



Appeal Decision

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/G5750/C/20/3247550

282 Barking Road, Plaistow, London E13 8HR

- 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 Muhibur Choudhury against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 24 January 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission the material change of use of the property from four self-contained flats to six self-contained flats, through the subdivision of the ground floor rear flat and the first floor rear flat.
 - The requirements of the notice are:
 1. Cease the use of the property as more than four self-contained flats.
 2. Remove from the property all but four kitchens.
 3. Remove from the property all internal dividing doorways and internal partitioning that solely facilitates the use of the property as more than four self-contained flats.
 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
 - The period for compliance with the requirements is three 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.
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Decision

1. 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.

Preliminary Matters

2. By a letter dated 9 November 2020, arrangements were made for me to inspect the site on 24 November 2020, accompanied by a representative of the appellant and the Council. A representative of the Council met me at the property at the appointed time. But nobody attended on behalf of the appellant so no access was provided to the property. Consequently the site visit was aborted.
3. On the appeal form the appellant has declared it is not essential for me to enter the site to check measurements or other relevant facts. Having attempted to gain access to the appeal site, I have considered determining the appeal without entering the site. I sought the appellant's comments on this approach and no response was received. So I have based my decision on the information provided.

4. My attention has been drawn to emerging policies of the draft London Plan dated December 2017. However, no evidence has been provided that satisfies me the policies referred to will be published in the form provided and so I give them limited weight in this decision.

Reasons

The ground (d) appeal

5. In an enforcement appeal on ground (d), the burden of proof is on the appellant, 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. I must consider whether, prior to the issue of the notice, there had been continuous use of the property as 6 self-contained flats for 4 years beginning with the date of the breach.
6. In their grounds of appeal the appellant identified examples of evidence they would be relying on. However, no such evidence has been provided. So I am not satisfied that at the date when the notice was issued no enforcement action could be taken in respect of the breach alleged in the notice. Accordingly, the appeal on ground (d) fails.

The ground (a) appeal

7. Based on the reasons for issuing the notice, the main issues in the ground (a) appeal are:
 - whether the appeal development provides an acceptable standard of accommodation; and
 - the effect of the appeal development on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Standard of Accommodation

8. Uncontested evidence provided by the Council indicates each flat formed as a result of the breach fails to meet minimum space standards¹, has no provision for cycle storage and has no access to private amenity space. I therefore conclude the appeal development does not provide an acceptable standard of accommodation.
9. This does not comply with Policies 3.5 and 6.9 of the London Plan 2016 (as amended) (the London Plan), Policies SP2 and H1 of the London Borough of Newham Local Plan 2018 (the Newham Local Plan), the Housing Supplementary Planning Guidance, March 2016 (the SPG) or paragraph 127 f) of the National Planning Policy Framework (the Framework) in respect of this main issue.
10. My attention has also been drawn to Policies 3.8, 7.1 and 7.2 of the London Plan and Policies SP1 and SP3 of the Newham Local Plan. But it has not been explained how these are relevant to this main issue.

¹ Department for Communities and Local Government, Technical Housing Standards – Nationally Described Space Standard, March 2015

Living Conditions

11. Based on the information available, 2 flats have been subdivided to form 4 flats. In my judgement, this represents a significant intensification of space within this narrow mid-terrace building in a close-knit urban area. As a result, additional noise and disturbance is likely to be generated for occupiers of existing flats within the building and neighbouring homes, particularly as a result of increased comings and goings. I have no reason to think this is not the case.
12. I therefore conclude the appeal development harms the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. This does not comply with Policy 7.15 of the London Plan, Policy SP8 of the Newham Local Plan and paragraph 127 f) of the Framework in respect of this main issue.
13. My attention has also been drawn to Policies SP2 and SP3 of the Newham Local Plan. But it has not been explained how these are relevant to this main issue.

Other Matters

14. The appellant states the new residential units provide much needed accommodation and that they are well served by public transport. But these are not good enough reasons for allowing the appeal development in light of the harm identified above.
15. The appellant suggests the appeal development makes an effective use of land. But from the information provided, this is at the expense of the standard of accommodation provided and the living conditions of neighbouring occupiers.
16. The appellant also states the accommodation provides affordable housing to low income groups. But there is no evidence the accommodation is affordable for the purposes of the Framework.

Conclusion on ground (a)

17. Considering all of the above points, the appeal on ground (a) fails.

The ground (f) appeal

18. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by discontinuing any use of the land 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. In this case, the purpose of the enforcement notice is to remedy the breach of planning control.
19. The appellant considers requirement 2 to remove all but 4 kitchens is an excessive requirement of the notice. This is on the basis that requirement 2 will hinder the appellant from offering the property for other uses in the future, such as a House in Multiple Occupation (HMO) with the benefit of having 2 kitchens in one unit. But other uses would require an express grant of planning permission, including use as HMO accommodation. This is because of an Article 4 Direction the property is subject to, which came into force on 31 July 2013.
20. There is no evidence the kitchens attacked by requirement 2 are not integral to and solely for the purposes of facilitating the unauthorised use. So the notice

may require their removal so that the land is restored to its condition before the change of use took place. I conclude no lesser steps have been suggested which would achieve the purpose of the notice. As such, the appeal on ground (f) fails.

The ground (g) appeal

21. The appellant indicates the flats have been occupied for a considerable period of time and so the time for compliance should be extended to 6 months to minimise disruption and allow any associated works to be undertaken. But no evidence has been provided which indicates the requirements of the notice cannot be carried out in the time period specified in the notice.
22. I conclude the time period specified in the notice does not fall short of what should reasonably be allowed. I am conscious of the Covid-19 pandemic. So should this prove not to be the case, it is entirely a matter within the discretion of the Council to draw on its powers under section 173A(1)(b) of the 1990 Act, without prejudicing its right to take further action. The appeal on ground (g) fails.

Conclusion

23. For the reasons given above, I conclude that the appeal does not succeed. I uphold the enforcement notice 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