



Appeal Decisions

Site Visit made on 3 November 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal A Ref: APP/A5270/C/20/3260809

47 Bideford Avenue, Perivale, UB6 8DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Bilal Majed against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission: The material change of use of the main dwelling to two self-contained flats.
 - The requirements of the notice are to:
 1. Cease the use of the property as self-contained flats
 2. Remove one of the kitchen and drainage connections from the property;
 3. Remove one of the bathroom and drainage connections from the property;
 4. Remove all internal doors, partitions and locks that facilitate the use of the property as self-contained flats; and
 5. Remove from the land all resultant debris
 - The period for compliance with the requirements is: within 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 B Ref: APP/A5270/W/20/3260808

47 Bideford Avenue, GREENFORD, UB6 8DE

- 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 Bilal Majed against the decision of the Council of the London Borough of Ealing.
 - The application Ref 201198FUL, dated 20 March 2020, was refused by notice dated 24 July 2020.
 - The development proposed is continued use of two self-contained flats.
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Appeal A: S174 Decision

1. It is directed that the enforcement notice is varied in section 5 by:
 - At step 2, the addition of 's' after 'kitchen' and the addition of 'associated' so that it reads 'Remove one of the kitchens and associated drainage connections from the property'; and
 - The deletion of step 3.
2. Subject to these variations, the appeal is dismissed, 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 B: S78 Decision

3. The appeal is dismissed.

Preliminary Matters

4. The enforcement notice relates to the change of use of the main dwelling to two self-contained flats. Although there is an enforcement notice and separate planning appeal for an outbuilding, it does not form part of this appeal.
5. The enforcement notice makes reference to policies 7.1 and 7.6 of the Ealing Development Management DPD (DPD)(2013), however, the Council has confirmed this is an error and it should have referred to the London Plan 2016. As the 2016 plan has been superseded, the Council confirms it considers policies D3 and D6 of the London Plan (2021) are relevant now.

Ground (a) and S78 appeals

6. An appeal under ground (a) is made on the basis that planning permission should be granted for any breach of planning control which may be constituted by the matters stated in the notice. This is effectively the planning merits, and is similar to the appeal under S78. While the reasons for refusing the planning application differ to the reasons given on the enforcement notice, given the similarities, I shall deal with them together.

Main Issues

7. The main issues of the S78 and S174 appeals are:
 - Whether the appeal building provides satisfactory living conditions, having regard to internal space; and
 - Whether the appeal scheme provides satisfactory amenity space for occupants of the flats; and
8. In addition, the main issues of the S174 appeal are:
 - The effect of the appeal scheme on the living conditions of the occupants of the appeal property and neighbouring occupants, with particular regard to outlook, privacy and noise and disturbance; and
 - The effect of the appeal scheme on the character and appearance of the area.

Reasons

Living conditions: Internal floor space

9. Policy 3.5 of the DPD seeks minimum space standards for new housing. The Council state that the building lacks adequate indoor living space and has made reference to policies 3.5 and 7.4 of the London Plan (2016) in its enforcement notice. The Council has also made reference to policy D4 of the London Plan, however, this relates to delivering good design through the use of masterplans and design codes.
10. Housing standards have been incorporated into policy D6 of the new London Plan, which seeks adequately sized rooms. The first floor flat measures around 58.85sqm over two floors. The second floor was laid out with a double bed at

the time of my visit. The London Plan sets out at Table 3.1, a 2 bedroom, 3 person, two storey dwelling should have a floor space of at least 70sqm and a 4 person, two storey dwelling should have a floor space of at least 79sqm.

11. The appellant suggests that the top floor loft room is a study/storage area. However, from the evidence provided and from my inspection of the site, it is clearly used as a bedroom. The appellant suggests restricting the use of loft room by condition, however, I consider such a condition is likely to be unenforceable in practice, because it would be difficult for the Council to monitor and require an intolerable level of supervision. Given the layout of the room and the location of the wc, it is highly likely to be used as a bedroom.
12. Under ground (f), the appellant suggests removing the staircase between the first and second floor of the building, with access via a loft hatch, so that it cannot be used as a bedroom. However, I do not consider such a requirement to be reasonable because it would unduly restrict the use of the top floor. Furthermore, it would also be difficult for the Council to monitor.
13. The appellant has cited the removal of permitted development rights for the conversion of garages into habitable rooms, however, I do not consider this to be comparable to the appeal scheme before me. The conversion of a garage to a habitable room is likely to be easier to detect, for example, because windows would need to be inserted. It is also likely to require approval under Building Regulations.
14. The ground floor measures around 50.5sqm and has built-in storage provision under the stairs. The Council suggests that the requirements for storage are additional, however, the London Plan explains that built-in storage areas are included within the overall Gross Internal Area (GIA) of a dwelling. Although the storage currently provided is less than the 1.5 set out in the London Plan, given the size of the ground floor, it would be possible to secure additional provision via condition.
15. While the ground floor flat provides sufficient living space, the first floor flat falls significantly below the minimum requirements set out in the London Plan. Although the rooms would be provided with sufficient light, given the limited space within the first floor flat, it would not provide satisfactory living conditions for occupants, contrary to policy 3.5 of the DPD and policy D3 of the London Plan.

Amenity space

16. Where development increases demand for open space, policy 7D of the DPD seeks to secure an appropriate contribution towards meeting this additional demand. Table 7D.2 sets out the space provision that should be made for private garden space for a house or a flat of 5sqm per 1-2 person unit, plus 1sqm for each additional occupant. Ealing's Planning New Garden Space SPD (June 2015) advises that where spaces offer little or no privacy to users, then they will not be considered to count towards the quantitative garden space standards.
17. The rear garden could be accessed via a side entry or the ground floor flat. Fencing delineated the area to the rear of the flats from the outbuilding, though from the evidence provided points towards there being no such delineation at the time the notice was issued. Nevertheless, it is clear from the

plans submitted in support of the appeals that it would be possible to provide some privacy through the provision of fencing. An area of approximately 38.6sqm would be provided for the ground floor flat, with direct access from the kitchen and an area of approximately 15sqm would be provided for the first floor flat, with access from the front of the building, via the bin and bike store.

18. If the designated garden areas were delineated by a fence, it would provide private outdoor space to occupants of the respective flats. However, the guidance provided to Table 7D.2 of the DPD states that narrow, unusable areas should not count towards this provision. The area provided for the first floor flat would be limited in width. Access to the space would also need to be shared with the occupants of the ground floor flat. Given the layout of the space and the shared access, I consider it is therefore unlikely to be used by occupants of the first floor flat for sitting out, or the drying of clothes.
19. Given the limited size of the rear garden, I am not persuaded it would be possible to provide satisfactory private garden space for both flats, contrary to policy 7D of the DPD and the SPD, the requirements of which are set out above.

Living conditions: Privacy, outlook, noise and disturbance

20. The appeal property comprises two flats, with living accommodation for one flat laid out on the ground floor, and the second flat, laid out over two floors. A shared hallway, with doors to each of the flats limits the disruption that occupants of the ground floor flat would experience when occupants of the first floor flat enter the building and ensures privacy for users of the respective flats.
21. Although the appeal property could be occupied by different households, given the layout of the building, with living accommodation for the different flats on different floors, I consider it highly unlikely that the occupants would be adversely affected by noise or disturbance. Although there are two kitchens and therefore two lots of cooking could take place at the same time, the additional cooking smells are unlikely to be discernible to occupants outside of the respective flats.
22. Whilst the occupants of the different flats would lead separate lives, given the generally residential nature of the area and their use of the front door, any movements generated by occupants would appear no different to users of the dwellinghouse and are unlikely to harm the living conditions of neighbouring occupants as a result.
23. As such, I consider there would be no conflict with policy D3 of the London Plan, which seeks appropriate outlook, privacy and amenity and policy 7B of the DPD, which seeks a high standard of amenity for users and adjacent users.

Character and appearance

24. No 47 Bideford Avenue is located in a generally residential area, characterised by semi-detached and terraced dwellings with modest front gardens, fronting onto the highway. Although the front garden is used for parking, this does not form part of the allegation and would be unaffected by the notice.
25. Although it is likely occupants of the flats would generate a demand for off-street parking, given the limited space available to the front of the dwelling, I

consider it is likely a family would also be likely to utilise the space for parking. As such, there would be no discernible difference between the use of the property as flats or as a single family dwelling.

26. Although bins are stored to the front of the dwelling, it would be possible to secure the provision of bin storage by condition. Indeed, the appellant has shown bins and bike storage as part of the proposals for the planning application.
27. Although there may be a greater number of occupants within the building, I consider there would be no significant difference in terms of the character and appearance of the area and no harm in this regard. Consequently, there is no conflict with policy 7.4 of the DPD, which seeks to protect local character and policy D3 of the London Plan which seeks to ensure development responds to existing character.
28. My conclusion in this matter is limited to consideration of the appeals before me and not the residential use of the outbuilding, which I have considered separately¹.

Conclusions

29. Thus, for the reasons given above, the appeal scheme fails to provide sufficient internal floor space which is harmful to the living condition of the occupants of the first floor flat and also fails to provide satisfactory outdoor amenity space for its occupants. While I have found there is no harm from noise, disturbance or outlook, or to the character and appearance of the area, these are neutral factors in my consideration of the appeals.
30. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

31. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or to remedy any injury to amenity which has been caused by any such breach. The Council confirm that the purpose of the notice is to remedy the breach of planning control.
32. I have considered the arguments put forward by the appellant in relation to step 1 of the enforcement notice. Since I have found that restricting the occupancy of the building by condition would not meet the tests set out in paragraph 56 of the Framework, it follows that Step 1 is not excessive, since it is necessary for the use of the property as self-contained flats to cease in order to remedy the breach.
33. I agree there is scope for misinterpretation of step 2. In the interests of clarity, I shall amend the wording to require the removal of one of the kitchens and associated drainage connections.
34. Where an enforcement notice is issued in respect of a material change of use, and works were carried out to facilitate the material change of use, the

¹ APP/A5270/C/20/3260817

enforcement notice may require that the works are removed in order that the site is restored to its previous condition, thereby remedying the breach.

35. The appellant does not dispute that the bathrooms have been installed to facilitate the material change to two flats. However, from the evidence provided by the Council, it appears that the property contained a bathroom on the ground and first floor and a toilet a wash basin on the third floor prior to the conversion of the property to flats.
36. Since the bathrooms were not installed to facilitate the material change of use, requiring one to be removed would exceed what is necessary to remedy the breach. I shall therefore remove step 3 in its entirety.

Conclusion

37. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

M Savage

INSPECTOR