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## Appeal Decision

Site visit made on 14 December 2020

**by Zoë Franks Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 6<sup>th</sup> January 2021**

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**Appeal Ref: APP/G5750/C/19/3243128**  
**183 Boleyn Road, London, E7 9QH**

- 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 Yahya Khan against an enforcement notice issued by the Council of the London Borough of Newham.
  - The enforcement notice, numbered EN20/00060/ENFNOT, was issued on 15 November 2019.
  - The breach of planning control as alleged in the notice is without planning permission the material change of use to two self-contained flats.
  - The requirements of the notice are: 1. Cease the use of the property as self-contained flats; 2. Remove from the property all but one kitchen, any internal dividing doorways and internal partitioning that solely facilitates the use as self-contained flats, plus all duplicate doorbells, duplicate signage and duplicate outside waste bins; 3. Remove from the property all but one supply of electricity, gas and water; and 4. Remove from the site all debris arising from compliance with steps 1,2 and 3.
  - The period for compliance with the requirements is 5 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission also falls to be considered.
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### Decision

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied: by the deletion of 5 months and the substitution of 9 months as the period for compliance. Subject to this variation 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. The appellant was not present for the site visit but the tenant in the upstairs flat allowed access with the appellant's permission. I was therefore able to undertake a site visit of part of the appeal property, without the appellant or Council officer present, but I was unable to gain access to the ground floor flat.
3. The enforcement notice and the Council's evidence refer to policies in the emerging draft London Plan but I have not referenced them in this decision as they are not yet part of the development plan but are consistent with it.

### Ground (d)

4. In order to succeed on this ground, the appellant must show on the balance of probabilities that the property has been used as two self-contained flats substantially uninterrupted for a period of 4 years prior to the issue of the

notice. Whilst I was unable to see the inside of the ground floor flat, the layout of the building accords with the evidence submitted by the parties who agree that it was in use as two self-contained flats at the date of the issue of the notice.

5. The appellant's case is that the conversion and use as separate units took place more than 4 years before the service of the notice. As evidence, the appellant has provided a 12 month tenancy agreement dated 4 February 2014 relating to an unfurnished first floor flat. This agreement does not cover a continuous four year period and is only in relation to the upstairs flat. Furthermore, it is not corroborated with any other evidence such as proof of the payment of rent or council tax or electoral roll records.
6. The Council's delegated report (dated 14 November 2017) refusing planning application 17/0294/HH for the erection of a first floor extension states that the plans which were submitted as part of that application did not accurately reflect the layout of the property at that time. The report does not specifically record whether the property was in use as one or two units (although it does refer to the property as a dwellinghouse which suggest that it was a single unit), or indeed record the actual layout of the property in detail. In the absence of any other evidence the appeal on ground (d) cannot succeed.

### **Ground (a) and the deemed application for planning permission**

7. The main issues in the ground (a) appeal and deemed application for planning permission are:
  - a) Whether the development causes the loss of a family home;
  - b) Whether the development provides adequate living conditions; and
  - c) The effect of the development on the character and appearance of the area.
8. The appellant's case is that planning permission should be granted because he can demonstrate that the flats comply with planning policy and provide suitable accommodation in an area of need close to the town centre. However, no further information has been submitted to support these assertions. The appellant has had the opportunity to respond to the Council's evidence but has not done so. I have determined the ground (a) appeal and deemed application for planning permission based on the information and the relevant development plan and other policy documents before me.

### *Family home*

9. The Council's case is that the change of use represents the loss of a family dwellinghouse which causes harm to the stability of the community and community cohesion. During the site visit, Flat 2 which is situated on the first and attic floors of the appeal property, was being used as a three bedroomed dwelling, with a kitchen, bathroom and living/dining room. As no evidence has been submitted regarding the layout of Flat 1, situated on the ground floor, and I was unable to see it during the site visit I cannot comment on its configuration, but it is smaller than Flat 2 in terms of its floor area, even with the ground floor rear extension which was evident from the upstairs window. Policy H4 of the London Borough of Newham Plan 2018 ('the Newham Local Plan') seeks to protect 3 bed and 4+bed family housing. The conversion of the appeal property into two units is in conflict with this policy as the house, if used

as one unit, would have more than 4 bedrooms. In addition, Policy H4 states that subdivision or conversion of such properties may be appropriate, where all resulting new units are 4 bedroom plus family dwelling units, but this is not the case here.

10. The loss of the large family dwellinghouse causes material harm to the provision of housing stock and fails to promote stable mixed and balanced communities. This is contrary to development plan policies including Policy 3.8 of the London Plan which are in part intended to deliver good quality homes, and Policies H1 and H4, S1, S6, SP1, SP2 and SP3 of the Newham Local Plan which seek to secure quality housing and protect housing stock and to stabilise the population.

#### *Living conditions*

11. It appeared from the information submitted and from my observations during the site visit that Flat 2 did not have any private outdoor amenity space. The halls and entrances inside Flat 2 were cramped with the dwelling accessed by stairs located directly behind a locked door leading from the small ground floor hall area shared with Flat 1. Dedicated cycle storage was not evident and the appellant has not stated that there is any, despite it being raised in the Council's evidence. Similarly, the appellant has not provided any information to contradict the reason on the enforcement notice that states that the development does not accord with the provisions of the DCLG Technical Space Standards. In the absence of any case made out to the contrary, and in conjunction with my observations during the site visit, I accept these matters as put by the Council.
12. For the reasons set out previously, the living conditions within the units are not adequate and the development creates low quality housing which is in conflict with the National Planning Policy Framework, the DCLG Technical Housing Standards, the Mayor of London's Housing SPG 2016 and Policy 7.2 of the London Plan.

#### *Character and appearance of the area*

13. It is likely that the occupiers of two residential units will have separate living patterns and routines, with increased visitors and comings and goings, when compared with a single household. The conversion of a single family dwellinghouse into two units is an intensification of use which can cause harm to neighbouring amenity. The change of use to two self-contained flats of a house originally designed as a single family home is likely to lead to an increase in noise and disturbance, and in an additional need for refuse facilities and parking, which will cause material harm to the character of the area. This is in conflict with Policy 7.15 of the London Plan and Policies SP2, SP3, SP8 of the Newham Local Plan, all intended in part to provide good quality neighbourly development that reflects and responds to local character.

#### *Conclusion on Ground (a)*

14. The change of use of the property to two self-contained flats has failed to meet the housing needs of the borough, and is harmful to the living conditions of the occupiers and the character of the area. It is contrary to the development plan policies as set out above and since there are not material considerations to outweigh the conflict with the development plan, I conclude that the appeal on

this ground should be dismissed and the deemed application for planning permission refused.

**Ground (g)**

15. The appellant has requested 12 months in which to comply with the terms of the notice if upheld. I note that the notice was issued before the start of the Coronavirus Pandemic and, taking into account various factors including the harm being caused by the development and the residential use of the property, I therefore intend to extend the period to 9 months which is proportionate in all of the circumstances. In this context, the ground (g) appeal succeeds.

*Zoë Franks*

INSPECTOR