The Planning Inspectorate

# Appeal Decision

Site visit made on 15 February 2022

**by Jean Russell MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 May 2022**

## Appeal Ref: APP/G5750/C/19/3235439
## Land at 129 Elizabeth Road, Forest Gate, LONDON, E6 1BW

- The appeal is made by Mr Subodh Malik under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 17/00439/ENFC) issued by the Council of the London Borough of Newham on 17 July 2019.
- The breach of planning control as alleged in the notice is: without planning permission material change of use of the ground floor of the property to create two self-contained flats.
- The requirements of the notice are to:
  1. Cease the use of the ground floor of the property as self-contained flats.
  2. Remove from the ground floor of the property all but one kitchen and bathroom.
  3. Remove from the ground floor of the property all internal dividing doorways and internal partitioning that solely facilitates the use as two self-contained flats.
  4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990. 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 Town and Country Planning Act 1990.

## FORMAL DECISION

1. It is directed that the enforcement notice be corrected and varied by:

   - the deletion of the words 'permission material' from paragraph 3 and substitution of the words 'permission, the making of a material', and

   - the deletion of three (3) months and substitution of six (6) months as the period for compliance with the notice.

2. Subject to the correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

## PRELIMINARY MATTERS

### The Site Visit

3. I intended to visit the site on 15 February 2022 with the appellant and a Council officer. The appellant did not attend, despite having been told of the arrangements by email on 7 February.

4. Thus, I was unable to enter the appeal building but there is uncontested evidence before me, including plans, of the alleged flats. I can decide the appeal without causing prejudice to either party.

## 129 Elizabeth Road, no. 131 and the Enforcement Notice

5. 129 Elizabeth Road is a two-storey end-terraced building built for use as a single dwellinghouse. References in this decision letter to 'the ground floor' of no. 129 should be taken as including the 'upper' and 'lower ground floor areas'.

6. On 16 December 2011, the Council issued an enforcement notice against the use as a self-contained residential unit of a single storey garage attached to the side of no. 129. The appellant refers to the garage as '131 Elizabeth Road' and I shall do the same for ease of reference. However, the 2011 notice was upheld at appeal decided on 6 August 2012[1].

7. The 'site edged red' on the plan attached to the current enforcement notice includes 131 as well as 129 Elizabeth Road. Other drawings submitted by the parties show that neither of the alleged flats is wholly or partly within no. 131, but it does not follow that the enforcement plan is incorrect.

8. The Inspector who determined the 2012 appeal found that the lawful use of no. 131 was garaging or storage related to the use of no. 129. The 2016 lawful development certificate (LDC) described below may have changed matters, but not so that no. 131 could be deemed to have a separate lawful use. Thus, the land affected by the current notice is properly described in paragraph 2 as no. 129 and that is properly shown on the plan as including no. 131.

9. I shall correct the notice, however, so that the alleged breach of planning control is described as 'the making of a' material change of use. The correction will cause no injustice to the Council or the appellant, but rather make the notice more precise and readable.

## Planning History and the Lawful Use

10. In addition to the 2011 notice and 2012 appeal, I shall refer to:

    - 'The 2016 permission': planning permission (ref: 16/01308/FUL) was granted on 17 June 2016 for the 'erection of a single storey rear extension and single storey outbuilding to ground floor flat' at 129 Elizabeth Road. The application was made on or before 28 April 2016.

    - 'The 2016 LDC': a lawful development certificate (ref: 16/01334/CLE) was granted on 17 June 2016 to show that the existing use of no. 129 as two flats was lawful on the date of the application, being 24 April 2016.

    - 'The 2019 PCN': the Council served a planning contravention notice (ref: 17/00439/ENFC) on 11 January 2019 on the owners of the appeal building as part of its investigation of the now alleged breach of planning control.

    - 'The first 2019 application': a planning application (ref: 19/01049/HH) for the construction of a side infill extension was refused.

    - 'The second 2019 application': a planning application (ref: 19/01537/FUL) for the construction of single storey rear extension and alterations to the existing flat to form a 1 bed studio flat was refused on 1 July 2019.

11. The 2016 LDC was granted on the basis that the existing use of no. 129 as two flats was lawful because both were immune from enforcement action due to the

[1] Appeal ref: APP/G5750/C/12/2169305

passage of time. I do not have the LDC plans but it is undisputed that one of the lawful flats occupied the ground floor and the other was on the first.

12. Indeed, the 2016 permission referred to a 'ground floor flat' singular at no. 129, and it was shown on the 'existing plan' submitted with the application. The plan included no. 131 within the 'site edged red' and the ground floor flat, but that was not necessarily an error given the outcome of the 2012 appeal.

13. The 'existing [2016 application] plan' is alarming in that it shows no connecting doors between nos. 129 and 131, and the only bathroom for the ground floor flat being within the latter. However, I could not presume anyway that the 2016 permission is an exact guide to what was subject to the 2016 LDC. I shall proceed on the basis that the ground floor flat at no. 129 which was found to be lawful might or might not have included the space at no. 131.

**The Alleged Development and Flat Numbers**

14. The allegation set out in the enforcement notice is, in effect, that there has been a change of use through the subdivision of the lawful ground floor flat at no. 129, so that there are now two flats on the ground floor and three in the building altogether. The three flats have different owners; the appellant owns the rear or lower ground floor flat.

15. The appellant made the 2019 applications in order to gain planning permission for the use of the rear or lower ground floor flat as such. His proposal then was to change the layout of the flat from that existing, and I discuss that matter further below in relation to the appeal on ground (a).

16. There is a pre-existing rear extension to no. 129. The appellant also made the 2019 applications to gain permission for further enlargement works, but I do not know if they were ever actually carried out. Either way, the notice does not allege and this appeal does not relate to any 'additional' extension.

17. The appellant has described the two alleged flats as follows:

- Flat 129a is the front or upper ground floor flat.
- Flat 129b is the rear or lower ground floor flat which was subject to the 2019 applications. It is occupied by a tenant.

18. The Land Registry's schedule of notices of leases also suggests that Flat 129b is on the ground floor, but it does not refer to any flat as 129a:

- '129 Elizabeth Road (first floor flat) – [lease] 99 years from 01/01/2008'
- '129 Elizabeth Road (ground floor flat) – 99 years from 01/04/2016'
- '129b Elizabeth Road (ground floor flat) – 105 years from 01/06/2014'

19. Adding to confusion, I saw a letter box and doorbell that were both marked '129b Elizabeth Road – **first** floor'. However, the 'first floor flat' was described as such by its leaseholder in their response to the 2019 PCN. I shall therefore refer to the alleged flats as nos. 129a and 129b as per the appellant.

**The Legal Grounds of Appeal**

20. The appellant has pleaded grounds (b), (c) and (d). The question for ground (b) is whether the development alleged by the notice has occurred, but the

appellant does not dispute that there are two flats on the ground floor of no. 129. Ground (c) concerns whether what is alleged constitutes a breach of planning control, but the appellant does not claim that the change of use described by the notice did not require or already has planning permission.

21. The appellant has made the same case for each of these grounds, and it is that the use of the ground floor as two flats has become lawful through the passage of time. That argument falls under ground (d) which is that, on the date the notice was issued, it was too late for the Council to take enforcement action.

22. I shall proceed on the basis that (d) is the only legal ground. The onus is on the appellant to make his case on the balance of probabilities. His evidence should be accepted so long as it is sufficiently precise and unambiguous, and there is nothing to contradict it or make it less than probable.

## THE APPEAL ON GROUND (D)

23. Under s171B(2) of the Town and Country Planning Act 1990 (TCPA90), where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The 'four year rule' applies where the change of use has resulted in the creation of flats, so long as each is used as a self-contained dwellinghouse.

24. The notice was issued on 17 July 2019. For the appeal to succeed on ground (d), the appellant must show that the change of use from one ground floor flat to two had occurred by no later than 17 July 2015. To determine the date of the change of use, I shall assess when the pre-existing flat was subdivided and the new units provided viable facilities for living, and when their use as two flats began as a matter of fact and degree.

25. It is also necessary for the appellant to show that the use of each flat took place for a continuous four year period, such that the Council could have taken enforcement action at any time. It would be possible for me to make a 'split decision' if one of the flats was found to be immune but not the other.

### The Evidence

26. The Land Registry schedule mentioned above shows that the leasehold of a ground floor flat at no. 129 was sold on 1 June 2014. Putting aside the confusion over flat numbers, I find it probable that the sale concerned the pre-existing and lawful single ground floor flat.

27. The appellant claims that the 'conversion works to flats a and b were carried out and completed in early 2015'. He has submitted a 'final invoice' which was sent from the builders to HG Investments Ltd in respect of works 'to carry out conversion and complete fit out works to [129] to form two self-contained flats on ground and lower ground floor'. The invoice was dated 5 April 2015 and described the provision of internal partitioning and '2 bathrooms and 2 kitchens' plus electrical, plumbing, heating and decoration works.

28. The appellant also submitted a copy of an Assured Shorthold Tenancy (AST) agreement which shows that Flat 129b was let on 1 May 2015, again by HG Investments Ltd. It is unlikely that the contract could relate to the first floor flat because it has a different owner who let it to the same tenant from 2008 until 'recently' before the 2019 PCN. Thus, the invoice and AST agreement

suggest that both alleged flats had viable facilities for living and Flat 129b had been let for residential use by the material date of 17 July 2015.

29. However, that evidence is at odds with the fact that an application for an LDC was made on 24 April 2016 for the existing use of no. 129 with just one ground floor flat. That is a very serious discrepancy[2]. Notwithstanding the confusing plan, the 2016 permission also related to a ground floor flat singular. The appellant has not explained how planning and LDC applications came to be made and granted in spring 2016 in respect of one existing ground floor flat at no. 129 if that dwelling had been subdivided into two almost 12 months before.

30. The Land Registry schedule indicates that the leasehold for the second ground floor flat, 129a, was sold on 1 April 2016. The Register of Title gives a different date for the transfer, 2 June 2016, and that is consistent with the suggestion that both alleged flats were registered a day earlier for Council Tax. However, it makes no difference whether Flat 129a was sold in April or June 2016; I could infer that the change of use took place before the 2016 LDC was granted but not that it had occurred by 17 July 2015.

31. The appeal would not necessarily succeed on ground (d) even if the change of use did happen before the material date, as suggested by the invoice and AST agreement. There is still the question as to whether either or both of the flats were probably used as such without substantial interruption for four years. The Council's enforcement report says that the flats were 'being rented out to separate tenants' in May 2019, but the appellant has not shown that Flat 129a was ever occupied as a dwelling before it was sold in April or June 2016.

32. The appellant makes the precise and unambiguous claim that Flat 129b has been 'in continuous and uninterrupted occupation for over four years'. Such assertion, however, is not enough to make that version of events probable. The AST agreement does not show how long the (first) tenant stayed. The Council Tax and licensing evidence relating to no. 131 is not relevant and begs the question as to why no similar records were produced for Flats 129a or 129b.

33. Statements submitted with the second 2019 application referred to a 'current' occupier of Flat 129b but gave no details. All I am told about them is that they have not complained about the accommodation and that is not evidence of probable four year use.

**Conclusion**

34. The appellant's evidence as to when the alleged change of use occurred is at odds with the 2016 LDC. He has not shown that either of the alleged flats had been used as such, on the balance of probabilities, for any substantially uninterrupted four year period by 17 July 2019. I conclude that, on the date the notice was issued, it was not too late for the Council to take enforcement action against the change of use. The appeal fails on ground (d).

**THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION**

35. The appeal on ground (a) is that planning permission ought to be granted for the development alleged by the notice. The Council's enforcement report

[2] Paragraph ref ID: 17c-013-20140306 of the Planning Practice Guidance states that is an offence to make a false or misleading statement, use false or misleading documentation or withhold any material information in order to obtain an LDC.

includes a sketch of the flats being enforced against; it shows 129a laid out as a studio and 129b as a two bedroom flat.

36. The 'existing ground floor plan' submitted with the second 2019 application also showed Flat 129b as having two bedrooms. The 'proposed plan' was to extend 129b and reconfigure it as a studio flat, but the application was refused and there is no evidence that Flat 129b was laid out as a studio before the notice was issued. I shall consider the merits of the alleged change of use on the basis that Flat 129a is a studio flat and Flat 129b has two bedrooms.

## Main Issues

37. I consider that the main issues are a) the implications of the change of use for the living conditions of the occupiers of the appeal flats and nearby dwellings, and b) the effect of the change of use on the supply of family homes.

## Planning Policy and Guidance

38. The enforcement notice referred to policies in the London Plan 2016 and the consultation draft London Plan 2017. The Mayor of London has now adopted the London Plan 2021 (the London Plan) and I shall refer to policies therein which correspond to those cited by the parties. The London Plan and the London Borough of Newham Local Plan 2018 (NLP) comprise the statutory development plan on the date of this decision letter.

39. The Mayor of London's Housing Supplementary Planning Guidance 2016 (SPG) is a material consideration for this appeal. The National Planning Policy Framework (NPPF) sets out Government planning policy and is another material consideration. It refers to the Planning Practice Guidance (PPG) which in turn links to the nationally described space standard for housing (NDSS).

## Reasons

### *Living Conditions*

*Housing Standards*

40. London Plan Policy D6[3] requires that housing development, including new dwellings created through a change of use, should provide adequately-sized rooms with comfortable and functional layouts that are fit for purpose; sufficient daylight; and at least the gross internal floor area set out in Table 3.1. It sets out the same minimum space standards as the NDSS:

    - Studio flats: 37 square metres (sqm) is the minimum size of a one bedroom flat with a shower room and a bed space for one person. 39sqm is the minimum size of a one bedroom flat with a bathroom for one person.
    - One bedroom flats: 50sqm is the minimum size of a one bedroom flat with bed spaces for two people.
    - Two bedroom flats: 61sqm is the minimum size of a two bedroom flat for three people. 70sqm is the minimum size of a two bedroom flat with bed spaces for four.

41. The Council's enforcement report and the 'existing ground floor plan' submitted with the second 2019 application both show that Flat 129b has a gross internal

[3] Policy D4 in the draft London Plan 2017.

area of 32.2sqm. Thus, the rear or lower ground floor flat is less than the minimum size for a one bedroom, one person flat – and yet it is laid out with two bedrooms. It is seriously under-sized, as are the rooms within it. The kitchen is particularly squeezed into a narrow area that looks more like and indeed would have to function as a corridor.

42. The appellant has referred to an extract from the Council's report on the second 2019 application, which states that Flat 129b 'marginally' meets the NDSS. However, the report concerned a proposal to use Flat 129b as a studio flat and build an extension which would increase the gross internal floor area to 37.7sqm. This appeal on ground (a) does not relate to that scheme.

43. The sketch in the enforcement report suggests that Flat 129a has a bathroom and should have a gross internal floor area of at least 39sqm. The Council has put the actual figure at 27.9sqm, and that is not disputed by the appellant. I find Flat 129a too small to provide even one occupier with adequate living conditions. Once furniture, kitchen fittings and storage facilities, however minimal, are installed, the sole habitable room would be cluttered, cramped and not fit for its intended purposes of cooking, eating, relaxing and sleeping.

44. Furthermore, Flat 129a includes a large bay but no other windows which might provide natural light to the 'living/dining' area shown on the sketch. Flat 129b has only side-facing windows[4] looking onto adjacent structures[5]. The back door in Flat 129b opens towards an outbuilding across the yard on site. Both flats will receive insufficient daylight and be gloomy inside. That effect, alongside the lack of floorspace, will make the flats unacceptably claustrophobic.

45. I also agree with the Council that the flats are too awkwardly configured to be entered, used or exited safely, easily and with dignity for all, as required by London Plan Policy D5[6].

*Noise and Disturbance*

46. The Council has made a separate objection that the subdivision of the lawful ground floor flat into two will cause an increase in comings and goings from the property, as well as an increase or change in movement inside the building, so as to cause unacceptable noise and disturbance affecting occupiers of the appeal and adjacent dwellings.

47. I tend to agree with the appellant that the Council has submitted little evidence to substantiate its concern. Moreover, I saw that no. 129 is located in a dense urban area close to busy roads and other houses, some of which are likely to be used as flats. I expect most residents in this area will routinely hear and be accustomed to the sounds of other people's activity.

48. Nonetheless, I support the Council on this issue because the shoehorning of two undersized flats into the ground floor of no. 129 would result in the space being over-intensively used. The occupiers of both flats would undertake all of their daily domestic activities within squashed and proximate spaces. The three households in the building as a whole would have little respite from the sounds of others. Each household would also be likely to come and go several times

[4] The rooflights proposed under the second 2019 application are not existing to my knowledge.
[5] Being either the garage known as no. 131 or an extension at no. 127.
[6] Policy D3 in the draft London Plan 2017

per day through the shared front door, causing disturbance especially within the adjacent sleeping area in Flat 129a shown on the Council's sketch.

49. Allowing this appeal would result in the occupiers of the alleged flats, the first floor flat in no. 129 and potentially the neighbouring property at 127 Elizabeth Road suffering persistent and unacceptable disturbance. Living conditions in the alleged flats, then, would be unacceptably poor due to the combined harms from lack of space, lack of daylight and noise.

*Other Matters and Conclusion on Living Conditions*

50. I accept for the sake of argument that the yard provides enough amenity space for both alleged flats, if not also that on the first floor. I would not refuse permission because there are no cycle parking facilities, as required by London Plan Policy T5, since they could be installed pursuant to a planning condition. I accept that there have been no complaints from the occupier of Flat 129b or their neighbours regarding the standard of accommodation or noise.

51. However, those points do not alter or outweigh my concerns that the flats are unacceptably small and lacking in daylight, and so cramped that their use would result in unacceptable noise. I could not impose a condition to require that the flats are enlarged or reconfigured, because I can only grant permission for what is alleged and existing on the ground.

52. I conclude that the alleged flats afford their occupiers unacceptably poor living conditions and will unacceptably harm the living conditions of nearby occupiers. A grant of permission would conflict with London Plan Policies D5 and D6 as discussed, and with Policies GG4 and D14, which require good quality homes and the avoidance of significant adverse impacts of noise.

53. The use also conflicts NLP Policies SP1, SP2, SP3, SP8 and H1, which expect development to improve housing quality and avoid unacceptable exposure to noise, and all new homes to meet the internal space standards of the London Plan. It conflicts with the NPPF, which expects development to function well and create places that are inclusive, accessible and promote a high standard of amenity for users. And it conflicts with the NDSS – and with the SPG, which expects compliance with housing space standards.

***Housing Supply***

54. The Council objects that the change of use to form two ground floor flats has resulted in the loss of a family-sized dwelling. They claim that the 2016 LDC related to a three bedroom flat, while pointing out that NLP Policy H4 'specifically' seeks to protect three and four+ bedroom family housing.

55. The NPPF seeks to significantly boost the supply of (all) homes but is also clear that planning policies should assess and reflect the size, type and tenures of housing needed for different groups in the community, including families with children. The change of use subject to this appeal has resulted in a net gain of one new dwelling but that supply-side benefit is too minor to justify the loss of any family home protected by NLP Policy H4.

56. However, there is only space for a three bedroom flat on the ground floor of no. 129 if no. 131 is incorporated. If the former garage is excluded, the gross internal area of the ground floor would be large enough for a two bedroom, three person flat at best. That assessment is based on the London Plan and

national space standards because they must be applied, in my view, when deciding whether a dwelling is 'family-sized' for the purposes of NLP Policy H4.

57. No. 131 was used, unlawfully, as a separate unit of accommodation until at least 2011. The Council's report on the 2016 LDC application does not say how many bedrooms were in the then existing ground floor flat at no. 129, and the existing plan subject to the 2016 permission may not show what is lawful. I cannot be certain that the ground floor flat subject to the 2016 LDC was a three bedroom or family-sized dwelling.

58. I shall give the appellant the benefit of the doubt. I conclude that the change of use has not caused an unacceptable loss of a family home protected by NLP Policy H4. The use does not conflict either with NLP Policy H1, London Plan Policies GG4, H1 or H10, or the NPPF, insofar as they seek the provision of new homes that meet identified needs including for family housing.

59. As a make-weight to that conclusion, I consider it unlikely that dismissing this appeal would result in the ground floor of no. 129 being put (back) into use as a three bedroom flat. The notice requires that the unauthorised use of the ground floor as two flats is ceased, but it does not and could not require resumption of the lawful use – and that might prove complicated to do since Flat 129a has a different owner who is said to be in dispute with the appellant.

**Other Matters**

60. The appellant suggests that I could make a split decision and grant permission only for the larger flat, 129b. He refers to a different property where the Council took enforcement action against two flats but later permitted (ref: 18/03637/FUL) just one. However, that permission also related to an extension which brought the approved flat up to the relevant space standard.

61. In this case, I have been clear that the enforcement notice does not allege the construction of an extension and such works cannot be subject to ground (a) and the deemed planning application. As things stand, Flat 129b as well as 129a fails to comply with space standards and other requirements set out in planning policy. I have no basis for making a split decision.

62. The Council referred to but did not provide copies of other appeal decisions. In one, the Inspector found that a shortage of internal floor space would 'add to negative impacts associated with [a] transient…population'[7] but that issue is not raised before me. I attach little weight to the other appeal decisions.

**Conclusion**

63. I have found that the change of use should not be refused permission because of lack of cycle parking facilities, and it has not caused the unacceptable loss of a family-sized dwelling. It does not conflict with London Plan Policies T5 or H10, or with NLP Policy H4. However, those findings do not amount to positive reasons to grant planning permission. That the occupiers of the alleged and nearby dwellings will experience unacceptably poor living conditions as a result of the change of use is sufficient and compelling reason to dismiss this appeal.

64. The change of use conflicts with London Plan Policies GG4, D5, D6 and D14, and with NLP Policies SP1, SP2, SP3, SP8 and H1, and thus the development

[7] Appeal (ref: APP/G5750/C/12/2183824) discussed in the enforcement report.

plan when read as a whole. Those policies are relevant and not out of date, and the development also conflicts with the NPPF. I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

**THE APPEAL ON GROUND (F)**

65. Ground (f) is that the requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the alleged development.

66. The purpose of the notice must be to remedy the breach of planning control because it requires that the alleged use is ceased. It should also be noted that I have considered the injurious effects of the use through ground (a) and found that the use should not be allowed. Thus, the appeal on ground (f) can succeed only if the appellant shows that the requirements of the notice are excessive to remedy the breach.

67. The appellant asks that the first requirement is varied to refer expressly to 129 Elizabeth Road, so that it could not be interpreted as applying to no. 131. I have observed that neither of the alleged flats is contained within no. 131, but also that the former garage has no separate lawful use. It is not inaccurate, unclear or excessive for the notice to require the cessation of the use as self-contained flats of the ground floor of the 'property', being 129 Elizabeth Road as shown on the plan attached to the notice.

68. The appellant also requests that the second requirement is varied so that he does not need to remove one of the bathrooms on the ground floor. I realise that even relatively small flats can have more than one bathroom. The Council objects that allowing an additional bathroom would harmfully reduce habitable space, but that is a question of merit and not what steps are necessary to remedy the breach of planning control.

69. However, the difficulty for the appellant is that the invoice he submitted in support of ground (d) shows that two bathrooms as well as two kitchens were installed specifically to facilitate the change of use of the ground floor of no. 129 to two flats. It is not excessive, then, for the notice to require that one of the bathrooms as well as one of the kitchens is removed. Remedying the breach must involve restoring the property to its previous condition.

70. The notice already omits to mention any new extension to no. 129. I conclude that none of the requirements exceed what is necessary to remedy the breach of planning control and the appeal fails on ground (f).

**THE APPEAL ON GROUND (G)**

71. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant seeks to extend the period from three to six or 12 months, so that the occupiers of the alleged flats have time 'to achieve a comfortable relocation' and he has time to make a new pre-application enquiry and then planning application.

72. The appellant has already made three unsuccessful attempts to gain planning permission for some subdivision of the ground floor of no. 129, both with and without an extension: the 2019 applications and appeal on ground (a). It seems to me that any future application made on the same or similar basis

would be unlikely to succeed. I also note that the appellant does not need permission to resume the lawful use of the ground floor as a single flat.

73. However, none of the applications since 2016 have encompassed the space at no. 131. Another complication in this case is that the ground floor of no. 129 has two owners who would presumably need to resolve their differences not only to progress the future use, but also to decide which kitchen and bathroom are removed within the period for compliance with the notice.

74. I consider that it would be sensible and reasonable to give the appellant time to negotiate with the owner of Flat 129a and with the Council, and at least draw up and submit new plans before he carries out the works required by the notice. Three months would fall short of what is reasonable for that process, in my view, but a period of 12 months would be excessive and indeed blunt the urgency of resolving the issues discussed.

75. I now turn to the housing needs of the existing occupiers. On the date of my site visit, the bay window was boarded up, even though Flat 129a has no other windows. Apart from the Council's note of their site visit in 2019, there is no evidence that Flat 129a is occupied now. If that flat is vacant, the occupier of Flat 129b could theoretically continue to live at the site because the ground floor could be put back into use as a single flat. However, I have noted potential difficulties in resuming the lawful use.

76. I assume, then, that the occupiers of either or both alleged flats would need to move out in order for the notice to be complied with. Under separate housing legislation, they would probably not be entitled even to three months' notice to quit. However, it would be proportionate to give them more time within these enforcement proceedings to look for somewhere else to live, given the wider need for more housing described in local and national planning policy. I consider that six months would be a reasonable period.

77. I conclude that the notice should be varied so as to extend the period for compliance to six months. To that extent, the appeal succeeds on ground (g).

**CONCLUSION**

78. For the reasons given above, I shall uphold the enforcement notice with corrections and a variation, and I refuse to grant planning permission on the application deemed to have been made under s177(5) of the TCPA90.

*Jean Russell*

INSPECTOR