



Appeal Decision

Site visit made on 10 August 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2020

Appeal Ref: APP/N5090/C/19/3234883

120 The Vale, London NW11 8SL

- 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 Christopher Joannou against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1367/18, was issued on 4 July 2019.
- The breach of planning control as alleged in the notice is the subdivision of ground floor into three self-contained flats.
- The requirements of the notice are:
 - 1 Cease the use of the ground floor as multiple self-contained flats.
 - 2 Restore the ground floor back to the state that it was prior to the breach, by removing all but one bathrooms or shower rooms, and the removal of all but one kitchen.
 - 3 Permanently remove all constituent materials resulting from the works in 2. above from the property.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Ground (b)

1. The ground of appeal is that the matter alleged has not occurred.
2. The notice alleges the subdivision of the ground floor into three self-contained flats. Subdivision is not a form of development. Nevertheless, I am satisfied that the notice could be corrected to substitute '...subdivision...' for '...the material change of use...', without causing injustice to any parties.
3. Notwithstanding the above, a more fundamental issue with the allegation is that it refers to three self-contained flats. The appellant states that there are four self-contained flats on the ground floor and were at the time of the notice being issued. This corresponds with the observations I made during my site visit. There were clearly four separate, self-contained flats, each clearly identifiable.
4. The Council confirm that prior to issuing the notice, they carried out site inspections on 30 October 2018 and 18 March 2019. Whilst they were able to view the first floor, they were unable to gain access to the ground floor units. There is no evidence before me of any further attempts to gain access to the ground floor units between the date of these visits and the issuing of the notice on 4 July 2019. Had they managed to access the full extent of the ground

floor, it seems to me that they would have clearly recognised that there were indeed four self-contained flats and not three. I note that the Council make no argument that the fourth flat was created following the issuing of the notice.

5. Given the above, the allegation in the notice is clearly incorrect. The ground floor of 120 The Vale has not been subdivided, or more accurately undergone a material change of use, to three self-contained flats as alleged, but rather four. The matter alleged has not, therefore, occurred as a matter of fact. However, the allegation need not specify the number of flats. It need simply allege a 'material change of use to self-contained flats' and I shall correct the notice accordingly. I am satisfied that no parties would be prejudiced by me doing so.
6. The appeal on ground (b) succeeds and I shall correct the notice.

Ground (d)

7. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the enforcement notice was issued on 4 July 2019, it was too late to take enforcement action against the alleged breach of planning control (as corrected). The relevant test of the evidence is 'on the balance of probability' (i.e., that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
8. In support of his case, the appellant has submitted a sworn statement from Jennifer Eleonora Joannou, a co-owner of the property. She states that when she bought the ground floor of the building in 2003/2004 it was already subdivided into 4 self-contained studio flats and has been used as such since 2000. She confirms that Flat 1 was occupied between 2009 and 2013 and is currently unoccupied; Flat 2 has been occupied by the same tenants since 2007; Flat 3 has been occupied by the same tenant since 2008; and, Flat 4 has been occupied by the same tenant since 2001.
9. The copies of the tenancy agreements, which the appellant states corroborates the sworn statement, provide various descriptions of the premises, including "one room forming part of the building known as...120 The Vale..."; "Self contained studio flat forming part of building known as...120 The Vale..."; "Property Address: 120 The Vale...Tenement Number: 1/3"; or simply "120 The Vale". The use of various terms for the agreements raises ambiguity as to how the properties were occupied, eg "one room forming part of the building" and tenement numbers are reasonable descriptions of rooms rented out in a House of Multiple Occupation (HMO) rather than self-contained flats.
10. In addition, there are significant gaps in the occupancy periods for the flats. There are no copies of agreements since 2017 and none prior to that for the years 2016, 2015, 2014, 2011, 2005 and 2003. Furthermore, for the years that agreements are provided for, these do not include all four flats.
11. Moreover, all of the copies of the Notice Requiring Possession refer to the address of the dwelling as "120 The Vale...". The address being referred to as "120 The Vale..." suggests that the property was occupied as a single dwelling. If it was occupied as four separate flats then it seems to me that the Notices

would have referred to the individual flat that the landlords sought the tenants' eviction from, ie Flat 1, Flat 2, Flat 3 or Flat 4.

12. The Official Copy of the Register of Title for the leasehold title states "Only the ground floor flat is included in the title". This raises significant doubt that there were four self-contained flats on the ground floor when the property was bought in 2003.
13. The Council confirm that the property was subdivided into two flats, 120 and 120A in at least 2003. This is corroborated by the Freehold Title, which refers to "Ground Floor Flat 120A" and "Top Floor Flat 120". However, the Council confirm that the Council Tax records indicate that the flats on the ground floor have only been registered for Council tax from 1 October 2010.
14. Overall, the evidence in support of the ground (d) appeal is limited and cannot be considered as precise and unambiguous. There is significant ambiguity over when the material change of use of the ground floor into four self-contained flats took place and whether the flats have been in single occupancy for a continuous period of four years. Therefore, I am not satisfied that, on the balance of probabilities, the material change of use of the ground floor occurred continuously for a four-year period prior to the date of the notice being issued.
15. The ground (d) appeal therefore fails.

Ground (a)

Main Issue

16. The main issues are the effect of the development on the character and appearance of the area; the living conditions of the occupants of neighbouring residents, with regard to noise and disturbance; and, whether it provides adequate living conditions for existing and future occupants.

Character and Appearance

17. The Vale is a predominantly residential area comprising two-storey terraces, semi-detached and detached properties. Whilst properties are predominantly single-family dwellings, there are a small number in multiple occupation, either as flatted accommodation or HMOs. Therefore, whilst there are varied residential properties, the area is nevertheless dominated by single family dwellings that create a pleasant leafy suburban character.
18. 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.
19. The Council accept that the appeal building was converted into two flats many years ago, with one on the ground floor and the other on the first floor. Therefore, the building was not a single-family dwelling prior to the alleged breach of planning control on the ground floor. As such, I do not consider that the development results in the loss of a single-family dwelling. However, the criterion h. of Policy DM01 simply refers to the "conversion of dwellings", not "the conversion of single-family dwellings". A flat falls within the definition of a dwelling. As the development therefore involves the conversion of a dwelling,

- ie the ground floor flat, into flats and the road is predominantly characterised by houses, I consider that it fails to satisfy criterion h. of Policy DM01.
20. Despite the appellant's contention that the level of accommodation is similar to a small HMO, I have considered it on the basis that it is four flats.
21. I note the appellant's reference to other flats and HMOs in the locality. However, the Council confirm that only two properties benefit from planning permission for their conversion into flats. 106 The Vale was granted permission in 2010, prior to the adoption of Policy DM01 and therefore was considered under a different policy context. 129 The Vale, the subject of the appeal decision¹ referred to me by the appellant, was extensively extended and converted into four flats, whereas the appeal property contains a total of five flats. I note that planning permission was granted by the Council for the conversion of 129 The Vale into flats prior to the Inspectors consideration of the appeal. There are no details before me of the Council's consideration of the development that they approved. Notwithstanding the above, I have considered the appeal based on its own planning merits.
22. The use of the ground floor as four flats would result in a significant increase in the number of comings and goings one would expect from a dwelling. In addition, the number of waste and recycling bins stored at the property and the potential number of cars parked within the vicinity of the site would be greater. Overall, the appeal property represents an overly intensive form of residential development that fails to respect the predominantly single-family dwellings in the locality and the overall character of the area.
23. I find therefore that the development significantly harms the character and appearance of the area, contrary to Policy DM01 of the LPDMP. It would also be contrary to Policies CS1 and CS5 of the London Borough of Barnet's Local Plan Core Strategy (LPCS) 2012, which, amongst other things, seek to ensure that new development is of the highest standards of urban design and respects local context and distinctive local character, creating places and buildings of high quality design. In addition, it would fail to comply with the guidance contained within the London Borough of Barnet's Supplementary Planning Document – Residential Design Guidance (SPD) 2016, which provides guidance on the conversion of single family dwellings into flats.

Living Conditions of Neighbouring Residents

24. The use of the ground floor of the property for multiple flats, in addition to the first floor flat, results in the overall occupation of the building, particularly by adults, being far greater than neighbouring properties. As a result, the level of noise and disturbance, for example from people conversing inside/outside the property, multiple sources of music and televisions playing and doors frequently closing, and general comings and goings, could be readily discernible from the adjoining dwellings.
25. Furthermore, the level of noise generated by the occupants of the multiple flats on the ground floor would likely have a significantly detrimental effect on the living conditions of the occupants of the single flat on the first floor. As the studio flats are spread out across the whole ground floor the occupants of the first floor flat would be sensitive to numerous sources of noise from televisions,

¹ Appeal ref: APP/N5090/W/17/3180843

radios, occupants conversing, etc. This would be particularly discernible where bedrooms in the first floor are directly above the living areas/kitchens and bathrooms of the ground floor flats.

26. I note that there is no evidence of complaints from first floor occupants. However, my assessment has included the potential effects on existing and future occupants.
27. I find therefore that the development would result in a significantly harmful effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance. As such, it is contrary to Policies DM01, DM02 and DM04 of the LPDMP, which, amongst other things, seek to ensure that new development protects living conditions of neighbouring residents. It would also fail to comply with the guidance set out in the SPD, which states that subdivisions should avoid additional noise and disturbance to neighbours.

Living Conditions of Existing and Future Occupants

28. The appellant contends that the existing tenants have occupied the flats for a number of years and therefore the living conditions must be acceptable. However, my assessment of the development has been based on the consideration of the adequacy of the living conditions for existing and future occupants. Whilst existing tenants may find the living conditions acceptable, that is not to say they are acceptable standards of accommodation.
29. There is no evidence before me specifying precisely how much floor space each of the flats has. However, from the observations I made during my site visit each of the flats were small in size, in particular flats 1, 2 and 4 were especially small with minimal space to sit down and relax. Flat 3 is slightly larger than the other three flats.
30. Table 3.3 of the London Plan 2016 sets out minimum standards for floor space for new dwellings, which are reiterated in Appendix 2 of the SPD. The flats appear to fall far short of these standards. Therefore, as a result of the lack of floor space, the flats represent oppressively confined forms of residential accommodation that would be harmful to the health and wellbeing of their occupants.
31. Whilst three of the flats have access to the large, communal rear garden, I do not consider that this outweighs the harm caused by the lack of internal floor space. Flat 4 has no access to private outdoor amenity space, compounding the harm caused by the inadequacy of the internal living conditions.
32. I find therefore that the development does not provide adequate living conditions for the occupants of the flats, with regard to floor space and private amenity space. As such, it is contrary to Policies DM01 and DM02, which seek to ensure that new development provides adequate living conditions for occupants. It would also be contrary to Policy 3.5 of the London Plan and the SPD, which seek to ensure that new development meets the minimum space standards.
33. In their reasons for issuing the notice, the Council also refer to Policies CS1 and CS5 of the LPCS. However, these are strategic policies that relate to growth and protecting the character of the area. There is no evidence before me of how they are relevant with regard to living conditions. As such, I find no conflict with them in this regard.

Conclusion

34. For the reasons given above, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

Ground (g)

35. This ground of appeal is that the period for compliance is unreasonably short.

36. The time for compliance with the requirements of the enforcement notice is six months. The appellant contends that the period for compliance is too short. This is because whilst notice can be served on the tenants to end their tenancy agreements, if they do not comply then court proceedings would be needed to get vacant possession of the flats.

37. However, no detailed evidence has been provided about the terms under which tenants are occupying the flats, or when rent periods started. It may be that the tenancy agreements expire during the compliance period, which would therefore likely reduce the time the appellant states would be required to comply with the requirements of the notice. Furthermore, it should not be assumed that the tenants will not vacate the property when requested to do so.

38. I have had regard to the time required to carry out the works necessary to comply with the requirements of the notice, once the flats have been vacated. However, the appellant need not wait until all of the tenants have vacated to commence the work. Once a flat is vacated, the shower room and kitchen for that flat could be removed even when the other flats are still occupied. I note that Flat 1 is currently vacant and therefore remedial works could be carried out on it unimpeded.

39. It is also claimed that the existing tenants are vulnerable people, although no explanation is given as to why they are vulnerable.

40. As the Council states, they have the discretion to prosecute should the notice not be complied with and could choose not to exercise that right if the appellant provides sufficient justification and submit to an agreed timetable for the remainder of the works.

41. In summary, from the available evidence I consider that the six month period of compliance specified in the notice is reasonable, and I do not see justification for extending it.

42. I therefore conclude that the ground (g) appeal must fail.

Conclusion

43. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b) to that extent. However, the ground (a), (d) and (g) appeals are dismissed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

44. It is directed that the enforcement notice is corrected by deleting the sub-text of paragraph 3 in its entirety and substituting "Without planning permission, the material change of use of the ground floor to self-contained flats".
45. Subject to the correction, 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.

Alexander Walker

INSPECTOR