
Appeal Decisions

Site visit made on 6 April 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2021

Appeals A and B Ref: APP/H5960/C/20/3255294 & APP/H5960/C/20/3255295

Ground Floor Flat, 19 Shipka Road, London SW12 9QP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr S Jaffery (Appeal A) and Ms G.E. Roberts (Appeal B) against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The enforcement notice was issued on 28 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission and within the last four years the material change of use from one x two bedroom self-contained flat to use as two x one bedroom self-contained flats.
 - The requirements of the notice are:
 1. Cease the unauthorised use of the Property as two self-contained flats and return the property to its layout as one flat;
 2. Remove from the Property the second kitchen (including cabinets, cooking facilities, sink and fridge) from the front facing flat and ensure that any remedial works accord with the approved plans of planning permission reference 2014/5077;
 3. Remove from the Property any dividing walls, furniture, fittings and fixtures associated with the unauthorised use; and
 4. Remove from the Property all debris arising from compliance with steps 1 to 3 above.
 - The period for compliance with the requirements is 5 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a), (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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Appeal C Ref: APP/H5960/W/20/3251469

19 Shipka Road, London SW12 9QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Jaffery against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2019/3358, dated 28 July 2019, was refused by notice dated 10 March 2020.
 - The development proposed is described as: "convert existing ground floor flat in to two studio flats".
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Decisions

Appeal A and B:

1. It is directed that the enforcement notice is varied by:

- deleting the words “Five months” within section 6 (Time for Compliance) and its replacement with “Ten months”.
2. Subject to this variation, the appeal is dismissed, and 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.

Appeal C:

3. The appeal is dismissed.

Appeal A on ground (a), the deemed planning application and Appeal C

4. As set out above there are three appeals on this site. I have considered each appeal on its individual merits. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of permission for the identical conversion, and the considerations in that appeal are similar, I have therefore treated both cases together, to avoid duplication, except where otherwise indicated.
5. The ground (a) appeal is being considered under Appeal A only since Ms Roberts (Appeal B) has withdrawn her appeal on ground (a).

Main Issues

6. The main issue in both appeals are:
- Whether the conversion is acceptable, having regard to the effect on the supply of single family dwelling houses; and
 - the living conditions for current/future occupiers of the new flats with regard to floor space and aspect.

Preliminary

7. During the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021 (London Plan), which was adopted on 2 March 2021. Therefore, this must now be given full weight in the decision making process. The Council has provided copies of the relevant recently adopted London Plan, 2021 policies and the appellant has been given the opportunity to respond, and so has not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.
8. The Written Ministerial Statement (WMS) dated 25 March 2015 sets out the Government’s policy on the technical standards for new dwellings. The WMS states that ‘decision takers should only require compliance with the new national technical standards where there is a relevant current Local Plan policy’. Policies DMH4 (a) and DMH6 of the Wandsworth Local Plan Development Management Policies Document, 2016 (Local Plan) states that residential development, including new build and conversions, will be permitted on appropriate sites..... where the proposal complies with internal space standards as outlined in the London Plan and the Mayor’s Housing Supplementary Planning Guidance (SPG) as amended to take account of the national technical housing standards. Therefore, it is appropriate to consider this appeal in

accordance with those policies in addition to the nationally described space standard, 2015

Supply of Single Family Dwelling Houses

9. Policy DMH2, part a of the Local Plan states that “The conversion of dwellings with less than 150 sq.m of existing habitable floorspace will only be permitted where the property is unsuitable for families”.
10. The supporting text for this policy highlights that it is important that the gain of additional dwellings (from conversions) is not achieved at the expense of family-sized accommodation. The protection of these smaller dwellings also contributes to a greater choice of dwelling sizes and prices. Small houses and larger flats, in addition to maisonettes, can also provide for the needs of professional sharers, adult families, and for people who work from home. The supporting text further states that the 150 sq.ms threshold will apply except where the property is considered to be unsuitable for families. In determining whether a property is suitable for families account will be taken of its location, for example, properties above shops or offices, in town centres or along busy main roads may not be suitable for families and therefore may be converted, subject to compliance with other residential policies as set out below.
11. The above policy accords with the National Planning Policy Framework, 2019 (the Framework), which indicates that planning policies should reflect the housing needs of different groups, including families with children.
12. There is no dispute between the parties that the ground floor flat prior to the unauthorised conversion is less than 150sq.m. The site is not above a shop or office and is located in a relatively quiet residential street with good access to public transport with Balham underground and railway station and bus routes nearby. Prior to the current unauthorised conversion, the appeal site comprised two bedrooms with access to a good sized rear garden, and in this respect is considered to be suitable for a family. However, the current unauthorised conversion has resulted in a loss of accommodation suitable for a family, for which there is an identified housing need in the Borough in conflict with Policy DMH2 (a) of the Local Plan.
13. I therefore conclude on the first main issue that the development has an unacceptably harmful impact on the supply of single family dwelling houses, contrary to Policy DMH2 of the Local Plan, which seek the aforementioned aims.

Living conditions for current/future occupiers of the flats - floor space and aspect

14. The conversion has created two one bedroomed flats on the ground floor. The front one bedroom flat has access to a small courtyard area and the rear one bedroom flat has sole access to the rear garden.
15. Both parties’ states that the front ground floor flat has an overall floor space of approximately 37.8sq.m, which is marginally below the 39sq.m required by the Technical housing standards – nationally described space standards (2015) and Policy D6 of the London Plan. However, the flat has a well-proportioned open plan living/dining/kitchen and a bedroom with access to a small private courtyard. I also note that this flat is dual aspect and the living area benefits from a large south-west facing bay window.

16. Both parties state that the rear ground floor flats provides an overall internal floor space of approximately 38sq.m, slightly below the 39sq.m required. However, the flat has a well-proportioned open plan living/dining/kitchen and has sole access to the private rear garden. Although the bedroom is less than 2.15m wide, the overall bedroom exceeds the 7.5sq.m required by the nationally described space standards (2015) and Policy D6 of the London Plan. I also observed during my site visit that there was sufficient space for a bed, as well as a wardrobe/storage and sufficient space for circulation. The main living space also benefits from large French doors, providing acceptable levels of light and aspect overlooking the private rear garden.
17. Accordingly, although the overall floor space of both flats is marginally below the national space standards, I find that the flats still provide satisfactory living accommodation for current/future occupiers with sufficient floor space and aspect.
18. I therefore conclude that although the new flats are not strictly in accordance with Policies DMH2, DMH4 and DMH6 of the Local Plan, which requires proposals for new residential accommodation, to meet the space standards set out in the national technical housing standards, 2015, and the London Plan, for the reasons outlined above the development results in acceptable living conditions for current/future occupiers with regards to floor space and aspect. In this respect the development is in accordance with paragraph 127 of the Framework, which states that development should ensure high standards of amenity are created for future as well as existing users.

Other matters

19. The appellant states that the flats could still be occupied by a family with children. However, given that the development results in two one bedroom, one person units, it is unclear how this can be so. I also note that the appellant states that the development has created an additional affordable unit which contributes to alleviating the housing crisis in the area. However, in my opinion this does not justify the permanent loss of a family dwelling.

Conclusion on Ground (a) and the Deemed Planning Application and Appeal C

20. Whilst I have found no harm with regards to the living conditions of current/future occupiers, these are neutral considerations that do not weigh in favour of the development and for that reason do not outweigh my conclusion on the first main issue regarding the unacceptable loss of a single family dwelling. For the reasons given and with regard to all other matters raised, I conclude that Appeal A on ground (a) should fail and the deemed planning application for permission deemed to have been made will be refused.
21. For the same reasons, Appeal C, should also be dismissed.

The appeal on Ground (f)

22. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".

23. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is clear from the first requirement of the notice, which requires the unauthorised use of the property as two self-contained flats to cease and for the property to be returned to its former lawful layout as one flat.
24. The appellant states that the requirements are excessive since the existing occupiers would need to be rehoused and that the Council should have negotiated with the appellant to reach a compromise. However, these measures outlined by the appellant would not remedy the breach of planning control, which is the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
25. Therefore, the appeal on ground (f) fails

Appeal on ground (g)

26. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 5 to 9 -12 months, in order to provide sufficient time to re-home existing occupiers and carryout the required building works.
27. Current occupiers might find it difficult under current housing market conditions to find suitable accommodation, particularly in light of Government policy regarding Covid-19 and restricting social contact. I also acknowledge that all occupiers may need to vacate the premises in order to carry out building works. I therefore consider that in the particular circumstances of this case, a 10 month compliance period is proportionate and reasonable. I shall therefore vary the period for compliance prior to upholding the notice to 10 months.
28. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusions

29. **Appeal A and B:** For the reasons given above, and having regard to all other matters raised, I conclude that Appeal A fails on ground (a) and I shall refuse planning permission on the deemed application and uphold the notice. I conclude that the appeals A and B should not succeed. I shall uphold the enforcement notice with a variation.
30. **Appeal C:** For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR