



Appeal Decision

Site visits made on 22 September 2020 and 21 October 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2020

Appeal Ref: APP/A5270/C/19/3234203

31 Lonsdale Road, Southall, Middlesex UB2 5LS

- 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 Act).
 - The appeal is made by Mr D S Kallha against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 5 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the dwelling to two flats (one 3-bedroom ground floor flat and one 3-bedroom flat at first and second floor) and a nil use in the subdivided property at the rear of the premises ("Unauthorised Development").
 - The requirements of the notice are:
 1. Cease the use of the main dwelling as two separate, self-contained dwellings;
 2. Remove one set of kitchen and drainage connections which facilitate the use of the main dwelling as two separate, self-contained dwellings;
 3. Remove one set of bathroom and drainage connections which facilitate the use of the main dwelling as two separate, self-contained dwellings;
 4. Remove the internal partitions that facilitate the use of the main dwelling as two separate, self-contained dwellings;
 5. Remove the fence separating the main dwelling from the outbuilding and facilitating the Unauthorised Development;
 6. 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), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - Deletion at section 3 (The breach of planning control alleged) of the words "and a nil use in the subdivided property at the rear of the premises"; and
 - Within the last sentence of section 5 (What you are required to do) deletion of "within 3 months" and their substitution with "within 6 months".
2. Subject to the correction and 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.

Procedural Matters

Getting the notice in order

3. The rear part of the appeal site has been fenced off. I could see above the fence that this rear-most part of the site includes a large detached outbuilding but I could not gain access through to that area. The allegation as set out on the notice states that the use of that part of the site is for a "nil use". It is acknowledged by the appellant in the response to a Planning Contravention Notice (PCN) issued on 10 May 2019, that the outbuilding is "not used". A 'nil use' would only result from circumstances, such as abandonment, where there is no clear underlying lawful use that could be resumed. The cessation of a use is not development within the meaning of S55 of the Act and would not normally affect the lawful status.
4. One of the representations submitted refers to a "small cramped flat" having been made in that half of the garden which is not consistent with the allegation or the PCN response by the appellant. However, I must deal with the appeal on the basis of the circumstances that existed when the notice was issued. The Council's and appellant's views were closer to that point and are consistent, indicating that there was no active use.
5. Compliance with the notice would normally by reason of S173(11) of the Act grant planning permission for any activity that is a part of the allegation and has not been required to cease. This makes the consequence of complying with the notice as currently worded unclear as it would unintentionally appear to confirm the status as a 'nil use'. The requirement to "remove the fence separating main dwelling from the outbuilding" enables access to that part of the land and in turn will enable the re-use of the outbuilding by occupants of the dwelling consistent with the Council's stated purpose of the notice, to remedy the breach of planning control.
6. The allegation in its current form therefore renders the notice invalid in my opinion. Taking out reference to the suggested 'nil use' would not extend the scope of the notice and would make it clearer particularly following compliance. This correction can be undertaken without causing injustice to the Council or the appellant in my opinion. I can therefore use my powers of correction under the provisions of S176(1)(a).

The Appeal on ground (d)

7. The main issue is whether at the date that the notice was issued, enforcement action could be taken with respect to the development enforced against. In this case, the development enforced against is a use of the land and buildings as 2 separate, single dwellinghouses. By reason of S171B(2) of the Act, no enforcement action could have been taken after the end of a period of 4 years beginning with the date of the breach. The appellant therefore needs to demonstrate that the use subsisted continuously for a 4 year period prior to the date that the notice was issued. The use would need to have been continuous for 4 years at the latest by 5 July 2015. The onus is upon the appellant to demonstrate their case on the balance of probabilities.
8. It is clear from the evidence submitted by the appellant, in particular the tenancy agreements from January 2015, that preparations were being made to accept tenants on the first floor and the ground floor even if that only involved

- the paperwork. Both of those tenancy agreements show that the ground floor and the first floor would be let for use as single private dwellings and that they should not be sublet without permission. The agreements straddle the material date but do not confirm occupancy or what the layout was at that time.
9. A receipt for payment for the provision of a new power supply is also provided which is dated 18 March 2015 although it is not clear if that was in addition to an existing supply. Council Tax information indicates that the ground floor and the first floor along with the roofspace were banded as 2 separate flats with effect from 23 July 2015. That is close to the material date but nevertheless indicates that the use may have commenced after the necessary moment in time and is not confirmation of actual occupation.
 10. Overall, none of these documents, taken individually or together, show that there had by 5 July 2015 been actual occupation within 2 separate flats. Even if a second power supply had been installed, none of the documents shows that the building had been divided into 2 separate planning units, each with the facilities required for day-to-day private domestic existence to enable occupation by 5 July 2015. Further lease agreements have been provided for a period within the 4 years prior to the issuing of the notice. Again, the lack of confirmation of occupation and what facilities were provided does not give a continuous timeline for the actual use or ability to use the building as 2 separate dwellinghouses.
 11. The appellant states that the council have not provided evidence to justify that the conversion of the property is not immune from enforcement action. However, the onus is upon the appellant to demonstrate their case and this has not been achieved precisely or unambiguously. On the balance of probability it is not clear that the 2 flats have existed and have been occupied or at least available for occupation since before the material date. Enforcement action appears to have been taken within 4 years of the breach commencing.
 12. The appeal on ground (d) therefore fails.

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

13. I have to consider whether planning permission should be given for what is alleged on the enforcement notice. There is no mechanism under ground (a) to consider proposed plans submitted only at the appeal stage. Plans have been submitted with respect to the appeal under ground (f), showing not only a different internal arrangement for the flats but also the proposed new layout of the land and building at the back of the site. Those plans go further than relating only to the matters or part of the matters stated in the notice. I cannot deal with those as if they were a new proposal but I have considered them with respect only to the suggested internal changes which I have interpreted as being part of the matters alleged.

Main issue

14. The main issue is whether the occupants of the 2 flats currently have adequate living conditions by reason of internal space, layout and access to external amenity space.

Reasons

15. The appeal site is a traditional end of terrace property within a tight-knit urban

area. The building has been divided into 2 flats. One flat is on the ground floor and the other flat is on the first floor with a second floor within the roof space.

Internal layout and space – ground floor flat

16. The notice alleges use of the ground floor as a 3-bed flat. Table 3.3 of the London Plan (LP)¹ and also table 1 of the National Standards² requires a minimum Gross Internal Area (GIA) of 74m² for such accommodation. The appellant has referred to 61m² for the alternative layouts which would therefore appear to be the maximum floor area available. The space available is below these standards for the accommodation as alleged.
17. I found however that, on a dark wet autumnal day, there was a reasonable amount of natural daylight within each of the bedrooms and other rooms but that doesn't overcome the over cramped feeling provided by present layout. For instance, in places such as outside the ground-floor 'WC' and kitchen, the doors into rooms open into the corridor to prevent easy access around the flat. Furthermore, in order to gain access to the rear garden it is necessary to walk through one of the bedrooms. Even if all occupants would be within the same household, this does not provide for a suitable amount of privacy and convenience and is not an attractive living environment in my opinion.
18. Altering the layout of this unit as shown on the proposed plans, to provide 2 bedrooms and providing open-plan living, dining and kitchen area with consequent ability to create more space elsewhere within the flat, would make some headway towards providing comfortable living conditions. The stated GIA of 61m² would therefore just meet the required standards.

Internal layout and space – upper flat

19. This flat included a different layout from that shown on the existing plans although the room within the roof-space was being used more as a storage or utility area than bedroom. Conversely, the storage room shown on the submitted existing plans was a bedroom and it was not possible to open the door without it banging into the bed. Whether this flat could contain 3 bedrooms as alleged or 4 bedrooms with around 58m² GIA available, it is significantly short of the space set out in the LP and National Standards which would require at least 84m² assuming 3 bedrooms set over 2 storeys but more if there is a fourth bedroom.
20. I again found the layout of this flat was cramped and the limited size of the kitchenette means that there is a need for a utility area within a corridor, immediately outside 2 of the bedrooms. This and the generally constrained feel of the flat does not lead to an attractive living environment.
21. The proposal to address the layout and create a 1 bedroom flat out of this unit would just about meet the 58m² GIA required for such a flat accommodated over 2 storeys. Although the loft space bedroom would have some of its floor space affected by the sloped ceiling, I found that it is a sufficiently spacious room that would provide a comfortable bedroom. Making those changes would make a significant difference to the internal layout of the accommodation at first floor level as well. In my view, these internal changes would create a reasonably comfortable living environment.

¹ The London Plan, March 2016

² Technical Housing Standards – Nationally described space standard

Outside space

22. The rear garden is currently limited to a hard-surfaced courtyard which is separated from the unused portion of land and the outbuilding, to the rear, that was previously part of the garden. There is no definite agreement between the parties regarding the factual size of the outdoor space or what would be available if the partitioning fence were to be removed.
23. The small hard-surfaced space that can be accessed by the occupants of the ground floor flat appeared to me to give a reasonable amount of space which would seem consistent with the amount of space required as set out in Table 7D.2 of the Development Management DPD³ (DPD). However, as I have stated above, I am concerned that the means of access to the garden from that flat requires walking through one of the bedrooms which is inconvenient and lacks adequate privacy for occupants.
24. The existing garden is not accessible by the occupants of the upper flat. Even if it is possible to increase the garden size by using the fenced off area as well, it is not clear how that could be accessed by the occupants of that flat without compromising the privacy of the other residents on the ground floor or having to utilise areas outside of the appeal site.
25. The garden does not achieve a high standard of amenity for any of the residents within the appeal site.

Conclusion on main issue

26. With respect to the main issue occupants of the 2 flats currently have inadequate living conditions by reason of internal space, layout and access to external amenity space. Even though some improvements could be made to the internal accommodation, access to external space would remain inadequate given the details provided. This does not therefore comply with LP Policy 3.5 and table 3.3 or DPD Policies 7B and 7D.

Other matters

27. Whether or not the dwelling could originally accommodate 7 people with compromised space does not affect my judgement that the present accommodation is unsuitable for the above reasons. The interested parties who have commented about this case include the existing tenants. It is not for me in this appeal to re-appraise or critique the process through which they have become tenants at this property. Furthermore, I have taken account of the benefits of this accommodation to the housing stock but there is insufficient evidence to indicate that these are significant.

Conclusion on ground (a)

28. For the reasons given above and having regard to other matters raised, the harm I have identified in relation to the main issue is not outweighed by the other matters. The appeal on ground (a) and the application for deemed planning permission fail.

The Appeal on ground (f)

29. The appeal on this ground is that the steps required exceed what is necessary

³ Ealing Development Management Development Plan Document, Adopted 10 December 2013

to achieve the purpose of the notice. The Council confirms that the purpose of the notice is to remedy the breach of planning control.

30. Firstly, the notice requires the use as 2 separate self-contained dwellings to cease. Requirements 2 to 4 necessitate the removal of the physical elements that have enabled the unauthorised use with 5 seeking the reinstatement of the garden as it was. In my view these steps are all reasonably required to achieve the purpose of the notice.
31. The appellant under this ground of appeal is requesting my consideration of an alternative scheme which would not achieve the purpose of the notice but is aimed at the alternative purpose as set out in S173(4)(b) of remedying any injury to amenity caused by the breach. I have considered the planning merits of that alternative scheme above and do not consider that it overcomes the planning objections. Those alternative plans are not an obvious alternative to the current requirements of the notice.
32. The appeal on ground (f) therefore fails.

The Appeal on ground (g)

33. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice requires all of the requirements to be completed within 3 months.
34. The appellants state that the occupants of the flats could not be re-homed in that time due to the term of their tenancy agreements. A period of 6 months is requested in which time it is stated that alternative and affordable accommodation within the area could be found.
35. Finding alternative accommodation could cause stress and anxiety for the existing families who live at the appeal site, particularly within the present health crisis. The development in its present form causes harm in the manner I have described within the reasoning for the appeal on ground (a). This relates largely to the tenants own living conditions which are substandard rather than impacts upon neighbouring residents or the wider environment.
36. In my view, the requested period of 6 months would provide a more reasonable time for present tenants to find alternative accommodation. I hope that this would reduce some of the pressure upon them. This would strike a more reasonable and proportionate balance in my view.
37. For that reason, the appeal on ground (g) therefore succeeds.

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A Harwood

INSPECTOR