



Appeal Decision

Site visit made on 21 September 2021

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2021

Appeal Ref: APP/P4605/C/21/3274963

95 Weoley Park Road, Birmingham B29 6QZ

- 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 Shane Grant against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2016/0514/ENF, was issued on 14 April 2021.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use from single dwellinghouse (C3) to 5 self-contained flats (C3).
 - The requirements of the notice are:
Cease the use of the property as self-contained flats and return the property to its original use as a single dwellinghouse.
 - The period for compliance with the requirements is 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). 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 1990 Act.
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Decision

1. It is directed that the enforcement notice be varied by deleting the step under section 5 and replacing with:
"Cease the use of the property as self-contained flats"
2. Subject to this variation, 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.

Preliminary matter

3. Since the submission of this appeal, an application for a change of use of the property to 4no. self-contained flats (Ref: 2021/04417/PA) has been approved by noticed dated 26 July 2021. By implementing this permission, the two flats on the first floor (Flats 3 and 4) would become one.
4. The Development Management in Birmingham Development Plan Document (DMB) was submitted to the Secretary of State for examination in July 2020 and hearing sessions took place in November 2020. Consultation on the Main Modifications closed on 5 May 2021. The relevant policies carry forward the approach in the current development plan.

Matters concerning the enforcement notice

5. A requirement to cease the unauthorised use is sufficient, whereas a positive requirement to restore the use of the building to its original use as a single dwellinghouse goes beyond what is necessary to remedy the breach of planning control. Accordingly, I have deleted this by way of a variation to the notice. I am satisfied that the variation would not result in any injustice to the parties¹.

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

Main Issue

6. This is whether adequate living conditions are provided for occupiers of the premises with particular reference to indoor space.

Reasons

7. The appeal site is a large semi-detached property located within a residential area. It is positioned at the end of a row of houses in a tree lined service road which is set back from the main highway. There is off road parking to the front and a private garden to the rear. The property has been converted to provide five self-contained flats over three floors.
8. The Council considers that the intensive nature of the conversion of the property to five flats provides a poor living environment for the occupiers. This is because the flats are "too small, poorly laid out and with significantly reduced head height". The submissions from the Council confirmed that the issue of poor living conditions referred specifically to Flats 3 and 4 on the first floor and Flat 5 on the second floor.
9. From my own inspection, the two first floor flats clearly have restrictive accommodation. Although they have windows to the front and rear which give a pleasant naturally-lit atmosphere and a good outlook, the accommodation is extremely compact, particularly the arrangement whereby the living and kitchen area are arranged as one space. There is also a separate small shower room/WC adjoining the kitchen space and a separate bedroom. Because there is no shared communal area in the building such as a lounge/TV room, the occupiers of those rooms must undertake all their living in the combined living/kitchen space.
10. The gross internal floor area of Flats 3 and 4 is given as 22sqm and 27.9sqm respectively with bedrooms measuring 8.1sqm and 8.23sqm. The plans show the kitchen laid out with storage units, fridge freezer, stove, sink and space for a washing machine. The plans also show how the remaining spaces can be equipped to provide a bedroom with a single bed, computer station and storage space, and a living area with relaxing chair or sofa and a table.
11. Although the flats provide a practically equipped kitchen, I find that these flats are too small and cramped to provide a reasonable and comfortable standard of living. The limited floor area, and consequently the layout, is of particular concern with Flat 3 which provides narrow cramped 'living' space, and in these circumstances, it would be likely that any occupier would utilise their bedroom in preference to sitting in an armchair in their kitchen. Although Flat 4 has a greater internal floor area, it is also extremely limited. The confined floor areas

¹ 176(1)(a) of the 1990 Act

and restricted widths are problematic for the provision of suitable furniture and storage for the occupiers of these units, and this is harmful to their living conditions.

12. Flat 5 is situated on the top floor and takes possession of the entire floor area. It has a good level of natural light and has a pleasant outlook. However, because the converted flat is within the roof space, head height is compromised by sloping ceilings which make part of the area in the living area and the room labelled "store"² and "dining room"³ unusable. Nevertheless, the flat is shown as having a gross internal floor area of 45sqm with 32sqm of that space with an acceptable head height measuring 2.3m. I observed that the layout of the flat provides for reasonably comfortable accommodation and although the living and kitchen areas are in a single room, there is space to relax, albeit with a limited choice for furniture layout.
13. I appreciate that there may be demand for the flats, as shown by the marketing material provided by the appellant. However, it is important to the health and wellbeing of occupiers that the internal space of self-contained accommodation is of an acceptable level to ensure that their living conditions are not impinged. Development that provides an unacceptable level of accommodation cannot be deemed as being beneficial to a sustainable neighbourhood. Furthermore, restricting occupancy to an individual person would not address the harm related to the lack of space in some of these flats.
14. I therefore find that the subdivision of the property to five flats has resulted in an unacceptable standard of living, due to the size of the accommodation created and the resultant sense of enclosure from such confined spaces, particularly for the occupiers of Flats 3 and 4. Having regard to the above conclusions, the property fails to make adequate provision for the existing and future occupiers regarding the availability of internal floorspace, resulting in a poor quality of accommodation. In this respect, the development conflicts with Policies PG3, TP27 and TP35 of the Birmingham Development Plan (2017), saved policies 8.23 to 8.25 of the Birmingham Unitary Development Plan and the National Planning Policy Framework which, amongst other matters, collectively seek new residential development to be of a satisfactory size and layout and be of a high standard for new and future users.

Conclusion on ground (a)

15. There are no material considerations that indicate the deemed application should be determined other than in accordance with the Development Plan. For the reasons given above I therefore conclude that the appeal on ground (a) should not succeed and I shall refuse to grant planning permission on the deemed application.

The appeal on ground (f)

16. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development.
17. The steps which the Council require to be taken, or the activities which the authority require to cease, in order to remedy, wholly or partly, the breach of

² Existing plan 4665:02C

³ Proposed plan 4665:04A

planning control is set out in section 3 of the notice. The steps, as varied and required by the notice, stipulate the cessation of the use of the property as self-contained flats to remedy the breach of planning control. This requirement is in accordance with s173(4)(a) of the Act.

18. While the issued requirement does not exceed the purpose behind the notice, an alternative, as suggested by both parties, is to make the development comply with the planning permission⁴ which has been granted in respect of the land. This would indeed remedy the breach of planning control, but as s180(1) of the 1990 Act provides that the notice shall cease to have effect so far as inconsistent with the permission granted, I do not consider it necessary to vary the notice to include the option to comply with the terms of that planning permission.

19. The appeal on ground (f) therefore fails.

The appeal on ground (g)

20. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant argues that six months is wholly unreasonable having regard to the current occupation of the flats and the works required for compliance. A minimum period of 12 months following the notice taking effect is suggested as being more appropriate and reasonable.

21. I am informed that 4 flats within the building are currently let with tenants on six month assured shorthold tenancies, with one agreement accepted on 12 April 2021. Part of the reason for the appeal on ground (g) is due to eviction proceedings requiring a landlord to give notice of at least two months, having been extended to six months due to the pandemic. That may have been the case at the time of the appeal. However, I am aware that from 1 October 2021, all notice periods returned to the pre-pandemic position with the minimum period of notice being two months.

22. Notwithstanding this, the appellant highlights that the works would take a minimum of 2-3 months to be completed and that this timescale could be compromised because of current difficulties obtaining contractors and materials.

23. The Council has stated that even though these are unprecedented times they believe the requirements of the notice are still achievable. They also provide that should the Covid-19 pandemic create a barrier to achieve compliance with the requirements of the enforcement notice within the 6 month compliance period, the Council will consider its powers of discretion under S173A of the Act, which gives the Council the ability to extend the time for compliance with the notice.

24. Overall, and having regard to both parties, I do not consider that 6 months is an unreasonable amount of time to comply with the notice, which is the cessation of the use of the building as self-contained flats.

25. Accordingly, the appeal on ground (g) fails.

S A Hanson INSPECTOR

⁴ 2021/04417/PA