



Appeal Decisions

Inquiry Held on 13 and 18 February 2020

Site visit made on 18 February 2020

by J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13th March 2020

Appeal A: APP/C5690/C/18/3206841

Land and premises known as 30 Arcus Road, Bromley, Kent, BR1 4NW

- 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 Mrs Tanya Erol against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 18 June 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the premises:
 - From: Use as a dwelling house Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)
 - To: Use as a self-contained flat at ground floor level, as shown hatched blue on the attached drawing¹, and a self-contained flat situated in the ground floor side extension, as shown dotted black on the attached drawing, and a self-contained flat at first floor level.
 - The requirements of the notice are:
 1. Cease the use of the ground floor of the premises as shown hatched blue on the attached drawing, as a self-contained flat
 2. Cease the use of the ground floor side extension as shown dotted black on the attached drawing, as a self-contained flat
 3. Cease the use of the first floor of the premises as a self-contained flat
 4. Remove the kitchen fixtures and fittings situated at first floor level of the premises
 5. Remove the partition situated at the ground floor entrance hall as shown shaded green on the attached drawing
 6. Remove the partition subdividing the ground floor side extension from the remainder of the ground floor as shown shaded red on the attached drawing
 7. Remove the partition and access door to the first floor flat situated at first floor level as shown on the attached photograph
 8. Remove all rubble and building materials resulting from compliance with requirements 4 – 7 above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/C5690/X/18/3204048

Land and premises known as 30 Arcus Road, Bromley, Kent, BR1 4NW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Tanya Erol against the decision of the Council of the London

¹ In this heading, references to "the attached drawing" are to the drawing attached to the enforcement notice.

Borough of Lewisham.

- The application Ref DC/18/106131, dated 27 February 2018, was refused by notice dated 3 May 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use as three self-contained flats (use Class C3).
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Decisions

Appeal A: APP/C5690/C/18/3206841

1. It is directed that the enforcement notice be varied in section 6 by substituting the following as the time for compliance:

“Requirements 1 – 3: Six months after this Notice takes effect.

Requirements 4 – 7: Eight months after this Notice takes effect.”

Subject to this variation 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.

Appeal B: APP/C5690/X/18/3204048

2. The appeal is dismissed.

Procedural matters

3. In relation to appeal A, the appeal form originally cited grounds (a), (c), (d) and (f). However, the matters submitted in the appellant’s Statement of Case in support of ground (f) clearly relate to ground (g). The appellant’s planning consultant’s proof referred to ground (f), but it was confirmed at the start of the inquiry that this ground, and indeed ground (c) were withdrawn, leaving grounds (a), (d) and (g) to be considered.
4. Regarding appeal B, some confusion arose because a copy of the LDC application on the Planning Inspectorate’s file was dated 4 May 2018. However, this cannot be correct, given that the application was refused on 3 May 2018. The copy appended at tab 2 of Ms Biddlecombe’s proof bears the date 27 February 2018. There is no obvious explanation for this discrepancy, but I have taken the February date as the correct one and it makes no difference to my decision in any event.
5. Proofs of evidence from Ms Biddlecombe and Mr Che were submitted on behalf of the Council and appellant respectively, but those witnesses were unable to attend the inquiry. However, Ms Biddlecombe’s proof was adopted by Mr Adamczyk and Mr Che’s proof was adopted by Mr Martin. All evidence was given on oath.
6. During the first morning of the inquiry, the appellant’s agent, Mr Martin, indicated that additional documentary evidence had been submitted to the Planning Inspectorate (PINS) and the Council by email on 14 January 2020. Although Mr Che’s proof was received under cover of an email dated 17 January 2020, neither the Council nor PINS had received that earlier email or attachments. Copies of those documents were given to the Council at the inquiry for its consideration, but not to me. The Council said that, whilst it did

not object to this evidence being submitted, it would need time to fully consider it. However, following several short adjournments, the appellant indicated through counsel that she did not wish to submit the additional documentary evidence to me.

7. On the second day, counsel for the appellant said the likely explanation for the 14 January 2020 email not being received was that the attached files were too large. When the Council nevertheless put one of the documents to Mr Martin in cross examination (namely a slightly different version of a copy tenancy agreement already in evidence as part of exhibit 4 to Mrs Erol's statutory declaration)², the appellant was given a further opportunity to submit all of the other evidence, but this was declined.

Appeal A, ground (d) and Appeal B

8. The issue on ground (d) is:

- whether the appellant has proved on the balance of probability that the use of any part of the appeal building³ changed to use as a self-contained flat on or before 18 June 2014⁴ and that the use of that part as a self-contained flat then continued for at least 4 years after the date of the change, without any substantial interruption; and if so
 - whether that breach of planning control was deliberately concealed in a manner which should result in the appellant being deprived of the immunity offered by section 171B of the Act.

9. The issue on appeal B is whether the Council's refusal of an LDC was well founded. However, this will turn on the same considerations as ground (d) above, save that the key date is 27 February 2014, being 4 years prior to the date of the LDC application.

Reasons

10. I shall focus first on the appellant's own evidence in relation to each of the flats, the starting point being Mrs Erol's 'statutory declaration' dated 10 January 2018 (the declaration). That document may not comply entirely with the usual formalities for statutory declarations. However, it was originally submitted as part of a response to a December 2017 Planning Contravention Notice (PCN) and so criminal sanctions can apply if false information was knowingly or recklessly given in that document. In any event, the declaration served as Mrs Erol's proof when she gave evidence on oath and its contents carry weight accordingly.
11. In short, the declaration confirmed that the appeal property had been let as 3 self-contained flats on 1 October 2013 and it exhibited copy tenancy agreements and a few other pieces of documentary evidence. I will look at these in relation to each flat.

² Inquiry document (ID)7.

³ This formulation has regard to the judgement in *Van Dyck v SSE and Southend-on-Sea BC* [1992] 66 P&CR 61.

⁴ Four years prior to the issue of the enforcement notice.

Flat 3

12. I will consider Flat 3 first, as an issue concerning that unit and when the change of use took place, arose early in Mrs Erol's own evidence. This flat is in the ground floor side extension to the main house. The declaration exhibits the front page of a tenancy granted to two individuals on 1 October 2013 for a term of 12 months commencing 2 October 2013. However, photographs taken by a Planning Enforcement Officer (Sean Farnan) on 4 June 2014, and included at tab 4 of Ms Biddlecombe's appendices, show the side extension unoccupied and unfinished inside.
13. Mrs Erol explained that the statement in her declaration and response to the 2017 PCN that Flat 3 had been occupied since 2 October 2013 was not correct. When cross-examined, she said the true position was that: (i) there had been problems with plaster falling off the walls in the extension and the tenants did not move in until 13 June 2014; (ii) when she signed the tenancy on 1 October 2013, she knew the Flat would not be ready for the start of the 12-month term on 2 October; however (iii) the tenants were trying to get their child into a local school, so she helped them by signing a tenancy agreement suggesting that they would be living there from that date.
14. When asked how she knew occupation of Flat 3 had commenced on 13 June 2014, Mrs Erol said this was because she had received an email from the tenants. However, no email was put in evidence and the accuracy of that date is dependent on the extension having been completed in the 9 days following Mr Farnan's visit on 4 June.
15. In this regard, Mrs Erol said only works of plaster boarding, wiring and painting remained outstanding. Despite having recently built his own house, Mr Adamczyk acknowledged that he is not a professional builder. Nevertheless, having been a development control or planning enforcement officer for more than 30 years, he has been on many building sites. Referring to Mr Farnan's photographs, he commented that the plastering alone would take "2 – 3 days solid graft" and then it would take "about a week to dry" and in addition, electrical work had to be completed. I attach significant weight to Mr Adamczyk's view that it was "simply not credible" for the outstanding works to have been completed in the 9 days following Mr Farnan's visit, to enable the tenants to move in on 13 June.
16. I also note that, in responding on 24 April 2014 to a PCN issued on 26 March 2014 (the 2014 PCN), Mrs Erol said a "wooden frame building on the side of the house has been added to be used as storage/workshop." This was repeated in an accompanying letter and can only refer to the extension which is now Flat 3. That statement was given at a time when, on Mrs Erol's evidence at the inquiry, she had granted a tenancy of this flat and she knew the tenants were going to move in. Furthermore, according to Ms Biddlecombe's proof, Mr Farnan noted the appellant's statement during his visit in June 2014, that the purpose of the extension was to store supplies associated with an ice cream business.
17. As late as March 2015, a Design and Access Statement (DAS) submitted in support of an application for planning permission for the "retention of single storey side and rear extensions" indicated that the extension would be used as a 'granny annex' and would "not be used as a self contained unit." The original drawings submitted with that application Ref DC/14/89976 in November 2014

(the 2014 application) show an open hallway linking the extension to the main house on the "existing ground floor plan".⁵

18. Mrs Erol said her initial instructions to the agents submitting the application were given in August 2013, when the firm intention was to use the annex for her parents in law. However, circumstances changed, and that intention was abandoned by September 2013. She said the DAS and plans no longer reflected the real situation at the time of submission because the agents had not been answering her calls and she had forgotten all about the application. This was not a satisfactory explanation, especially since slightly amended plans were submitted in March 2015 and it is unlikely that the agents were acting entirely unilaterally.
19. Mrs Erol said on numerous occasions that she was experiencing a very difficult time when she completed the 2014 PCN response; she wasn't "in the right frame of mind" and she did not really know what she was being asked or what she was saying. In addition to stating that the extension was to be used as a store, Mrs Erol said in her 2014 PCN response: (i) "No works commenced or have been completed to create three self-contained flats"; (ii) "One self-contained house exists"; (iii) "2 adults and 2 children occupy the whole house"; (iv) there were "2 bedrooms in the whole house"; and (v) when asked how many units currently exist at the premises, Mrs Erol replied "1 whole house."
20. These straightforward and emphatic responses do not suggest confusion at the time, and it is difficult to see how the statement concerning the proposed use of the extension in both the PCN response and the accompanying letter could have been a simple error. Nevertheless, when asked about many details from this time, Mrs Erol repeatedly said she simply could not remember.
21. There is no other evidence, such as statements from the tenants or builders; receipts for rent; utility bills; Council Tax or electoral registration records to corroborate the appellant's claim that Flat 3 was ready and occupied as a self-contained flat by 13 June 2014, or even anytime close to that. Indeed, whilst I have not been provided with contemporaneous site visit notes or photographs, an email from the Council Tax Valuation Officer to Mr Martin concerning Flat 3, dated 7 March 2019⁶ is in evidence. This stated: "a council tax inspector visited the property 7th February 2014 and 1st October 2014 and on both of these visits the flat was not habitable, with works still ongoing and in October 2014 looked nowhere near completion."
22. I have no reason to doubt Mrs Erol's evidence that she was experiencing personal and family difficulties at the time. However, she gave no convincing explanation as to why, amidst all this confusion, she specifically remembers 13 June 2014 as the day when the tenants moved into Flat 3; a day which falls conveniently just before the critical date for the purposes of ground (d). An appellant's own uncorroborated evidence can be enough, but even without considering the Council's contrary evidence, there are too many inconsistencies in Mrs Erol's account. Taken together, all the circumstances give me no

⁵ Inquiry document 8. These drawings contrast with versions exhibited to Mrs Erol's declaration which, show a solid wall between the extension and the main house and include annotations on the "existing front elevation" to identify Flats 1, 2 and 3.

⁶ Mrs Biddlecombe's appendices, tab 5.

confidence that her oral evidence concerning the date of the change of use of this part of the building was correct.

23. Even on the appellant's own revised evidence that Flat 3 was ready and occupied from 13 June 2014, appeal B cannot succeed in relation to that flat, as the relevant date is 27 February 2014. For all the reasons given, I am also not persuaded on the balance of probability that the change of use had occurred by 18 June 2014, such that that ground (d) of appeal A could succeed in relation to Flat 3.

Flats 1 and 2

24. The tenancy agreements exhibited to the appellant's declaration include the following:
- (i) Tenancy of "30 Arcus Road, (Flat 1 Ground floor) Bromley...", dated 10 December 2013, to Nikoletta Lippa and Miklos Kovacs, for a term of 6 months from 10 December 2013;
 - (ii) Tenancy of "30 Arcus Road, (Flat 1 Ground floor) Bromley...", dated 29 June 2014, to Nikoletta Lippa and Miklos Kovacs, for a term of 12 months from 29 June 2014;
 - (iii) Tenancy of "30 Arcus Road, (Flat 2 1st Floor) Bromley...", dated 2 December 2013, to Ms Ildiko Kovacs for a term of 3 months from 2 December 2013, endorsed "MOVED OUT 12/3/14";
 - (iv) Tenancy of "30 Arcus Road, Flat 2 1st floor) Bromley...", dated 18 March 2014, to Sasikala George Jebaselvam, for a term of 3 months from 18 March 2014, endorsed "Moved out 10 days later 28/3"; and
 - (v) Tenancy of "30 Arcus Road, (Flat 2 1st floor) Bromley...", dated 29 March 2014, to Miss Luisa Goncalves, for a term of 6 months from 1 April 2014, endorsed "(MOVED OUT 18th AUGUST 2014)"
25. On their face, the above documents indicate that Flats 1 and 2 were separately occupied from December 2013, well before the relevant dates for both appeals. However, the Council spotted a difference between agreement (iii) above and a copy of the same agreement⁷ included in the bundle disclosed to the Council at the start of the inquiry, but which the appellant chose not to submit to me in evidence. The original text of that version appeared to state the property address simply as "30 Arcus Road, Bromley...", without the detail "(Flat 2 1st Floor)". Instead, it appeared from the photocopy that a note had been stuck towards the top right-hand corner of the page with that detail on it.
26. Mrs Erol was not present at that stage, but Mr Martin was recalled to deal with this point. He explained that he had gone through the agreements with Mrs Erol when preparing her declaration in 2017. He said a 'post-it' note had been put on this agreement during their discussion to "clarify" the position.

⁷ ID7.

That detail, identifying Flat 2 was then written onto the agreement itself, before it was exhibited to the declaration.

27. At first, Mr Martin said that this was the only agreement that had been altered in this way. However, during cross examination and when questioned directly by me, Mr Martin eventually admitted that, wherever an agreement included the details of the specific flat in brackets⁸, that detail had been added during his 2017 meeting with Mrs Erol; it was not on the original agreements. This applies to many of the agreements, not just those listed above. Indeed, the earliest agreements which state property addresses beginning "Flat 1", "Flat 2" or "Flat 3" are dated 2016 and 2017.
28. On their face then, the original tenancy agreements from before and sometime after the relevant dates related to the whole of 30 Arcus Road and not to separate flats within it. I appreciate that they indicate rights granted separately to different people at the same time, but they nevertheless suggest those people were sharing the whole house, rather than occupying individual self-contained flats. In this regard, as pointed out during cross-examination, at the time Ms Ildiko Kovacs is said to have been a tenant of Flat 2, someone with the same last name is said to have been a tenant of Flat 1. The details added to the agreements in 2017 amount to more than clarification; they change the substance of the agreements.
29. Another point arose during Mr Martin's recall, which diminishes the evidential weight of the submitted copy tenancy agreements. I had asked Mrs Erol when she had made the various endorsements indicating when tenants moved out. She said they were added at the time the tenants vacated. By contrast, Mr Martin said they were made when he sat down with Mrs Erol to go through the evidence in 2017.
30. I appreciate that some tenants, such as Nikoletta Lippa and Miklos Kovacs appear to have been granted consecutive tenancies. However, in other cases it would be much more difficult to be confident that people who were granted tenancies necessarily remained in occupation throughout the whole of the contractual term or, in the absence of other evidence, that they left on the precise dates indicated by the endorsements. This point is more particularly relevant to the issue of the continuity of the breach, rather than the date of the change of use, but it increases my serious doubts about the cogency of the tenancy agreements generally, as evidence of actual use and occupation.
31. For the reasons given, I place little reliance on the tenancy agreements to show when the use of Flats 1 and 2 as self-contained flats commenced, but the appellant does rely on other evidence. Directgov records indicate that "FLAT 1 GND FLR" and "FLAT 2 1ST FLR" were separately registered for Council Tax (CT) with effect from 25 November 2013. In her proof, Ms Biddlecombe says that, when CT officers visited on 7 February 2014, they witnessed a kitchen and bathroom at ground floor and a kitchen and bathroom at first floor and classified the properties as 2 flats. By contrast, she said that when Planning Enforcement Officers visited from 2014 to 2017, they saw no internal partitions separating the ground floor from the first floor and occupiers could walk between the floors.

⁸ In the case of agreement (iv) above, there is no opening bracket before "Flat 2", but I attach no significance to that.

32. I have no direct evidence from CT officers to explain the basis upon which they concluded Flats 1 and 2 were separately registrable from November 2013. However, Mr Adamczyk indicated that, compared to planning law, he understood from joint working with CT officers that a different test applies under their legislation; in that context, the focus is whether the unit has all the necessary "mod cons." In support of this, the Council drew my attention in closing to *R (o.a.o. Nigel Coleman (Listing Officer) v C Rotsztein* [2003] EWHC 1057 Admin⁹. It is apparent from that judgement that the CT regime does not look to see whether the space has actually been occupied as an independent dwelling; it is merely concerned with whether it has the facilities which would make it capable of such. So, a granny annex which is used wholly as residential space by the occupiers of the main house, and which has an interconnecting internal door, can still be a dwelling for CT purposes. In planning law however, such a granny annex would normally be regarded as part and parcel of the main dwellinghouse.
33. Whilst supportive of the appellant's case, without more, the CT registrations do not establish that the use of the ground and first floors of the appeal property changed to self-contained flats on or before the relevant dates. An email from the Council's Principal Electoral Services Officer dated 30 September 2019 says in "2015, it appears that the property was split into two flats". It indicates that one person was on the Electoral Register at the appeal property in 2013 and one person was recorded there in 2014. Neither of those people is named in any of the submitted tenancy agreements. Whilst electoral registration records may frequently be an unreliable indication of who is in actual occupation of a dwelling, they do not support the appellant's case. As with Flat 3, there are no statements from any of the tenants or others, and no receipts for rent to indicate use of Flats 1 and 2 as self-contained flats from before the relevant date, or indeed at any time.
34. Receipts for materials dated 11 September 2013 are consistent with significant work having been undertaken around that time, but do not indicate the creation of self-contained flats. The other limited documentary evidence in the form of bills and letters to tenants from banks and the Department for Work and Pensions relate to periods long after the relevant dates in 2014. Furthermore, the appellant's own evidence, in the form of the 2014 PCN response, the planning application Ref DC/14/89976 and the unamended tenancy agreements, all suggest little weight should attach to the date of CT registration.
35. Two neighbours spoke of concerns regarding overcrowding at the appeal property and problems relating to transient occupation. One of them specifically said the problems started in 2014, or indeed when the property was purchased, which was July 2013. However, this is no more indicative of a change of use to self-contained flats than it is of intensive occupation of one dwelling.
36. The appellant maintains that Flats 1 and 2 were physically capable of independent occupation from the relevant dates, being self-contained and having all that is needed for living. Whilst Ms Biddlecombe did not visit the appeal property until October 2019, her proof refers to site visits by Council

⁹ ID10.

Enforcement Officers, including 2 by Mr Farnan on 4 June and 27 November 2014. I do not have Mr Farnan's contemporaneous notes but, as the Council's Planning Enforcement Manager, Mr Adamczyk explained that the visit notes and photographs are loaded onto the Council's 'ACCOLADE' digital record system. He confirmed that, having reviewed the files, Ms Biddlecombe's proof was an accurate reflection. It is unfortunate that illness and family illness prevented Mr Farnan and Ms Biddlecombe's attendance. Their oral evidence would have carried greater weight, but I have no good reason to doubt the accuracy of Ms Biddlecombe's summary of Mr Farnan's findings.

37. In any event, Mr Farnan's inspection on 4 June 2014 revealed that each flat then had kitchen and bathroom/toilet facilities, as well as living room and bedroom space. In contrast to the open hallway between Flats 1 and 3, the plans submitted with the 2014 application also show a door between Flats 1 and 2. The appellant said the doors connecting the flats had 2 latches, namely 1 in the top right-hand corner on each side. These were kept locked and only she had the keys. Mr Adamczyk accepted that such a system would result in effective self-containment. However, during both his June and November 2014 visits, Mr Farnan noted no partitions or elements of self-containment between the ground and first floors.
38. There are no photographs from the November inspection and those from the June visit do not clearly demonstrate the absence of lockable doors. Furthermore, the appellant said that, prior to the June inspection, the Council had advised her that full access would be required to the whole property and so she ensured that the internal doors were unlocked and open during inspections. This is plausible. However, the 2014 PCN had been served because it appeared to the Council that there may have been a change of use of the premises to 3 self-contained flats and extension of the premises. Mr Adamczyk's evidence was that Mr Farnan, who has 12 years' experience as an enforcement officer with the Council, would therefore have been looking very closely for evidence of self-containment, including locks on doors, as these are fundamental things. Mr Adamczyk accepted that clear photographs should have been taken. Nevertheless, it seems probable that, if double locks and latches had been on the door between Flats 1 and 2 in June and or November 2014, Mr Farnan would have noted them.

Conclusions on Appeal A, ground (d) and appeal B

39. The appellant's evidence is far from precise or unambiguous. It is internally inconsistent. She says that she was in a confused state at the relevant dates, which makes it more difficult to rely on her explanation of events some years later. Indeed, there were many details which she said she simply could not remember.
40. Imperfect recollection is a very human trait, which adds to the importance of documentary evidence in a case such as this. The tenancy agreements were the principal documents relied upon to corroborate the appellant's account but, for the reasons given, these carry very little weight in support of her case. If anything, the original versions contradict it. The appellant's own evidence is insufficient to demonstrate her case on the balance of probability and the Council's evidence from inspections reduce that probability further.
41. In relation to appeal A, I conclude that the appellant has failed to prove on the balance of probability that the use of any part of the appeal building changed

to use as a self-contained flat on or before 18 June 2014. The same applies in relation to appeal B and the relevant date of 27 February 2014, such that the refusal of an LDC was well-founded. In these circumstances, I need not consider whether the use then continued for at least 4 years after the date of the change, or whether the breach of planning control was deliberately concealed. Appeal A, ground (d) and appeal B must fail.

Appeal A, ground (a)/the deemed application for planning permission

Main issues

42. The main issues are:

- whether the development is acceptable, having regard to the effect on the supply of single family dwelling houses; and
- whether the occupiers of the flats enjoy satisfactory living conditions, having regard to the layout and floor space and external amenity space.

Reasons

43. The development plan comprises the London Plan (LP) March 2016 (consolidated with alterations since 2011), the Lewisham Local Development Framework – Core Strategy Development Plan Document, adopted June 2011 and the Lewisham Local Development Framework – Development Management Local Plan (DMLP), adopted 26 November 2014.
44. DM Policy 3 of the DMLP says the Council will refuse planning permission for the conversion of a single family house into flats except where specified environmental conditions mean that the house is not suitable for family accommodation. Although the LP generally defines family housing as having 3 or more bedrooms, the text supporting DM Policy 3 says single family houses with fewer than 3 bedrooms should also be retained in order to provide housing choice.
45. The appeal property is an end terrace house which had 2 bedrooms when the appellant purchased it. As such, Mr Martin agreed during cross-examination that it is covered by DM Policy 3 in any event. Furthermore, by the time the enforcement notice was issued, it had been extended and I am satisfied that it could then be regarded as a 3-bedroom house, albeit that one bedroom would be on the ground floor. Mr Martin also agreed that no environmental conditions exist to make the house unsuitable for family accommodation.
46. Moreover, under DM Policy 3, even dwellings unsuitable for family accommodation should not be converted to flats unless the net internal floorspace exceeds 130 sq. m. Mr Martin could not dispute the evidence in Ms Biddlecombe's proof that, even as extended, the appeal property failed to meet that threshold. Accordingly, he agreed that the appeal development conflicts with DM Policy 3. He also accepted this policy accords with the National Planning Policy Framework (the Framework), which indicates that planning policies should reflect the housing needs of different groups, including families with children.
47. I conclude on the first main issue that the development has an unacceptably harmful impact on the supply of single family dwelling houses, contrary to DM Policy 3.

48. Turning to living conditions, to ensure that new housing development provides an acceptable level of residential quality and amenity, DM Policy 32 of the DMLP requires compliance with the minimum space standards in the LP. Those standards are set out in LP Policy 3.5, which requires housing developments to be of the highest quality, internally and externally. Ms Biddlecombe's proof sets out gross internal area (GIA) measurements for each flat and I have not been provided with any contrary evidence. Application of the LP standards requires judgements to be made about the number of bedrooms and bed spaces in each flat.
49. When cross examined, Mr Martin accepted that Flat 1 is a 1-bedroom flat with 2 bed spaces. I saw nothing to suggest otherwise and, on the evidence before me, Flat 1 falls short of the minimum 50 sq. m standard by 13.2 sq. m.
50. Ms Biddlecombe assessed Flat 2 as a 2-bedroom, 4 person flat. In so doing, she took account of the loft, which she noted during her inspection on 10 October 2019. However, this was after the enforcement notice was issued. The loft is not referred to in the notice and none of the summaries of earlier inspections mention it, save that Mr Farnan referred to a small loft space which was not in use on 4 June 2014. The deemed application does not include the loft and so Flat 2 should be assessed as a 1-bedroom flat. The bedroom on the first floor nevertheless accommodated a double bed with reasonable space around it and I regard Flat 2 as a 1-bedroom flat with 2 bed spaces. Although Ms Biddlecombe's GIA calculation cannot apply to the first-floor element of Flat 2 alone, this flat is clearly smaller than Flat 1. Therefore, it must also fall significantly short of the LP minimum standard of 50 sq. m.
51. Ms Biddlecombe assessed Flat 3 as a 2-bedroom 3 person flat. Mr Martin did not contest this when cross examined. My own inspection did not suggest any other conclusion and Mr Martin accepted that Flat 3 falls 10 sq.m below the LP minimum standard. Indeed, he accepted that, as all 3 flats fall below the minimum standards, this is a serious breach of DM Policy 32 and LP Policy 3.5. The development cannot therefore be said to represent good design, which creates better places to live, in terms of the Framework.
52. With regard to external amenity space, Flats 1 and 3 share the use of a good-sized rear garden. Whilst Flat 3 only has a small balcony, there could be scope to create some usable private amenity space in the fenced area to the front. Furthermore, Downham Playing Fields lie a short distance away. In these circumstances, I find no additional harm with regard to external amenity space, but I nevertheless conclude that the occupiers of the flats do not enjoy satisfactory living conditions, having regard to the layout and floor space of the flats, which fall below the minimum standards in the LP and DMLP.
53. In terms of other material considerations, Mr Martin accepted during cross examination that there were no material considerations which would indicate that the appeal should be determined other than in accordance with the development plan. Whilst I acknowledge that the development provides additional housing units, this factor would carry limited weight anyway in circumstances where it is accepted that the Council can demonstrate a 5-year supply of housing. Given that the development also involves the loss of a valuable single family house and the provision of units with inadequate internal space, it does not weigh in favour of the appeal.

54. The Council also drew my attention to the Written Ministerial Statement (WMS) of 17 December 2015 concerning Intentional Unauthorised Development. However, given the acknowledged conflict with the development plan and the lack of material considerations to weigh against that, I need not consider whether the WMS also weighs against the appeal.

Overall conclusions and planning balance

55. The development results in the unacceptable loss of a single family dwelling house and provides unacceptable living conditions for the occupiers of the flats due to inadequate internal floor space. The development is contrary to the development plan and the Framework and no material considerations indicate that planning permission should be granted. The appeal on ground (a) must therefore fail and the application for permission deemed to have been made will be refused.
56. Dismissal of the appeal will involve some interference with the occupiers' rights to respect for private and family life under Article 8 of the European Convention on Human Rights and the right to protection of property, including peaceful enjoyment of possession under Article 1 of the First Protocol. However, these are qualified rights. Subject to consideration of ground (g), the interference will be the minimum necessary and a proportionate approach to the legitimate aim of protecting the supply of family housing and ensuring satisfactory living conditions.

Appeal A, ground (g)

57. The issue on this ground is whether 6 months is a reasonable period for compliance with the notice. The appellant suggests a period of 15 months should be allowed to enable the existing tenants to find alternative accommodation; for the works to be undertaken once the tenants have vacated; and for the appellant to prepare alternative proposals for the building.
58. The required works are not so extensive as to necessitate, in themselves, more than 6 months for compliance. Neither does the appellant's wish to consider alternative proposals justify extension of the period. However, whilst I have little information regarding the current occupiers and none concerning the basis on which they occupy the property, or the length of notice required, I have already noted that my decision will involve an interference with their human rights. The physical works required by the notice cannot reasonably be undertaken while the tenants are in occupation. I shall therefore vary the notice to allow a further 2 months for those works to be carried out, once the use as flats has ceased. In practice, this will allow a little more time for the tenants to vacate before the relatively modest works have to be completed. This is a proportionate response and I am satisfied the variation will cause no injustice.
59. To this extent, the appeal succeeds on ground (g), but the notice will be upheld.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nicholas Grant of counsel, instructed by Alex Martin of Lyondale Planning Ltd

He called	Tanya Erol
	Alex Martin MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Dale-Harris of counsel, instructed by Fiona Shanahan, Legal Services Department, London Borough of Lewisham Council

He called	Eddie Adamczyk BA(hons) DipTP, Team Leader for Planning Enforcement, London Borough of Lewisham Council
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INTERESTED PERSONS:

Laura Ivancia	Neighbouring resident
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Christine Davine	Neighbouring resident
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DOCUMENTS SUBMITTED DURING THE INQUIRY

1	Appellant's opening submissions
1(a)	Council's notice of inquiry
2	Council's opening submissions
3	Statement of common Ground
4	January 2018 emails with response to 2017 Planning Contravention Notice attached
5	Planning Contravention Notice dated 26 March 2014
6	Council's list of suggested conditions
7	Front page of tenancy agreement between Tanya Erol and Ms Ildiko Kovacs
8	Drawings DP/2472/ES – 1 and DP/2472/ES – 2 dated November 2014 submitted with planning application Ref DC/14/89976 for development described in the decision notice as "The retention of a single storey wrap-around extension to the side and rear of 30 Arcus Road BR1, with use of the side element as a granny annexe
9	Council's closing submissions
10	<i>R (o.a.o. Nigel Coleman (Listing Officer) v C Rotsztein</i> [2003] EWHC 1057 Admin
11	Appellant's closing submissions
12	Appeal decision APP/U5360/C/18/3197581 re 80 Dunsmure Road, Hackney