



Appeal Decision

Site visit made on 19 October 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 26 October 2020

Appeal Ref: APP/C5690/C/20/3244237

114 Lewisham Way, London SE14 6PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr U Najeeb against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice was issued on 5 December 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the basement floor of the Property as a self-contained residential flat.
- The requirements of the notice are:
 1. Cease the use of the basement as a self-contained residential flat.
 2. Remove all kitchen fixtures and fittings, including kitchen cupboards, cookers, sinks and kitchen extractors and all internal partition walls, which facilitate the residential use of the basement flat.
 3. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the property and its premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (d)

1. In order to succeed in an appeal on ground (d), the appellant must show on the balance of probability that the change of use occurred at least four prior to the issue of the notice, and that it has continued since that date without significant interruption, such that it is now too late for the Council to take enforcement action. The relevant date in this case is 5 December 2015.
2. The appellant has submitted letters from B Jabber and M Shaheen, both dated 22 December 2019, which indicate that the appellant and his family have lived in the appeal premises for some time. However, these letters are ambiguous as they do not specify dates. Moreover, they do not carry the weight of statutory declarations as they are not formally witnessed.
3. The submitted image of a letter from the Home Office dated 14 October 2015 is addressed to a different individual, H Rahi at No 114 Lewisham Way. It does not identify the basement flat as a separate unit. A copy of a letter from the Council dated 1 July 2015 does identify a basement flat in the premises but does not show whether or not the flat was occupied. Indeed, a letter to the Home Office from H Rahi, who was apparently living in No 114a, suggests that the basement flat had been vacated following the Council's letter.

4. Invoices and a bank statement addressed to the appellant at the basement flat do not show the premises was occupied as it could be a correspondence address. Neither do the Council Tax bills dated 10 May 2019 and 3 December 2019. A Tenancy Agreement dated 1 November 2014, between the appellant and H Rahi, has been submitted. However, this covers only part of the relevant period and does not show how the flat was used and occupied. The bank statements of April and July 2015 do not assist as they show deposit money only, not what that money was for.
5. Finally, there is a Statutory Declaration from M Shahid, a former resident of the adjoining property. This states that the appellant and his family lived in the basement flat for about 16-17 years, except when they were away and the flat was occupied by the neighbour's son. This statement carries due weight as sworn evidence, however, it conflicts with the evidence concerning occupation of the premises by H Rahi.
6. Overall, the appellant's evidence is imprecise and ambiguous. The claim that the appellant and his family lived in the premises for many years conflicts with other evidence which suggests a different individual occupied the basement flat. The evidence does not show that the property was used and occupied as a residential flat, without significant interruption, throughout the relevant period and the appeal on ground (d) must fail.

The appeal on ground (a) and the deemed planning application

7. The appeal on ground (a) is that planning permission should be granted for the matters alleged in the notice. The terms of the deemed planning application are derived from the allegation, hence, planning permission is sought for the material change of use of the basement to a self-contained residential flat. The main issue is whether the development provides suitable living conditions for existing and future occupants.
8. The appeal site comprises the basement of a three-storey terraced property, which is located in an area characterised by commercial and residential development. The basement has been converted into residential accommodation, which the appellant says has a gross internal area of 51 sqm.
9. The minimum space standards for new dwellings are set out in Policy 3.5 and Table 3.3 of the London Plan (2016), which are consistent with the Nationally Described Space Standard (DCLG: 2015). The standards require a minimum of 37 sqm for a one bedroom flat, where occupied by a single person, plus 1 sqm for storage. However, the appellant's evidence alone indicates that the premises has been occupied by several people living together. This is corroborated by the Council's observations at the various site visits. Given the likely levels of occupation, the minimum space standard would be 70 sqm plus storage space, which is not achieved.
10. Even if I were to accept the appellant's claims about single occupancy, it would be necessary to consider the broader requirements of Policy 3.5 of the London Plan and DM Policy 32 of the Local Plan¹ relating to light, aspect and outlook. The plans show that the unit has very limited natural light and ventilation. There is a single window on the rear wall of the living area to which light is significantly reduced by the surrounding ground levels.

¹ Lewisham Development Management Local Plan (November 2014).

11. Furthermore, the outlook from this window is restricted due to its apparent height above the floor level². Even if views outside could be obtained, they would be towards a retaining wall. A further rear window allows light to the shower room only. I understand that there is a rooflight which allows some light to the basement, but this is limited and provides no outlook.
12. The lack of natural light combined with the poor outlook and relatively low ceiling height, less than 2.5m, would result in a dark and oppressive living space. The occupants would be reliant on artificial lighting during the daytime, which is unsatisfactory. The room is not dual aspect, contrary to the policy, and there are no other factors that would allow an exception to be made in this instance. The substandard quality of accommodation is exacerbated by the relatively small size of the flat, which is below the floor space standards if occupied by more than one person.
13. The appellant has submitted an alternative proposal, which I have considered. The appellant suggests opening up the living accommodation to create a single-occupancy studio flat with the kitchen area positioned towards the front. Relocating the shower room would mean that the rear living space would be served by two rear windows. However, the front of the living space would remain dark, due to the single aspect, and the revised scheme would not address the outlook issues. This would not be overcome through the proposed minor alterations to the retaining wall surrounding the rear yard.
14. I accept that the development makes a very small contribution to the local housing supply and it is well located for access to goods and services. I also note the letter of support from an interested person. However, these minor benefits do not outweigh the harm to occupants' likely living conditions resulting from the sub-standard accommodation.
15. I find that the development does not provide adequate living conditions for the occupiers of the basement flat with regard to light, space and outlook. It fails to comply with Policy 3.5 of the London Plan and DM Policy 32 of the Local Plan which seek, among other things, to secure high quality residential development. The development would not meet the aims of the National Planning Policy Framework insofar as it seeks to secure a high standard of amenity for existing and future occupiers.

Conclusion

16. 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.

Formal Decision

17. 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.

Debbie Moore

Inspector

² Proposed Section Ref LW/03.