



Appeal Decisions

Site Visit made on 20 September 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2021

Appeal A Ref: APP/N5660/X/20/3262572

172 Streatham Hill, London, SW2 4RU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ashraf Ismail against the decision of London Borough of Lambeth.
 - The application ref 20/02534/LDCE, dated 28 July 2020, was refused by notice dated 17 September 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is four self contained flats.
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Appeal B Ref: APP/N5660/C/21/3267353

172 Streatham Hill, LONDON, SW2 4RU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ismail Properties Investment Limited against an enforcement notice issued by London Borough of Lambeth.
 - The notice was issued on 26 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the first floor flat into two self-contained flats and the second floor flat into two further self-contained flats ("the four unauthorised flats").
 - The requirements of the notice are to:
 - a) Cease the use of each of the four unauthorised flats and remove from the premises all internal doors/partitions, kitchen units/appliances, electric/water/gas metres and associated plumbing/wiring, that facilitates the unauthorised use; and
 - b) Remove all associated waste and debris, resulting from compliance with the above step, from the premises.
 - The period for compliance with the requirements is: 12 months after this notice takes effect.
 - 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. 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 A Decision

1. The appeal is dismissed.

Appeal B Decision

2. 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.

Preliminary Matters

3. Since the appeal was submitted, the Council adopted its Lambeth Local Plan 2020-2035¹. The Council advise that its policies, D5, H4, H5 and H6, Q2, Q12 and Q13 are largely the same as the ones they replace and have also provided me with a copy of policies T3 and T6 in support of the appeal. The Council advise that affordable housing contributions are no longer required under policy H2. There would therefore be no conflict with policy H2. The appellant has been given the opportunity to comment on the Lambeth Local Plan through the appeal process.
4. Since the enforcement notice has been issued, the London Plan (2021) has been published. Both parties have been given the opportunity to comment on the implications of the new plan on the appeal. Although the Council has not provided me with a copy of the policies it considers relevant, policy D6 of the 2021 London Plan is similar to policy 3.5 of the 2016 London Plan and the associated space standards contained within Table 3.3, upon which both the appellant and Council have based their case. I am therefore satisfied that there would be no injustice in my consideration of policy D6 in this instance.

Appeal A: S195 LDC & Appeal B: S174 Ground (d)

5. An application under S191(1)(a) of the Act² seeks to establish whether any existing use of buildings or other land is lawful. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
6. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
7. The main thrust of the appellant's case under both the S195 appeal and the ground (d) appeal is that the use of the first floor and second floors as a total of four flats has occurred without significant interruption for a period of at least four years. Given the similarity between the issues, I shall consider them together.
8. The date of the LDC application is 28 July 2020 and the date of the issue of the enforcement notice is 26 November 2020. The relevant dates are therefore 28 July 2016 and 26 November 2016 for the LDC and ground (d) appeal respectively. For the appellant to succeed on either appeal, the appellant will need to show, on the balance of probabilities, that the material change of use of the building to four flats began on or before the relevant date and that it continued without significant interruption for at least 4 years thereafter.
9. A statutory declaration, signed by the Director of Ismail Property Investments Ltd, states that the property was purchased in July 2012 with a leasehold tenant in situ. The property is stated to have been laid out as four self-contained flats and a separate ground floor commercial unit. The Director states that all four flats have been continuously tenanted other than, in the

¹ Adopted September 2021

² Town and Country Planning Act 1990 (as amended)

- case of some flats, short periods between one tenant(s) vacating and a new tenant moving in. However, the statement provides no details of occupation.
10. A letter, dated 24 July 2020, signed by the previous leaseholder, states that 'the upper residential have always been as what they are at present being of two separate units on each floor'. However, the letter does not state how the units were used or over what period.
 11. The director of London Building Construction Limited has provided a statutory declaration, dated 24 July 2020, in support of the appeal. His company carried out works on both the ground floor commercial and the residential flats above between October 2016 to May 2017. He states that on inspection of the flats above, he noted that each floor contained two flats, which at the time were out dated and in poor condition. It is not clear from the statutory declaration whether the flats would have been occupied during the works.
 12. The appellant advises that there are no tenancy agreements available prior to 2017 because the previous letting agent is no longer trading, however, the lease was surrendered in May 2016, more than four years before the issue of the enforcement notice. Building works were carried out over a period of up to 7 months which would, if the flats remained unoccupied during those works, have been so significant a break in occupation, as to start the clock again in terms of the immunity period.
 13. The leasehold tenant surrendered the lease in May 2016, following which Citylocations were instructed to market and manage the property. A statutory declaration signed by the Director of City Locations, states that he has managed the property on behalf of the landlord since 1 April 2017 and it has from this date been laid out as four self-contained flats. All four flats are stated to have been continuously tenanted other than, in the case of some flats, short periods between one tenant(s) vacating and a new tenant(s) entering into a tenancy and moving in.
 14. Although there is comprehensive evidence that the four flats have been occupied continuously from 2017, evidence prior to City Locations taking over the management of the premises is limited and does not demonstrate the flats had been occupied continuously for a period of at least four years. Whilst I agree Council Tax records are not decisive, it does point towards the premises comprising two flats and not the four suggested.
 15. The Council has provided details from the electoral register from 2007. As the appellant points out, there are a number of different names registered at the property. However, the record does not show how the property was occupied. Even if I were to accept that the records indicate levels of occupation, in 2009 there were only two occupants registered and between 2013 and 2018, a maximum of two occupants were registered in any one year, suggesting occupation of only one or two units.
 16. The Council has provided me with a copy of plans which were submitted in support of a planning application in 17/00698/FUL. The plans show an entrance, which leads to the first floor, with doors off for the different rooms. A door is then shown to the stairs, which lead to the second floor. The Council suggests this points towards the property not having been divided into four flats at the time the planning application was submitted.

17. The plans show the property as a maisonette, with living accommodation on the first floor and bedrooms and a bathroom on the second floor, which conflicts with the Council Tax banding details. I note the appellant's explanation that an old survey was used and have no reason to doubt this. The Council does not contend that the property was a maisonette and so, I consider it likely that the plans did not reflect the layout at the time the application was submitted.
18. Nevertheless, the paucity of evidence regarding occupation prior to 2017 is a significant omission. Case law has established that a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time.
19. While the evidence points towards the building being converted prior to 2016, in my view, the appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the material change of use of the building to four flats began on or before the relevant date and that it continued without significant interruption for at least 4 years thereafter.

Appeal A Conclusion: S195 LDC

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of four self-contained flats was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B Conclusion: S174 Ground (d)

21. Thus for the reasons given above, the appeal made under ground (d) must fail.

S174 Appeal Ground (a)

Main Issues

22. The main issues are whether the appeal scheme:
 - Provides satisfactory living conditions for the occupants of the flats, having regard to the internal space provided; and
 - Provides satisfactory provision for refuse and recycling and cycle storage; and
 - Would be car free; and
 - Provides an appropriate housing mix for the Borough; and
 - Provides satisfactory living conditions for the occupants of the flats with respect to noise and disturbance.

Reasons

Living conditions

23. The flats are laid out over two floors, above a commercial premises which is at street level. Policy H5 of the LLP expects new dwellings to meet the minimum private internal space standards set out in London Plan policy D6. Policy D6 of

the London Plan states that housing development should be of high quality design and provide adequately-sized rooms and sets out minimum gross internal floor areas for a one person, one-bedroom dwelling of 37sqm where a shower room is provided and 61 sqm for a two-bedroom dwelling.

24. Both the appellant and the Council have provided an estimate of floor space provided by the units. Even if I take the appellant's figures, which show the property comprises two one-bedroom flats with floor space of around 22 metres squared (sqm) and 30sqm on the first and second floors respectively, and two two-bedroom flats of around 50sqm and 40sqm on the first and second floors respectively, the floor space provided falls well below the minimum requirements set out in the London Plan of 37 square metres for one-bedroom dwellings and 61 square metres for two-bedroom dwellings³.
25. The appellant accepts that the units do fall short of the space standards but asserts that acceptable bedroom/living areas are still provided in terms of floorspace with a good lookout from each habitable room. I have also been provided with letters from tenants in support of the appeal. While I note the tenants consider the standard of accommodation to be acceptable, the requirements set out in Table 3.1 of the London Plan are the minimum that are deemed required. As the floor space provided by the flats falls significantly below the requirements set out in the London Plan, I do not agree that the accommodation provides acceptable living conditions.
26. The appellant states that prior to its purchase of the property, the site was in a very poor and dangerous condition and that there was also evidence of overcrowding. However, no substantive evidence has been provided to show what condition the property was in or how the property was overcrowded. I am therefore unable to give this matter weight.
27. Given the limited internal space of the units, I consider the appeal scheme would fail to provide satisfactory living conditions for occupants, contrary to policy H5 of the LLP and D6 of the London Plan, the requirements of which are set out above.

Refuse and recycling

28. Policy Q12 of the LLP seeks to ensure that refuse and recycling storage is conveniently located for users and within the stipulated distances for collection. The Refuse & Recycling Storage Design Guide (RRSDG)(2013) provides advice on how to achieve adequate refuse and recycling storage facilities, highlighting the threat posed to public health and amenity by inadequate refuse storage.
29. The appellant states that refuse and recycling space can be accommodated within the curtilage of the site. However, no substantive details have been provided.
30. I saw that there is limited outside space and the internal space afforded to the occupants does not meet the amount required. The appeal site is accessed via a shared staircase and external passageway, which serves a number of other properties along the terrace. External storage of bins, refuse and recycling, could obstruct the access to the properties.

³ As set out in Table 3.1 of the London Plan

31. In the absence of any details, I cannot be sure that the appeal scheme would make satisfactory provision or that it would be possible to secure such provision by condition, contrary to Policy Q12 of the LLP and the RRSDG, the requirements of which are set out above.

Cycle storage

32. Policy T3 of the LLP seeks to encourage cycling and sets out that the Council will require the provision of appropriate secure and covered cycle parking facilities in accordance with Local Plan Policy Q13. Policy Q13 of the LLP seeks to ensure that cycle storage is accessible, attractive, secure and safe to use. The appellant states that cycle storage can be accommodated within the curtilage of the site. However, no substantive details have been provided. Given the limited internal and external space, in the absence of details, I cannot be sure that provision can be made or that it would be possible to secure such provision by condition, contrary to policies T3 and Q13 of the LLP.

Car-free development

33. The site has a PTAL Rating of 6 and is located within an area which is subject to a Controlled Parking Zone and Red Route. Policy T6 of the LLP sets out that development should be permit free where the development has a PTAL of 4-6. The supporting text advises that where development involves the redevelopment of existing dwellings, all of the dwellings within the new development should be permit free and that section 106 agreements will be used to secure car-free developments.
34. The appellant asserts that the conversion of two larger flats to four smaller flats is highly unlikely to generate any additional traffic or parking needs. However, different households tend to have different transport requirements and so the creation of an additional two households, even if they are smaller as a result of the size of the flats, is likely to increase the demand for private vehicles. While I saw that the area is well served by public transport, occupants may still choose to own a vehicle. As such, I consider it highly likely that the appeal scheme would generate additional parking demand.
35. The appellant suggests car-free development could be secured by condition. However, the issuing of permits is the responsibility of the highway authority and enforced through the Traffic Regulation Orders (TRO). I do not have confidence that the necessary amendment to the TRO would be made, as this cannot be secured by condition. In the absence of a mechanism to ensure the development would be permit free, I cannot be sure that there would not be an adverse impact on on-street parking, contrary to policy T6 of the LLP.

Housing mix

36. Policy H4 of the LLP seeks a balanced mix of unit sizes including family-sized accommodation, which is defined as having three or more bedrooms. The appeal scheme would comprise two one-bedroom dwellings and two two-bedroom dwellings and would therefore fail to provide family sized accommodation, contrary to Policy H4 of the LLP.
37. The appellant has drawn my attention to paragraph 119 of the National Planning Policy Framework (2021), which seeks an effective use of land in meeting the need for homes. I note it is not always possible to provide a wide mix of accommodation on small scale sites. The supporting text accepts that

rigid application of these requirements may not be appropriate in all cases. Although the layout of the maisonette is likely to have included three bedrooms, the notice does not allege conversion from a maisonette, but from two flats.

38. Given the limited size of the property, it would not have provided a range of dwelling sizes prior to its conversion, nor is it likely to have comprised family-sized accommodation⁴. Consequently, I give very limited weight to the conflict with Policy H4 in this case.

Noise and disturbance

39. Policy H6 of the LLP supports the conversion into self-contained units where the conversion will not lead to an unacceptable level of noise and disturbance to occupiers and adjoining properties and policy Q2 seeks to ensure that noise is reduced to an acceptable level, amongst other things.
40. Despite the size of the units, the living accommodation is laid out so that bathrooms and kitchens of the different units are adjacent to each other. This limits the potential for disturbance. Although the occupant the first floor, one-bedroom flat may be able to hear other occupants entering the building, any noise or disturbance is likely to be limited and is unlikely to be harmful to living conditions. As such, I consider there would be no harm and no conflict with policies H6 and Q2 in this respect.

Ground (a) balance and conclusion

41. Although there would be no harm arising from noise and disturbance, this is a neutral factor in my consideration of the appeal. While the appeal scheme would result in the provision of additional housing, it would not meet the minimum standards required and so I afford any benefit from the additional provision very limited weight.
42. I have found the appeal scheme fails to provide satisfactory living conditions by virtue of inadequate internal space, fails to make adequate provision for refuse, recycling and cycle storage and would have an adverse impact on street parking and fails to provide a balanced mix of unit sizes.
43. Thus, for the reasons given above, I conclude that the development conflicts with the development plan as a whole. There are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (g)

44. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant requests a period of 18 months, given the current pandemic.
45. Since the appeal was lodged, rules and restrictions imposed because of Covid-19 have been relaxed. I consider that a period of 12 months is a reasonable and proportionate time period, which would give the occupants of the flats

⁴ Defined as having three or more bedrooms (at least one of which is a double-bedroom as defined in the Nationally Described Space Standards 2017).

sufficient time to secure alternative accommodation and for the works to be carried out. Consequently, the appeal under ground (g) fails.

Conclusion

46. For the reasons given above, I conclude that the appeal should not succeed. I shall 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.

M Savage

INSPECTOR