuant to permitted development rights.
21. It should be noted that as the enforcement notice is directed at a material change of use, it may require the removal of works or items which facilitated or were part and parcel the unauthorised use. It seems plain that the internal works carried out in this case, including the fitting of the first floor kitchen, were undertaken to facilitate the material change of use; the appellant has not shown otherwise. As such, it is not excessive to require their removal to remedy the breach of planning control.
22. It is proper therefore for the notice to require removal of the kitchen (step 2) and any dividing walls, fixtures and fittings etc. associated with the change of use (step 3). It is though excessive for step 2 to require what would amount to implementation of the 2017 Permission.
23. In the interests of precision, it is also necessary to vary the notice so that the reference to ceasing the unauthorised use of the property refers to use as 'self-contained flats', rather than 'two self-contained flats'. Otherwise, this would potentially permit use as one or three or more flats. A further variation is necessary due to an apparent typographical error in that it would appear that the cross reference in requirement no 4 should refer to steps 2 and 3.
24. I consider that I can vary the notice in these ways without causing injustice to either the appellant or the Council. The appeal on ground (f) therefore succeeds in these respects and I vary the notice as outlined in my formal decision below.

The appeal on ground (g)

25. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant requests in their grounds of appeal a period of six months on the basis that this would enable the remedial works to be carried out and for current tenants to search for alternative accommodation.
26. The works entailed in compliance with the requirements of the notice would most likely need to be carried out by a builder and so searching for a builder with availability and having these works carried out could be expected to take at least a few weeks. As the property is currently tenanted, a fair period of time should also be allowed to enable proper processes to be followed pursuant

to any tenancy agreements in place and to enable tenants time to search for an alternative home.

27. A total period of 6 months would be reasonable to facilitate the works and search for new accommodation. The appeal on ground (g) therefore succeeds and the notice shall be varied accordingly.

Overall Conclusion

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

Formal Decision

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

- Deleting from paragraph 5 requirement No 1 the word "two".
- Deleting from paragraph 5 requirement 2 the wording "and ensure that the floor plans accord with the approved floor plans of planning permission ref: 2016/6243".
- Deleting from paragraph 5 requirement No 4 the words "1 and 3 and substituting "2 and 3".
- Deleting from paragraph 6 the words "Six (6) weeks" and substituting the words "Six (6) months" as the period for compliance.

30. 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.

V Bond

INSPECTOR