



Appeal Decision

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 April 2022

Appeal Ref: APP/A5270/C/20/3253129

118 Horsenden Lane South, Perivale, Greenford UB6 7NT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Najamaldin Ali against an enforcement notice issued by London Borough of Ealing.
- The notice was issued on 8 April 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the property to three self-contained flats.
- The requirements of the notice are:
 1. Cease the use of the property as three self-contained flats;
 2. Remove the kitchen and drainage connections from two of the three self-contained flats;
 3. Remove the bathroom and drainage connections from two of the three self-contained flats;
 4. Remove all internal doors, partitions and locks that facilitate the use of the property as three self-contained flats; and
 5. Remove all resultant debris.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (d) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. By a letter dated 10 January 2022, arrangements were made for me to inspect the site on 19 January 2022, accompanied by the appellant and the Council. A representative of the Council met me at the property at the appointed time but nobody attended on behalf of the appellant so the site visit was aborted.
2. By a second letter, dated 8 March 2022, arrangements were made for me to inspect the site on 24 March 2022, accompanied by the appellant and the Council. A representative of the Council met me at the property at the appointed time but again nobody attended on behalf of the appellant so the site visit was aborted for a second time. Having twice attempted to gain access to the appeal site I have based my decision on the information provided.
3. Since the enforcement notice was issued the revised National Planning Policy Framework came into force, replacing a previous version. In addition, a new version of the London Plan has been published and so the 2016 London Plan policies, referred to in the notice, have been superseded by those in the London Plan 2021. Both main parties have had the opportunity to comment on any relevant implications of the above for this appeal and any relevant comments received have been taken into account in my reasoning.

The Notice

4. The notice alleges the use of the building as 3 flats and requires the use as 3 flats to cease. Due to the specific wording used, requirement 1 of the notice could be complied with by the building being used as any other number of flats. This is clearly not what the Council intended. In light of this, and the dispute in this case over whether the building is 3 flats or 2 flats, I have amended requirement 1 in my Formal Decision below, to overcome this concern.

Reasons

The ground (b) appeal

5. An appeal on ground (b) is that the matters stated in the notice have not occurred as a matter of fact. In a ground (b) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
6. The appellant states that there are 2 self-contained flats, not 3 self-contained flats. This is reflected in Council Tax records. But even if the building may now be arranged as 2 flats (and I have not been provided with access to know if this is the case) the wording of section 174(2)(b) is that those matters "have not occurred", rather than "are not occurring".
7. So for the purposes of ground (b) it does not matter what the layout of the building is now or if it has changed since the Council's inspection of the building on 11 February 2020. On this date, a Council officer found it was arranged as 3 flats, each with kitchen, bathroom, living and sleeping facilities. Photographs have been provided which reflect this finding.
8. At that time, there was a flat at ground floor level on the left-hand side, accessed through a left-hand side external front door. This is annotated as Unit A on drawing SK101A, dated December 2019, provided by the appellant. A second flat was at ground floor level on the right-hand side, accessed through a right-hand side external front door. This is annotated on drawing SK101A as part of Unit B.
9. A third flat was at first floor level, also accessed through the right-hand side external front door. On drawing SK101A this third flat is also annotated as part of Unit B. But it is clear from this drawing that the ground floor and first floor parts of Unit B are separable from each other by an internal door at ground floor level and an internal door at first floor level. Accordingly, the notice alleges 3 flats, not 2, and the finding that the building was 3 flats contradicts the appellant's case on ground (b).
10. Nothing has been provided by the appellant which casts doubt for me on the Council's account of the building having been laid out as 3 flats before the notice was issued. So I am satisfied on the balance of probabilities that the matters stated in the notice have occurred as a matter of fact and as such, the appeal on ground (b) fails.

The ground (d) appeal

11. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken. This may be because it was too late to take action due to the time limits set out in section 171B of the 1990 Act. In a ground (d) appeal the onus is on the appellant to make out their case to the

standard of the balance of probabilities. The decision must be made on the evidence provided and that evidence must be precise and unambiguous.

12. Section 171B(2) provides that where there has been a breach of planning control consisting in the change of use of any building¹ to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
13. So based on the evidence provided, I must consider whether any of the 3 flats identified by the Council changed use to a single dwellinghouse and continued to be so used for 4 years after the date of the change and before the enforcement notice was issued, such that the Council could have taken enforcement action at any time during that 4 year period.
14. The appellant states that the registration of 2 flats was formalised in 2016 and that 4 years have since elapsed. Tenancy agreements covering a period of 4 years or more have been provided. But these (and the Council Tax records) are for a 'ground floor' flat and a 'first floor' flat and it is the use of the building as 3 flats, not 2 flats, which is attacked by the notice.
15. Under ground (b) I have found that the area annotated on drawing SK101A as Unit B has been subdivided into 2 flats. So in this appeal Unit B cannot succeed on ground (d).
16. From the information provided, the area annotated on drawing SK101A as Unit A is the same planning unit in either case, ie whether the building is arranged as 2 flats or 3 flats. The appellant's evidence of the continuous use of this flat consists of tenancy agreements and Council Tax records. But these of themselves are not necessarily evidence of the continuous use of Unit A as a self-contained flat for 4 years.
17. The tenancy agreements provided by the appellant show a significant overlap of ground floor tenants between 29 May 2018 and 9 September 2019. This has not been explained and so, in my view, this makes the tenancy agreements imprecise and ambiguous.
18. The appellant states that the Council can match the tenancy agreements with receipts for Housing Benefit and/or Universal Credit. But this information has not been provided and the burden of proof in ground (d) lies with the appellant and not the Council.
19. Taking all of the above into account, I am not satisfied on the balance of probability that any of the flats changed use to a single dwellinghouse and continued to be so used for 4 years after the date of the change and before the enforcement notice was issued, such that the Council could have taken enforcement action at any time during that 4 year period. As such, the appeal on ground (d) fails.

The ground (a) appeal

20. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. So the deemed application for planning permission in this case is for use of the property as 3 flats and not 2 flats, as is suggested by the appellant.

¹ Under section 336 of the 1990 Act "building" includes any part of a building

21. Based on the reasons for issuing the notice, the main issues in the ground (a) appeal are:

- the effect of the development on the character of the area and the living conditions of current and future occupiers of the premises and neighbouring residential properties, with particular regard to noise and disturbance;
- whether the development provides adequate indoor living space; and
- whether the development provides adequate external amenity space;

Character, Noise and Disturbance

22. The appeal building forms part of a group of buildings which, from the information provided, are all single dwellinghouses with gardens. The use of the appeal building as 3 self-contained flats is out of character with this arrangement. As a result of the appeal development, 3 flats have been provided in a building which previously accommodated a single home.

23. In my judgement, particularly as a result of the comings and goings associated with unrelated occupants, the potential for noise and disturbance has significantly increased as a result of the appeal development compared with the previous situation, in what is a relatively small building in close proximity to other homes. This harms the character of the area and I note that the appellant states that it is not contradicted that 3 flats is unacceptable.

24. I conclude on this main issue that the appeal development has a harmful effect on the character of the area and on the living conditions of current and future occupiers of the premises and neighbouring residential properties, with particular regard to noise and disturbance. In this regard, it does not comply with Policy 7B or 7.4 of the Ealing Development Management Development Plan Document 2013 (the Ealing DMDPD) or Policy D3 or D6 of the London Plan 2021 that I have been referred to.

Indoor Living Space

25. The Council has provided approximate gross internal areas for each flat. It states that the ground floor left flat is 32.49sqm, the ground floor right flat is 24.56sqm and the first floor flat is 25.56sqm. None of these figures are large enough to meet the minimum internal space standards for new dwellings set out in the London Plan.

26. Drawing SK101A, provided by the appellant, indicates that Unit A (ie the ground floor left flat) is 50.4sqm. But there is no explanation of how this figure was calculated or why it is so different to that provided by the Council, following its inspection of the site. I have not been provided with access to this flat to satisfy myself that Unit A provides adequate indoor living space and, in any event, when the Council inspected this flat it found that this flat housed 3 occupants. The minimum internal space standard for a 3 person dwelling is 61sqm and on this basis this flat is too small.

27. I conclude on this main issue that the appeal development fails to provide adequate indoor living space. So in this regard it does not comply with Policy 3.5 or 7B of the Ealing DMDPD or Policy D3 or D6 of the London Plan 2021 that I have been referred to.

28. In respect of this main issue I have also been referred to Policy 7.4 of the Ealing DMDPD. But it has not been explained how it is relevant and so in respect of this main issue I consider this policy weighs neither in favour of nor against the appeal development.

External Amenity Space

29. Policy 7D of the Ealing DMDPD states that all developments that increase demand for open space will be expected to make an appropriate contribution towards meeting this additional demand, having regard to the standards detailed in table 7D.2. This table states that for flats a minimum of 5sqm of private garden space is required per 1-2 person unit plus 1sqm for each additional occupant, and, that this will typically take the form of private balcony areas for upper floor units and private garden areas for ground floor units.
30. The appeal development generates a requirement for 3 private garden spaces. From the information provided, only the ground floor right flat has access to any private garden space. But the Council states this is predominantly occupied by a rear extension, with only a strip of land remaining which is narrow, unusable and dark. I have no reason to dispute this assessment, particularly as access to the property has not been provided for me to form a different view.
31. I conclude on this main issue that the appeal development does not provide adequate external amenity space. It therefore does not comply with Policy 7B or 7D of the Ealing DMDPD, or Policy D3 or D6 of the London Plan 2021 that I have been referred to, or the Planning New Garden Space Supplementary Planning Document, June 2015.

Other Matters

32. In its statement, the Council has referred to inadequate car parking. But from the information provided, the Council does not identify what harm occurs as a result, or the severity of any such harm. Consequently, based on the limited case put to me, in respect of car parking I have not found conflict with any of the currently adopted policies I have been referred to.
33. The Council has also drawn my attention to inadequate cycle storage and refuse storage, in its statement. Neither of these is raised explicitly in the reasons for issuing the notice. But in my view, both are a consequence of the failure of the appeal development to make provision for adequate space indoors or outside. In other words, I consider both matters are a product of main issues already addressed above.

Conclusion on Ground (a)

34. Taking all of the above into account I conclude that the ground (a) appeal fails.

Conclusion

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

36. It is directed that the enforcement notice is corrected by the deletion of the word "three" from requirement 1 in paragraph 5.1. of the notice. Subject to this correction, 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.

L Perkins

INSPECTOR