



Appeal Decision

Site visit made on 19 October 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Appeal Ref: APP/N5660/C/20/3264672

Land at 10 Stansfield Road, London SW9 9RZ

- 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 Ivan Molina against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 15 October 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the intentional unauthorised: material change of use of the premises from a single dwellinghouse to three self-contained flats ('the three unauthorised flats'); erection of a single storey rear extension with parapet walls and roof terrace ('the unauthorised rear extension'); and erection of side and rear rendered breezeblock boundary walls to 3m in height in the rear garden (one along the boundary with number 12 Stansfield Road and one along the rear boundary) ('the two unauthorised boundary walls').
 - The requirements of the notice are:
 - a) Cease the use of each of the three unauthorised flats and remove from the premises all internal partitions and divisions, kitchen units and appliances, which facilitate the unauthorised use of the premises; and
 - b) Remove the unauthorised rear extension from the premises and reinstate the rear elevation as existed prior to the breach of planning control; and
 - c) Reduce the height of the two unauthorised boundary walls to be no more than 2 metres in height and make good the tops of the lowered walls; and
 - d) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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 as amended.
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Decision

1. 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.

Procedural Matters

2. Since the appeal has been made the Council has adopted the Lambeth Local Plan 2020-2035 (LP) and this now forms part of the development plan for the Borough. The Council has subsequently advised which LP policies are relevant to this appeal and the appellant has been provided with an opportunity to comment on them, so has not been prejudiced.

3. In addition, a revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework in reaching my decision.

Appeal on ground (a), deemed planning application

Main Issues

4. The main issues in this case are:
- Whether the development provides for acceptable living conditions for existing and future occupiers and the effect on housing mix having regard to local and national planning policy;
 - The effect of the development on the living conditions of neighbouring residents, with particular regard to privacy and outlook;
 - The effect on the character and appearance of the host property and surrounding area; and
 - Whether the development supports sustainable travel.

Reasons

Living conditions and housing mix

5. The appeal property is a three-storey terraced dwelling situated within a residential neighbourhood, and close to shops, services and public transport routes. It has a small enclosed front garden and a modest private rear garden. To encourage and secure mixed and balanced communities with a choice of family housing, Policy H6 of the LP seeks to manage the cumulative effects of residential conversions on environmental quality and local amenity by protecting dwellings suitable for occupation by families of less than 130m² (as originally constructed) from conversion into flats. Where a dwelling has a floor area (as originally constructed) of at least 130m², the conversion of the property into self-contained units may be acceptable provided the development meets a number of listed criteria.
6. From the evidence before me, including the floor plans of the dwelling at Appendix E of the Appellant's Statement of Case, the original dwelling (i.e. prior to the basement extension, attic conversion and rear extension), had a floorspace of 143.8m². Therefore, to comply with the provisions of Policy H6, the development undertaken must not conflict with the criteria listed in this Policy under B. (i) – (vi) which includes, amongst other things, a requirement that the development provides a high quality of accommodation and each new self-contained unit meets the standards for new residential accommodation set out in Policy H5 of the LP.
7. The property has been converted into three self-contained flats. A 5 bed 8 person unit located at lower ground and ground floor level (Flat 1); a 1 bed 2 person unit at first floor level (Flat 2); and a 2 bed 3 person duplex unit at second floor and attic level (Flat 3). Policy H5 of the LP seeks to ensure that new residential development, including conversions where new dwellings are created, accord with the principles of good design, including providing dual aspect accommodation, meeting minimum private internal space standards set

out in the London Plan, and provision for external amenity space in accordance with the standards set out in Part B of Policy H5.

8. Flat 1 has access to a private rear garden which provides suitable space for outdoor seating, drying of clothes, play and an external storage area. However, internally the space available for the occupants of this 5 bedroom 8 person dwelling is restricted in area and does not meet the minimum internal space standards for new dwellings as set out in Table 3.1 of The London Plan, 2021. Policy D6 of The London Plan requires high quality design for new housing development which provides adequately sized rooms, with comfortable and functional layouts which are fit for purpose and meet the needs of all occupiers. A 5 bed 8 person two storey dwelling is required to have a minimum gross internal floor space of 128sqm.
9. Flat 1 provides accommodation on two levels and has a gross internal floor space of 122sqm, and thus falls short of the minimum standard. In addition, I noted on my site visit that the ground floor living room shown on the drawings in Appendix E, is currently being utilised as a sixth bedroom. The accommodation at basement level is dark, with natural light limited to small windows looking out onto deep lightwells. Furthermore, due to the limited space within the rooms, furniture blocks the only window openings in two of the basement rooms. Consequently, the outlook for occupiers of the basement rooms is severely restricted and opportunities for natural ventilation limited.
10. Flat 2 occupies the first floor of the property. Although this accommodation is well lit and meets the overall minimum internal space standard of 50sqm, the double bedroom only has a floor area of 10.1sqm, which is less than the 11.5sqm required by Policy D6 of The London Plan. Furthermore, the occupiers do not have access to any external space. I understand that it is the appellant's intention for the roof of the unauthorised rear extension to provide external amenity space for the occupants of this flat. It is also clear from third party evidence that this roof area is currently being used for external storage and drying of clothes, which confirms the need for such space. I have taken into consideration the appellant's suggestion that a screen could be provided to enclose the space and provide some privacy to it. However, taking into account the proximity of the roof area to neighbouring residents, both on the floors above, below and those occupying adjoining properties, the utilisation of that space as an amenity area would have a harmful effect on the living conditions of neighbouring residents, by reason of noise and disturbance from its use. I do not therefore consider that a roof terrace in this location is acceptable and would not provide suitable external space for the occupiers of Flat 2.
11. Flat 3 occupies the second floor and converted attic space. It has a gross internal floor space of 62.87sqm which does not meet the minimum space standard of 70sqm required for a 2 bed 3 person unit located over two floors. In addition, it does not have any external amenity space available to it. Whilst I appreciate that there is public open space available within walking distance of the property, that space would not meet all of the needs of the occupiers of Flats 2 or Flat 3, where outdoor space is also necessary to dry clothes, store bicycles and other outside equipment.
12. Whilst the appeal property is of a size which may be suitable for a residential conversion, from the evidence before me and observations on my site visit, it is

clear for the reasons set out above that the standard of accommodation that has been provided does not provide adequate living conditions for the existing or future occupiers. Taking into account the space available, both internally and externally, the amount of accommodation that is being provided is excessive. Consequently, it has not been possible to ensure that all existing occupiers have access to adequate internal and external space, natural light, or a reasonable outlook. The small front garden currently provides light to the front basement room. Consequently, it is not a suitable or large enough space to provide refuse or cycle storage for all the occupiers of this property and there is evidence that the existing provision for refuse is inadequate with refuse spilling out onto the street.

13. I conclude that the residential conversion does not provide for acceptable living conditions for existing and future occupiers and fails to comply with the Council's objectives with regard to housing mix. There is conflict with the development plan, and in particular with Policies H5 and H6 of the LP and Policy D6 of the London Plan, the aims of which are set out above. I also find conflict with Policies Q12 and Q13 of the LP which seeks to ensure that there is sufficient space to accommodate the refuse and cycle storage requirements for the amount of accommodation provided.

Living conditions of neighbouring residents

14. The unauthorised extension has been constructed onto the rear of the property's two storey outrigger and abuts its common boundary with the rear yard of No 8 Stansfield Road. It is constructed in block with a white cement render painted finish.
15. Although it is only single storey, the parapet wall constructed around the roof edge extends the height of the extension to some 3.4m, and its flank wall lies close and to the south of the neighbour's ground floor window. I noted on my site visit, which was midday on a clear and sunny morning, that the extension cast a shadow over the neighbour's habitable room window. Furthermore, outlook from that window and their rear garden is now dominated by the high wall which has been constructed adjacent to it. Overall, the extension has a harmful effect on outlook for the occupiers of No 8 Stansfield Road.
16. I have taken into account the lawful development certificate¹ that has been granted for a rear extension at the property. However, the rear extension in that case only extended to a height of 3m. The rear extension the subject of this appeal extends to a height of 3.4m and is not permitted by any Class of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended. I therefore give this consideration little weight.
17. I conclude that the rear extension has a harmful effect on the living conditions of the occupiers of No 8 Stansfield Road. There is conflict with the development plan, and in particular with Policy Q2 of the LP which seeks to ensure that new development does not have an unacceptable impact on outlook or daylight/sunlight to adjoining property, including their gardens and outdoor space.

¹ Local Planning Authority ref: 10/03737/LDCP, Granted 22 December 2010.

Character and appearance

18. The extension and the boundary wall have been constructed in blockwork with a white cement render painted finish. I recognise that the character of the terrace at the rear of the property varies considerably. However, the parapet wall on the extension gives it a disproportionate appearance, which is accentuated by its stark white finish. The white painted blockwork of both the extension and the high boundary walls contrast sharply with the more muted appearance of the original facing brickwork and has a harmful effect on the character and appearance of the host property.
19. I appreciate that given the size of the appeal property's rear garden and that of its neighbours, the boundary wall does not have a significantly enclosing effect on outlook for existing occupiers or neighbouring residents. However, its scale, materials of construction and finish do appear incongruous in an area where garden walls and fences do not generally extend to more than 2m in height. I did not see any other garden boundary treatments in the area which were of a height over 2metres, and I have not been provided with any substantive evidence that a wall of this height is necessary to prevent crime or fear of crime. Overall, the boundary walls have a harmful effect on the appearance of the area.
20. I conclude that the extension and boundary walls have a harmful effect on the host property and the character and appearance of the area. There is conflict with the development plan and in particular with Policies Q5, Q7 and Q11 of the LP which are consistent with the aims of the Framework to promote good design, including extensions that positively respond to the original architecture in form and materials. There is also conflict with Policy Q15 of the LP which advises that rear boundaries between gardens and sites should not exceed 2m in height.

Sustainable travel

21. The appeal property is in an accessible location with a PTAL rating of 6a (excellent). It is also located within a controlled parking zone (CPZ). In such locations, in accordance with Policy T6 of the LP and London Plan Policy T6, car free development is supported but should also be permit free. The appellant has indicated that he accepts that future occupiers of the development should be restricted from obtaining parking permits. However, no mechanism has been provided whereby such restrictions could be controlled, for example by a Unilateral Undertaking. Furthermore, the development does not make adequate provision for cycle storage for existing and future occupiers which is necessary to support sustainable travel objectives.
22. I conclude that in the absence of any mechanism to secure a car free development, there is conflict with Policy T6 of the LP, therefore, for the reasons set out above, the development conflicts with the Council's sustainable travel objectives.

Other Matters

23. I have taken into account the growth objectives of the London Plan and recognise the need to provide accommodation to meet the housing needs of different sectors. However, those considerations do not outweigh the harm I have identified in the main issues set out above.

24. I have also considered the Council's concern in its reasons for issuing the notice that the unauthorised flats have been created in the absence of an off-site affordable housing contribution. However, in accordance with paragraph 64 of the Framework, The London Plan, and recently adopted Policy H2 of the LP, a contribution for residential developments that are not major developments is not required. In this case, where only two new units have been provided, there would be no requirement for an affordable housing contribution.

Conclusion

25. For the reasons given above, and taking into account all other matters raised, the appeal on ground (a) fails.

Appeal on ground (g)

26. The issue is whether the compliance period of nine months is reasonable. The appellant considers that a period of 12 months would be more reasonable and would allow existing tenants to find alternative accommodation and contractors engaged to carry out the works.
27. The appellant has not provided any substantive evidence as to why he would be unable to comply with the requirements within nine months. It seems to me that a period of nine months is a reasonable time period within which to comply with the notice in full. In addition, I am mindful that the harm I have identified to the living conditions of existing occupiers and those of neighbours should not be prolonged. The appeal on ground (g) therefore fails.

Human Rights

28. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention of Human Rights. I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm that I have identified, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Overall Conclusion

29. 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 for the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR