
Appeal Decision

Site visit made on 10 August 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal Ref: APP/N5090/C/19/3235054

8 Heathfield Gardens, London NW11 9HX

- 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 A Nejabat against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0944/19, was issued on 8 July 2019.
- The breach of planning control as alleged in the notice is the sub-division of the property into two self-contained flats.
- The requirements of the notice are:
 1. Permanently remove all but one bathroom from the property. That is to say remove toilets, handwash basins, baths and shower cubicles from all but one room.
 2. Permanently remove all but one kitchen from the property. That is to say remove kitchen sinks, cookers, ovens and food preparation surfaces from all but one room.
 3. Cease the use of the property as self-contained flats
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) 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.

Summary of Decision: 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.

Preliminary Matter

1. The appellant requests that I consider an alternative internal layout (drawing no. 201908/8HG/03) for the loft flat (Flat B), which reduces the number of bedrooms from three to one. Section 177(1)(a) Town and Country Planning Act 1990 only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control “whether in relation to the whole or any part of those matters”. As the alleged breach of planning control does not refer to the number of bedrooms in each flat, the alternative internal layout would still relate to the alleged breach. As such, I have determined the appeal on the basis of the alternative layout and consider that no parties would be prejudiced by me doing so.

Ground (a) and the Deemed Planning Application

Main Issues

2. The main issues are the effect of the development on the character and appearance of the area; whether the development provides adequate living conditions for existing and future occupants; and, the effect on highway safety.

Reasons

Character and Appearance

3. Heathfield Gardens is a predominantly residential road, comprising two-storey, semi-detached dwellings. There are a small number of properties on the road that have been converted into flats or Houses in Multiple Occupation (HMOs). However, the Council confirm that none of these conversions benefit from planning permission, although they may be historic. Nevertheless, these only represent a very small number of the properties on the road. Overall, the area is characterised by single family dwellings set back from the road in spacious plots that creates a pleasant suburban setting.
4. Chapter 2 of the London Borough of Barnet's Local Plan Core Strategy (LPCS) 2012 states that "Flat conversions must therefore be situated in appropriate locations characterised by housing that has already undergone significant conversions or redevelopment to small flatted accommodation". The appellant argues that the development is "redevelopment to small flatted accommodation" and therefore complies with the LPCS. If the wording was "...undergone significant conversions or *be* redevelopment to small flatted accommodation" then I may accept the appellant's argument. However, the wording is clear in that the LPCS requires that flat conversions take place in locations characterised by housing having undergone significant conversions or locations characterised by redevelopment to small flatted accommodation.
5. In support of the LPCS, Policy DM01 of the London Borough of Barnet's Local Plan Development Management Policies (LPDMP) 2012, amongst other things, states that the conversion of dwellings into flats in roads characterised by houses will not normally be appropriate.
6. The appellant contends that the number of occupants occupying the two flats would be commensurate to the number of people capable of occupying the 6-bedroom dwelling and therefore the level of activity would be comparable. However, whilst the number of occupants could be similar, there would be two households. As a result, there would likely be greater comings and goings than one would expect from a single family dwelling. For example, there could be more movements by way of the adult members of each household going to/returning from work or going to the shops. There would also likely be an increase in car ownership for the occupants of the two flats than the single family dwelling, which could result in additional on-street parking. In addition, both households would have associated waste bins, which would detract from the appearance of the area.
7. Individually, these effects only have a modest effect on the character and appearance of the area. However, cumulatively, they represent an overly intensive form of residential development that fails to reflect the general single family home character and appearance of the area. Moreover, when read in conjunction with other multiple occupation properties on the road, the

cumulative effects significantly detract from the single family dwelling character of the area.

8. I have had regard to the appeal decision referred to me by the appellant regarding 46 Dunstan Road¹. However, Dunstan Road has a different character and appearance to Heathfield Gardens. In particular, the Inspector refers to purpose-built flatted accommodation nearby and a large building comprising a synagogue, which he considered to contribute towards the character of the area. Heathfield Gardens on the other hand is characterised by single family dwellings. Accordingly, whilst there are similarities with the appeal development before me, these are not to such an extent that they create a precedent.
9. I find therefore that the development significantly harms the character and appearance of the area, contrary to Policies CSNPPF, CS1 and CS5 of the LPCS, which seek to ensure that new development is of a high quality and respects the character of the area. It is also contrary to Policy DM01 of the LPDMP and the London Borough of Barnet's Supplementary Planning Document – Residential Design Guidance (Residential SPD) 2016, which provides guidance on the subdivision of single family homes into flats.

Living Conditions

10. In response to the Council's objection to the development on the basis that Flat B does not provide sufficient floor space, its use as a one bedroom flat, as indicated on the alternative layout, would provide a floor space that would significantly exceed, and therefore satisfy, the minimum space standards as set out in the Residential SPD and the London Borough of Barnet's Supplementary Planning Document – Sustainable Design and Construction (Sustainable SPD) 2016.
11. Flat A has sole use of the private outdoor amenity space surrounding the building, with Flat B having no external amenity space. As such, Flat B would fail to satisfy the Outdoor Amenity Space Requirements for Barnet as set out in the Residential SPD and the Sustainable SPD, which state that flats should have 5sqm of outdoor amenity space per habitable room. Consequently, the lack of outdoor amenity space would have an unacceptably detrimental effect on the wellbeing and health of the occupants of Flat B.
12. The deemed application is for the matters stated in the notice as constituting the breach of planning control. Under s177(1)(a) of the Act I have the power to grant permission in respect of "the whole or part of" those matters as they are stated in the notice. The appellant contends that adequate external private amenity space could be secured for both flats via an appropriately worded condition. Despite there being no details before me, I am not satisfied that such a scheme, which the appellant confirms would likely include boundary treatments such as fencing, would not amount to a new element of development beyond that referred to in the notice. Accordingly, I cannot take it into account in determining this appeal.
13. I find therefore that the development, in particular Flat B, fails to provide adequate living conditions for existing and future occupants, with regard to outdoor amenity space. As such, it would be contrary to Policies DM01 and

¹ Appeal Ref: APP/N5090/W/17/3181467

DM02 of the LPDMP, which, amongst other things, seek to ensure that new development is of a high quality and provides adequate living conditions for occupants. It would also fail to comply with the Residential SPD and the Sustainable SPD.

14. In their reasons for issuing the notice, the Council also refer to Policy CS5 of the CS. However, this is a strategic policy that relates to protecting the character of the area. There is no evidence before me of how it is relevant to the living conditions of neighbouring residents. As such, I find no conflict with it in this regard.

Highway Safety

15. The third reason for issuing the notice states that the development fails to provide a legal undertaking to enable an amendment to the Traffic Regulation Order and contribution towards the associated monitoring costs to restrict future occupiers from obtaining residential parking permits, to mitigate the on-street parking impact in the vicinity of the site.
16. The justification given by the LPA for this reason is that the Highways Officer requested it in order to deny the occupants of Flat B the right to purchase a CPZ permit. However, there is no objective assessment identifying how the increase in one car, as a result of the one bedroom (as amended), has a detrimental effect on highway safety.
17. Heathfield Gardens, and the surrounding roads, have restricted on-street parking. At the time of my site visit there were a significant number of vacant resident permit parking spaces. Whilst I appreciate that this was a snapshot in time, there is no evidence to suggest that it is not reflective of the typical parking vacancies. There is no evidence before me to indicate a lack of capacity for an additional resident parking permit. Accordingly, it has not been demonstrated that an additional resident parking permit would cause harm to highway safety.
18. Furthermore, the site is in very close proximity to Brent Cross Station, which provides good access to a range of services, facilities and employment opportunities in the wider area, therefore reducing the need for a privately owned car.
19. Therefore, I find that the development does not have a significantly harmful effect on highway safety. As such it satisfies Policy DM17 of the LPDMP, which promotes highway safety. The Council also refer to the London Borough of Barnet's Supplementary Planning Document – Planning Obligations 2013; however, as I have found no demonstrable need for a planning obligation as suggested by the Council, I do not consider this guidance to be relevant.

Conclusion

20. I have found that the development would not have any significantly harmful effect on highway safety. However, this is a neutral effect and does not outweigh the harm to the character and appearance of the area and the lack of adequate living conditions for existing and future occupants.
21. For the reasons given above, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

Ground (f)

22. For the appeal to succeed on this ground, I need to be satisfied that that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
23. The appellant argues that it would be unreasonable for a 6-bedroom house to have only one bathroom. Furthermore, he argues that the property is located within a predominantly Jewish Orthodox area and this community requires two kitchens in their dwellings to meet the requirements of their religious beliefs.
24. However, it is established law that a notice attacking a change of use can require removal of works that are integral to and facilitate that use even if those works do not in themselves require permission. Despite the appellant's contentions, the requirements of the notice are clear and not excessive in remedying the breach of planning control. I appreciate there may be cultural requirements in communities, such as those under consideration, for two kitchens. However, the notice does not dictate the layout or facilities of a single family dwelling.
25. I therefore conclude that the ground (f) appeal must fail.

Formal Decision

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

Alexander Walker

INSPECTOR