



Appeal Decision

Site visit made on 18 August 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2020

Appeal Ref: APP/A5270/C/19/3238781

Premises known as Flat 3, 49 Corfton Road, Ealing, London W5 2HR

- 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 Indrajit Trivedi against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 9 September 2019
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change in the use of the premises into two self-contained flats ("the Unauthorised Development")
 - The requirements of the notice are:
 1. Cease the use of the premises as two self-contained flats;
 2. Remove the kitchen and drainage connections from one of the two self-contained flats;
 3. Remove the toilet, washing facilities and drainage connections from one of the two self-contained flats;
 4. Remove all internal partitions, doors and locks that facilitate the use of the two self-contained flats; and
 5. Remove all resultant debris from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (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 section 177(5) of the Act.
-

Decision

1. It is directed that the enforcement notice is varied by the deletion of 3 months as the period for compliance and its substitution with 6 months. Subject to this variation, the appeal is dismissed, 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.

Reasons

The ground (d) appeal

2. In general terms, for success on ground (d) in an appeal concerning the formation of new dwellings, the appellant must demonstrate that prior to the issue of the notice there had been continuous use of the breach alleged for 4 years beginning with the date of the breach. The burden of proof is on the appellant in a ground (d) appeal. The decision must be made on the evidence provided, that evidence must be precise and unambiguous and the standard of proof is the balance of probabilities.

3. The appellant states the material change of use of Flat 3 to two self-contained flats, known as Flat 3 and Flat 3A, commenced in April 2015 and a Council Tax account history for Flat 3A, with what the appellant refers to as a 'starting period' of 1 April 2015 has been provided. But from the evidence available to me, the start of April is the beginning of the financial year from which all Council Tax is paid and the charge for 2015-2016 is less than half of that shown for other years, indicating that Council Tax was only paid for part of the financial year.
4. The Council's evidence indicates Council Tax payments for Flat 3A were set up from 30 October 2015. This is the same date recognised as the effective date for Flat 3A by the Valuation Office Agency (VOA). The appellant states the VOA visited the site and inspected the two self-contained flats in April 2015. But no evidence has been provided to support this claim.
5. In February 2015 a Building Control application for the appeal site was made by the appellant for the demolition of one bathroom and the creation of two, and the erection of partitions. In March 2015 this description was changed to the reconfiguration of the existing 2 bedroom flat into a 3 bed flat, an office, relocation of an existing bathroom and kitchen and the formation of a shower/WC room. The property was inspected by the Council on 8 April 2015. Notes of this inspection make no reference to the appeal premises having been subdivided into two flats and so I consider it unlikely that the subdivision had been carried out by this time.
6. Gas safety records and electrical installation certificates have also been provided to support the appellant's case, dated 9 April 2015, for addresses referred to as Flat 3 and Flat 3A, with a postcode that matches that of the appeal site. However, these documents do not conclusively demonstrate that each flat was fully subdivided and self-contained by this time.
7. A tenancy agreement for Flat 3 has been provided for a tenant with the name of Mr Ibrahim Mahmoud from 28 April 2015 to 27 April 2016, who is said to have occupied this flat until 20 August 2017, after which he was replaced by tenants who currently reside in the appeal property. But this document does not indicate whether it relates to Flat 3 as it exists now, post-subdivision, or Flat 3 as it existed previously, with access to the entire first floor. The appellant states that the Council hold Council Tax records which can confirm Mr Mahmoud's occupancy of Flat 3. But as stated above, the burden of proof in a ground (d) appeal is on the appellant so there is no obligation on the Council to provide evidence to support the appellant's case.
8. The appellant has provided signed and witnessed statements from various people from London Homes Residential Limited and Anglopol Management Limited. These are the rental agency and maintenance company respectively for the appeal site. However, none of these statements are recognisable as a Statutory Declaration pursuant to The Statutory Declarations Act 1835 and there is no evidence any sanctions would apply should what is said in them subsequently prove to be untruthful. I therefore give them limited weight.
9. Having considered all of the above points I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate on the balance of probabilities that the use alleged has been carried out continuously for 4 years prior to the issue of the notice. Accordingly, the appeal on ground (d) fails.

The ground (a) appeal

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

- whether the appeal development provides adequate indoor living space; and
- the effect of the appeal development on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Indoor Living Space

11. It is clear from the tenancy agreements which have been provided that Flat 3 has been occupied by two people. The minimum space standard for a 1 bedroom 2 person flat is 50 sqm gross internal area (GIA). However, the evidence indicates Flat 3 is 38.39 sqm GIA and Flat 3A is 43.41 sqm GIA. So neither flat is large enough to comply with the above standard and overall I found the appeal development to be cramped, particularly Flat 3. In my judgement, this is a consequence of the limited indoor living space available.
12. The appellant acknowledges that the current tenancy agreement for Flat 3 names two people, and, should planning permission be granted under ground (a) he states the existing tenancy of Flat 3 would be terminated and Flat 3 would be marketed as a 1 bed/1 person unit. But I am not satisfied this is a permanent and enforceable solution for the shortfall in floorspace in the appeal development.
13. Given, as I saw at my site visit, each flat contains a double bed, I have no reason to believe either flat would not be occupied by two people in the future. So whilst I appreciate that the space standards in the London Plan do not dictate that people living alone should be forced to have a single sized bedroom, this is not a good enough reason to grant planning permission for the appeal development.
14. I conclude the appeal development does not provide adequate indoor living space and so does not comply with Policy 3.5 and Table 3.3 of the London Plan 2016 (as amended) (the London Plan) or Policy 3.5 of Ealing's adopted Development Management Development Plan Document 2013 (the Ealing DMDPD).

Living Conditions

15. The appellant states that bedroom numbers have not increased as a result of the appeal development. But this is not the only determinative factor in terms of the effect of the development on noise and disturbance. Two dwellings, each with a double bedroom, kitchen, toilet and washing facilities, have been provided in a space which previously contained a single residential unit. So it is clear the capacity for the number of households on the first floor of the property has doubled.
16. In my judgement, particularly as a result of the comings and goings associated with unrelated occupants of the appeal development, 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 modest space that already has occupants from other households living immediately above and below it, some of whom share the entrance.

17. I am not satisfied the provisions of the tenancy agreement referred to by the appellant, or the appellant's occupation of Flat 3A, are 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 appeal premises rather than any inconsiderate behaviour by its occupants. There is no evidence of any noise mitigation as part of the appeal development and I am not satisfied a lack of neighbour objection is a good enough reason to allow the appeal development in light of the harm identified above.
18. I conclude on this main issue the appeal development has a harmful effect on the living conditions of neighbouring occupiers with particular regard to noise and disturbance. In this regard, the appeal development does not comply with Policy 7B of the Ealing DMDPD. My attention has also been drawn to Policy 7.4 of the London Plan and Policy 7.4 of the Ealing DMDPD but these are not relevant to this main issue.

Other Matters

19. I recognise the appeal development adds an additional dwelling to the stock of housing in the area and that both flats enjoy natural daylight and opening windows and one of them has access to a small balcony. But these are not good enough reasons to allow the appeal on ground (a) in light of the harm identified above.
20. I acknowledge there may have been no external works as a result of the appeal development and no detrimental effect on the character or appearance of the area, including the Ealing Cricket Ground Conservation Area within which the site is situated. But these are neutral points and not a benefit of the development.

Conclusion on ground (a)

21. Considering each of the main issues for the ground (a) appeal, the appeal on ground (a) fails.

The ground (f) appeal

22. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control by, for example, discontinuing the use and/or by restoring the land to its condition before the breach took place, or, (b) remedy any injury to amenity which has been caused by the breach.
23. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is explicitly stated in section 4.4 of the notice, and, the requirements of the notice include the cessation of the use and, in effect, the restoration of the land to its former condition by the other requirements of the notice.
24. The appellant considers the requirements of the notice are excessive and has presented two options as alternatives to the steps specified in the notice. In effect, both options would result in the retention of the toilet and washing facilities which currently exist in each flat, ie the deletion of requirement 3.
25. It is clear the two toilets and two sets of washing facilities have sustained the unlawful use. These facilities are part and parcel of the unauthorised use and

should not be viewed in isolation as has been suggested by the appellant. Notwithstanding that these facilities may not require planning permission in their own right, a notice directed at a material change of use, as is the case here, may require their removal. Considering the above points, I am satisfied the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. As such, the appeal on ground (f) fails.

The ground (g) appeal

26. The Council acknowledges that the current situation with the COVID-19 pandemic will mean the appellant may need additional time to comply with the requirements of the notice. The Council states it has no objection to the compliance period being extended from 3 months to 6 months. I have no reason to disagree with the Council's new position in this regard, so I am satisfied 6 months is reasonable in these circumstances and I will extend the period of compliance accordingly. As such the appeal on ground (g) succeeds to this extent.

Conclusion

27. For the reasons given above, I conclude that the appeal does not succeed. I uphold the enforcement notice, as varied, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Perkins

INSPECTOR