



Appeal Decision

Site visit made on 16 June 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/A5270/C/20/3246471

29A Grosvenor Road, Hanwell, London W7 1HP

- 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 Nadeem Hussain against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 6 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission: the material change of use of the first floor of the premises to two self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the first floor as two self-contained flats;
 2. Remove the kitchen and drainage connections from one of the self-contained flats;
 3. Remove the bathroom and drainage connections from one of the self-contained flats;
 4. Remove all internal doors, partitions and locks that facilitate the use of the first floor as two self-contained flats; and
 5. Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Reasons

The ground (c) appeal

2. The appellant pleads ground (c), ie that the matter stated in the notice does not constitute a breach of planning control. Under section 55(1) of the 1990 Act, development includes any material change in the use of any building¹. Section 55(3)(a) of the 1990 Act noted above is clear that the use as two or more separate dwellinghouses of any building² previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used.
3. Whatever the precise nature of the former residential use, the first floor of the building, as I saw at my site visit, has been subdivided into two units, one at the rear and one at the front. Each unit is behind a lockable door with no

¹ Under s336 "building" includes any part of a building

² Ibid

handle and each unit contains all the facilities required for day-to-day private domestic existence. In this case, each unit has a toilet and areas for sleeping, washing and cooking. As such, each unit is a separate dwellinghouse and based on the information available to me, for the purposes of section 55 of the 1990 Act, a material change of use has occurred.

4. This fact is not changed by the appellant's statement that it was not their intention to create two separate units, or that there has apparently been no intensification in the use of the first floor, or that it operates and functions as one residential unit, or that the works carried out were only internal. Moreover, there is no evidence planning permission has been granted for the use or that the use is permitted development. Accordingly, considering all of the above points the appeal on ground (c) fails.

The ground (a) appeal

5. The main issues in the ground (a) appeal are:

- whether the development provides adequate internal accommodation;
- whether the development provides adequate external amenity space;
- the effect of the development on the living conditions of occupiers of the premises and neighbouring properties, with particular regard to noise and disturbance; and
- the effect of the development on the character of the area.

Internal Accommodation

6. It is the appellant's view that bedroom 2 in the rear flat, as annotated on the plan submitted, is not a bedroom but is storage. Taking this into account, the Council considers the rear flat should be at least 37 sqm gross internal area (GIA) to accommodate a single occupant and comply with space standards. It is the appellant's view that the rear flat meets this standard but the Council states the approximate GIA is 34 sqm. The Council considers the front flat should be at least 61 sqm GIA to accommodate 3 occupants but the appellant states the front flat is 42 sqm.
7. From all of the evidence available to me, including my observations at my site visit and details of the Council's inspection, the first floor of the building has been divided into a 2 bedroom flat at the front which contains a total of 4 bed spaces³ and a 2 bedroom flat at the rear which contains a total of 3 bed spaces⁴. Even if the rear flat may not be used by the current occupier in this way, I have no reason to believe it would not be so used by future occupants. On this basis, neither of the flats meet the space standards identified by the Council. This is consistent with my observations at my site visit where I found both flats were cramped and particularly lacking in living accommodation. This is notable by its absence from the plan submitted by the appellant.
8. The appellant states that all bedrooms satisfy requirements in that they exceed 7.5 sqm. But this is the minimum size for a **single** bedroom and the evidence indicates at least two of the bedrooms sleep more than 1 person, and, in any event, acceptable size bedrooms do not necessarily outweigh the need for the

³ Including a double bed and twin bunkbeds, occupied by a couple with children when inspected by the Council

⁴ Including a double bed and a single bed in bedroom 2

minimum space standard to be achieved for each dwelling overall. The appellant considers a shortfall may be permitted if the development is of exemplary design but there is no evidence this is the case here. Nor am I satisfied in this case the height of the ceilings compensates for the lack of floorspace, as is suggested by the appellant.

9. I conclude on this main issue the development fails to provide adequate internal accommodation and so in this regard does not comply with Policy 3.5 of the London Plan 2016 (as amended) (the London Plan), Policy 3.5 or 7B of the Ealing Development Management Development Plan Document 2013 (the Ealing DMDPD) or Policy D4 of the draft London Plan, which from the information available to me, is consistent with the aforementioned development plan policies in respect of minimum space standards.

External Amenity Space

10. Policy 7D of the Ealing DMDPD states that all developments that increase demand for open space will be expected to make an appropriate contribution towards meeting this additional demand, having regard to the standards detailed in table 7D.2. This table states that for flats a minimum of 5 sqm of private garden space is required per 1-2 person unit plus 1 sqm for each additional occupant, and, that this will typically take the form of private balcony areas for upper floor units and private garden areas for ground floor units.
11. The appeal development generates a requirement for 2 private garden spaces. At my visit I was shown a small outside space at the rear of the property which, it was indicated, occupants of the first floor flats have access to. However, no details of the size of this part of the rear garden have been provided for me to know whether it satisfies the size required by table 7D.2 for either flat and it does not provide space which is private, given that it is apparently for use by the occupants of both flats. Moreover, to access this space, occupants must go downstairs, out on to the street, through gates fitted with a padlock, along an alleyway and through a further locked gate. In my judgement, it is therefore not realistic to expect this outside space to fulfil the purpose required by the above planning policy.
12. My attention has been drawn to Dean Gardens, an area of green public open space, said to be located within an 8 minute walk of the appeal site. But I am not satisfied this fulfils the purpose of the above planning policy either or that it is an acceptable substitute given that the policy specifically seeks **private** outside space. I have taken into account the situation prior to the breach and the appellant's view that the current situation is not materially different. But from the information available to me the current situation requires different flats to share outside space and, in my judgement, this is not the appropriate contribution for outside space sought by the above policy.
13. I conclude on this main issue the development does not provide adequate external amenity space and is therefore contrary to Policy 7B and 7D of the Ealing DMDPD in addition to Policy D4 of the draft London Plan which is consistent with Policy 7D in this respect.

Noise and Disturbance

14. As a result of the appeal development, the appellant considers there has been no intensification in the use of the property in respect of the number of occupants. But this is not the only determinative factor in terms of the effect of the development on noise and disturbance. Two dwellings, each with 2 bedrooms, a full kitchen and shower room with toilet, have been provided in a space which the evidence indicates previously contained a single residential unit. So it is clear the capacity for the number of households on the first floor has doubled.
15. In my judgement, particularly as a result of the comings and goings associated with unrelated occupants, the potential for noise and disturbance has significantly increased as a result of the appeal development compared with the previous situation, in what is a relatively small space that already has occupants from other households immediately adjoining it.
16. I am not satisfied that Environmental Health powers referred to by the appellant, or a management plan, or management of the property by the appellant, would be sufficient to permanently mitigate the effect described above. This is particularly given some noise and disturbance will simply be a consequence of an over intensive use of the property rather than any inconsiderate behaviour by occupants.
17. I conclude on this main issue the appeal development has a harmful effect on the living conditions of occupiers of the premises and neighbouring properties, with particular regard to noise and disturbance. In this regard, the appeal development does not comply with Policy 7B of the Ealing DMDPD or Policy D1 of the draft London Plan which is consistent with Policy 7B in this respect.

Character of the Area

18. The area is characterised by terraced houses and flats, including houses converted into flats. From the evidence available to me, this character has not been changed in any significant way as a result of the appeal development. So there is no harmful effect of the development on the character of the area nor any conflict in this regard with Policy 7.4 of the London Plan, Policy 7B or 7.4 of the Ealing DMDPD or Policy D1 of the draft London Plan.

Other Matters

19. The appeal site is well located in terms of its access to local services and facilities and no objections have been received from third parties. But these are not good enough reasons to allow the appeal on ground (a) in light of the harm identified above.
20. The appellant states that each room is served by a window and has an acceptable level of light and outlook. Even if that is the case, in my judgement, it does not outweigh the harm identified above, nor does the quality or finish of the refurbishment which has been carried out.
21. With reference to paragraph 38 of the National Planning Policy Framework, the appellant is dissatisfied with the approach taken by the Council. But this is not a matter for me to consider in the context of an appeal under section 174 of the 1990 Act noted above.

22. The appellant considers they were advised by the Council that planning permission was not required. But even if this were the case, it makes no difference to the outcome of this appeal, and, from the evidence available to me, it is clear that in response to the information provided by the appellant (including plans) the appellant was advised by the Council that planning permission was required.

Conclusion

23. Whilst I have not found harm in respect of the effect of the development on the character of the area, I have found that the development does not provide adequate internal accommodation or external amenity space and that it has a harmful effect on living conditions with particular regard to noise and disturbance. In my judgement there is conflict with the development plan overall and so I conclude the appeal on ground (a) fails.

The ground (f) appeal

24. Under section 173(4) of the 1990 Act noted above, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. In this case, as stated in section 4.5 of the notice, the purpose of the notice is to remedy the breach of planning control.
25. The appellant considers the requirement to remove a kitchen and a bathroom from one of the self-contained flats is excessive. They state there has always been a kitchen and a kitchenette at first floor and a previous tenancy agreement indicating this has been submitted. However, both kitchens are equipped with at least one fridge/freezer, a sink, washing machine, cooker, oven and one had a dishwasher. In my judgement, both of these kitchens are beyond what constitutes a kitchenette.
26. Moreover, I am not persuaded by the appellant's evidence in respect of the kitchenette, given what was recorded in a note made by a Council officer at a site visit on 27 September 2016. The note describes the interior and there is no evidence the first floor had more than one room which contained kitchen facilities. Each kitchen facilitates the breach of planning control so to leave both kitchens intact would not resolve the breach of planning control which is the stated purpose of the notice.
27. No evidence has been provided to support the appellant's view that removal of one of the bathrooms is excessive, and, the tenancy agreement (noted above) indicates only one bathroom previously existed. Therefore, I am satisfied each bathroom facilitates the breach of planning control and it is reasonable to require that one of them is removed.
28. The appellant has suggested that removal of the lock from the door of each flat is a lesser step that would resolve the breach of planning control. But I am not satisfied this is a practical alternative that would achieve the stated purpose of the notice as it would leave the first floor open to occupants of the second floor of the building.
29. The appellant has also stated the doors are important in respect of minimising fire risk. But there is no evidence this is the case and there are other means by which the building and its occupants may be protected from fire risks. Considering all of the above points, no lesser steps have been suggested which

would achieve the purpose of the notice. As such, the appeal on ground (f) fails.

Conclusion

30. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice and refuse to grant planning permission on the deemed application.

L Perkins

INSPECTOR