The Planning Inspectorate

Appeal Decision

Site visit made on 12 July 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd AUGUST 2022

Appeal Ref: APP/Y5420/C/20/3266001
271 High Road, Tottenham, London N15 4RR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A Yaman against an enforcement notice issued by the Council of the London Borough of Haringey.
- The notice was issued on 12 November 2020.
- The breach of planning control as alleged in the notice is without planning permission:
- 1. The material change of use of the ground floor to two self-contained flats; 2. The installation of UPVC windows on the front elevation at the second storey of the building; 3. The erection of a gate and fence at the front boundary of the building.
- The requirements of the notice are: 1. Cease the use of the ground floor other than as one self-contained flat. 2. Remove from the ground floor all but one of the kitchens (a kitchen comprises cooking appliances, sinks, kitchen worktops and cupboards). 3. Remove from the ground floor all but one supply of electricity, gas and water. 4. Remove from the ground floor all internal dividing doorways and partitions facilitating the use of the ground floor as two self-contained flats. 5. Remove the UPVC windows on the front elevation at second storey level and replace with white timber sash windows; 6. Remove the front boundary fence and gate in their entirety. 7. Remove from the land all debris arising from compliance with the above requirements.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), 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.

Decision

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

    - In paragraph 3 deleting item 1 of the allegation, with the consequential renumbering of items 2 and 3 as 1 and 2 respectively, and;

    - In paragraph 5 deleting steps 1 to 4 inclusive, with the consequential renumbering of steps 5 to 7 as steps 1, 2 and 3 respectively.

    And varied by:

    - In paragraph 5 in new step 2 after "entirety" insert the following:

      "Alternatively, *reduce the overall height of the front boundary fence and gate so that they do not exceed 1 metre above ground level, to make the development comply with the terms (including conditions and limitations) of the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015)(as amended) at Article 3, Schedule 2, Part 2, Class A".*

2. Subject to the above corrections 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 section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The London Plan 2021 (LP) was published in March that year. The LP comprises the spatial development strategy for London and is part of the Development Plan. LP Policies D3 and HC1 have replaced policies in the previous version of the London Plan referred to in the Council's reasons for issuing the enforcement notice. After seeking comments from the main parties, I have determined the ground (a) appeal in accordance with the LP.

4. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal. The main parties have also been given an opportunity to comment on the implications of the Framework in respect of the ground (a) appeal and I have taken it into account in my decision.

Ground (d) appeal

5. The ground of appeal is that it was too late to take enforcement action against the breach of planning control alleged in the notice. This ground is pursued only in relation to the matter itemised at 1 in the allegation, i.e., the material change of use of the ground floor to two self-contained flats. It does not relate to the UPVC windows and the gate and fence, referred to at items 2 and 3 in the allegation. The burden of proving the relevant facts is on the appellant, the proper test of the evidence being on the balance of probability.

6. The appeal property contains a mid-terrace residential building with accommodation arranged over three floor levels. At the front on the ground floor is a studio flat, with a kitchen and bathroom. At the rear on the ground floor is a one bedroom flat with a separate living area, kitchen and bathroom. The effect of s191(2) of the Act is that the use of the ground floor as two flats would be lawful if no enforcement action can be taken because the time for taking such action has expired. At s171B(2), the Act provides that where there has been a breach of planning control consisting in the change of use of any building (which includes part of a building) to use as a single dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Any four-year period is relevant, not just the four years immediately preceding the date of the notice.

7. The appellant supplied a signed, dated and witnessed Statutory Declaration (SD) in which they explained that the ground floor of the building had been let by them as two residential flats, described as ground floor 271A and ground floor 271B, since April 2010. The SD was accompanied by contemporaneous documentary evidence, including copies of a number of Assured Shorthold Tenancy Agreements (ASTs) referring to the ground floor. The ASTs relate to two distinct residential occupancies taking place at more or less the same time on the ground floor. One group of ASTs commencing in September 2011 and continuing on an annual basis up to December 2019, relate to the residential occupation by successive tenants of what is described therein initially as "ground floor" and on later ASTs at various times as "ground floor flat", "ground floor flat 1", "flat 1", "studio 1 (facing front)", "ground floor" and "ground floor studio". A second group of ASTs commencing in March 2012,

continuing on an annual basis up to April 2020, relate to the residential occupation by successive tenants of what is described therein initially as "flat 2, ground floor" with a similar description in later ASTs as well as being described variously as "rear flat, ground floor", "ground floor flat", "ground floor" and "flat 2". The ASTs therefore provide clear documentary support for two separate residential occupancies as having taken place continuously on the ground floor of the building for a period of greater than four years prior to the date of the notice. It follows that in the absence of clear and compelling evidence to indicate otherwise, the appellant's evidence set out above should be afforded significant weight.

8. The Council argued that occupiers of the ground floor could have had separate bedrooms, sharing facilities in a single flat. However, that neglects to consider that there is continued reference in successive ASTs throughout the period to which they relate, to two ground floor "flats". Use of the term "flat" implies a high degree of self-containment that is not usually associated with shared accommodation. If the ground floor had been let as shared accommodation, it might reasonably be expected that the ASTs would have made that clear. This could have been by reference to the rooms occupied exclusively by a tenant and using a consistent description of the property to which they relate, as is commonly found in ASTs relating to a House in Multiple Occupation. As a result, the available evidence does not support finding other than that the ASTs refer to two separate, self-contained parts of the ground floor which each had the ability to afford to those who used it the facilities required for day-to-day private domestic existence, this being the appropriate test of what amounts to a dwellinghouse set out in relevant case law[1]. Whilst no detail of the works to subdivide the ground floor into two separate flats was provided, given the above context I do not regard this as significant.

9. Reference was made by the Council to what was regarded as unsatisfactory anomalies in the ASTs. They drew attention to an AST from September 2017 in relation to "flat 1". The tenant's signature on that AST is noticeably different to the signature of an individual with the same name on an AST dated January 2012 concerning Room 7 at 273 High Road, also owned by the appellant. There could be a number of perfectly plausible reasons for the signature differences. For example, given that there is a gap of more than five years between the date of the two ASTs it is possible that the individual's signature may have altered due to a change in their personal circumstances, or that the ASTs may not relate to the same individual. Alternatively, one or both of the ASTs may have been signed on behalf of the individual concerned. That the individual in question seems to have been a foreign national, with in all probability English as a second language and a limited grasp of the formalities of renting property in the UK, increases the likelihood of this being the case. Therefore, the signature difference in the above AST relating to "flat 1" does not call the evidential value of that document nor that of any other of the ASTs provided into question.

10. Reference was also made to the ASTs not reflecting the contents of the Council tax file. This indicates that only one tenant was liable for Council Tax in respect of the ground floor up to June 2018, with the Valuation Office first recording the presence of two separate flats in May 2019. Be that as it may, there could be a number of reasons why Council Tax was not previously paid

[1] *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307.

for two flats. For example, it could have been due to a misunderstanding or neglect on the part of the appellant. Additionally, the individuals named as tenants in the ASTs for the two occupancies covering the period from late 2018 to May 2019 do not reflect the Council Tax file, in which the ground floor is recorded as being in occupation by another, differently-named individual. Even so, this record seems to merely be based on a telephone conversation with someone from a letting agency. It does not represent a first-hand account from an individual occupier, for example as a result of a visit to the property, or to be based on information provided by the appellant. Given the potential for misunderstanding and inaccuracy inherent in this information, it fails to convey any degree of certainty regarding the ground floor possibly having been in use as one flat at that time. Therefore, I afford any inconsistency with the ASTs in the above respect limited weight.

11. The ASTs clearly show a considerable uplift in the monthly rent charged in respect of both tenancies in 2018 and subsequently, compared with tenancies in previous years. Even so, the ASTs also show that in the period between 2011/12 up to 2018, rental rates had reduced in relation to one of the ground floor tenancies and were largely static in the case of the other. Given the increasingly high market demand for accommodation similar to that provided at the property in London in general, this is hardly likely to have reflected real rental values. Consequently, it is entirely possible that the increase in rent was attributable to letting agents taking over management of the property, at which point rents were raised to reflect a more realistic market rate. The ASTs, which indicate that the use of letting agents in respect of new tenancies began after June 2018, also support this proposition.

12. Whilst the appellant may be the landlord of other properties that does not necessarily mean he is bound to pay close attention in all instances to rental market conditions or even if he does, to charge rents that fully reflect a market rate. Rents were increased shortly before the ground floor was recorded as two flats by the Valuation Office. However, that is also more likely to be as a consequence of using letting agents with an interest in obtaining the best financial returns for their client and who had a more knowledgeable approach to property matters. Consequently, the rent increases do not necessarily point to the subdivision to two flats as having taken place after 2018.

13. Insofar as the Council was critical of the other evidence submitted on the appellant's behalf, the representation from the owner of a first floor flat at the property is not in the form of a Statutory Declaration but nevertheless provides some first-hand support for the appellant's account of events. Reference to the appellant as a neighbour is highly likely to be a shorthand description for an owner of adjoining property and as such cannot sensibly be taken to imply any significant inaccuracy in the representations. The letter from a firm of accountants added little to the evidence already available and lacks sufficient clarity and precision. An insurance company's initial advice that the ground floor had been insured as two flats did not reflect the policy schedule, which showed a total of three flats in the building as a whole. Nevertheless, whether a property is adequately insured is not conclusive of its use. Other documents included details of Housing Benefit paid to a former tenant from May 2010 to December 2014. This only referred to the ground floor and therefore does not confirm a use as two flats during that period, whilst a British Gas statement for the period 2014/15 was similarly inconclusive. Electrical safety certificates referring to "flat A" and "flat B, ground floor" at the property were dated May

2019 and therefore did not show more than four years' use as two flats. Ultimately, none of the above documents add greatly to the evidential nexus. However, neither does that evidence cast any significant doubt in respect of the continuous use as two flats for a period of greater than four years.

14. Consequently, on the balance of probability the appellant has provided sufficiently precise and unambiguous evidence in respect of the continuity in the use of the ground floor of the building as two self-contained flats for a period of more than four years prior to the date of the notice. None of the matters raised by the Council materially affect the weight that should be given to the appellant's evidence; those matters do not make the appellant's account of events less than probable. It follows that on the date of the notice it was too late for the Council to take enforcement action in respect of the material change of use to two flats.

15. The consequences of the above findings are that there is success on the ground (d) appeal insofar as the change of use is concerned. Therefore, it is necessary to correct the notice by deleting item 1 from the alleged breach of planning control which relates to the material change of use of the ground floor to two self-contained flats. As part of that correction, it is subsequently necessary to delete and amend the requirements accordingly. The effect of these actions is that the alleged breach of planning control is now limited to the UPVC windows and the fence and gate erected adjacent to the front boundary of the property.

Ground (a) appeal

Main Issue

16. The main issue in this ground of appeal is whether the UPVC windows on the front elevation at second storey level and the fence and gate preserve the character or appearance of the Seven Sisters/Page Green Conservation Area (CA).

Reasons

Character or appearance of the CA

17. The lengthy three-storey terrace in which the building is situated forms part of a single architectural composition, with similar elevational arrangements including two storey canted front bays, similar detailing and external materials. These mainly residential properties are set back from the street behind what for the most part are relatively low masonry walls, in some cases with maturing planting behind, taller enclosures being isolated, obviously modern features.

18. The terrace, which is locally listed, forms part of the rapid residential development of the area that occurred in the late 19th Century. This and other terraces of similar age together with the wide setting back of development from the busy High Road contribute markedly to the significance of the CA. The importance of these factors in terms of contributing to the significance of the CA is also recognised in the Council's CA Appraisal (CAA).

19. The two UPVC windows attacked by the notice have since been replaced by white painted, vertically hung timber framed sash windows. However, I am bound to consider the planning merits of the UPVC units given that the deemed application is being pursued in that respect.

20. A photograph of the building's front elevation with the UPVC units in situ was supplied. This showed that the units bore a superficial resemblance to timber framed, single glazed sliding sash windows elsewhere on the terrace front elevations. Even so, being double glazed the UPVC units had a considerably greater frame thickness than single glazed windows. The UPVC units were clearly not set back as deeply in the window reveals as single glazed windows and also had appreciably different reflective qualities. Furthermore, with a top light that opened on a horizontal pivot, the UPVC units had a noticeably flatter profile as well as much thicker central horizontal frame sections than timber framed sash windows in the vicinity. Moreover, when opened the horizontal top light projected outwards from the front elevation in an angular fashion. This would have been noticeably at odds with the verticality of sliding sash windows in the terrace. Therefore, the UPVC units possessed a detailed design and appearance which failed to respect and reflect traditional windows, meaning that those units appeared as obvious and alien additions to the front elevation of the building and the terrace, in doing so failing to integrate satisfactorily with original built fabric and eroding the significance of the CA.

21. In reaching the above finding, I acknowledge that other UPVC units have been installed elsewhere on the front elevation of the building and in the rest of the terrace. If anything, it is those units that contribute to a diminution in the appearance and continuity of the terrace front elevation, not the surviving examples of timber framed windows. Indeed, the presence of other UPVC units largely serves to illustrate the harm to both the character and appearance of the CA that would occur if permission were to be granted in this instance. The presence of such units is therefore not a good reason for granting permission for unacceptable development as it could be repeated, ultimately undermining the significance of the CA and the purpose of its designation. The CAA, which points to extensive replacement of original timber sash windows as adversely affecting the character and appearance of the CA and which advises that replacement windows should closely replicate the design and dimensions of the originals, reinforces my view in the above respect.

22. The fence attacked by the notice is of horizontal timber boarding with a natural finish, of overall height approaching 2 m, erected on top of a pre-existing low masonry wall. The gate also attacked is slightly taller and of a metal railing type, which together with the frame is painted black. Although the fence has been reduced in height since the issuing of the notice, for similar reasons to those set out above in relation to the UPVC units the planning merits of the front boundary works still fall for consideration.

23. Due to their overall height and relatively solid and robust nature, the front boundary works create a strong sense of enclosure at the front of the property. This is coupled with a utilitarian appearance, having regard to the strictly functional design and the materials utilised which do not reflect those of more traditional front boundary enclosures in the locality. The juxtaposition between the differing heights, design and materials of the fence and gate together with its frame also contributes to a lack of unity in respect of the frontage treatment. The above is all entirely at odds with the prevailing pattern of frontage boundary treatments along the terrace and elsewhere in the CA.

24. The green coloured frontage fencing at 265 High Road (No 265) depicted has since been replaced by an enclosure which is considerably lower and more substantial than the fence in this appeal. Consequently, the fence does not

compare with the enclosure currently at No 265. Simply painting the fence a different colour would not satisfactorily address the visual harm caused by the overall height, design and materials of the front boundary works. As the notice does not attack the pre-existing low masonry wall, the property frontage would not be left unduly open if the front boundary works were to be removed. It follows that those works are viewed as an alien feature in their setting, leading to further erosion of the CA's significance. My views in the above respect are also reinforced by the CAA, which points out that boundary enclosures make an important contribution to character and that they should ideally be repaired or rebuilt to reflect the original appearance.

25. Therefore, the UPVC units and front boundary works do not preserve the character or appearance of the CA. The failure to achieve a high standard of design contributing to the distinctive character of the locality does not accord with Policy DM1 of the Haringey Development Management Development Plan Document (DPD), whilst by not conserving the significance of the heritage asset there is conflict with DPD Policy DM9. For similar reasons, the UPVC units and front boundary works fail to accord with Policy SP11 and Policy SP12 of the Haringey Local Plan Strategic Policies. Furthermore, the UPVC units and front boundary works do not accord with LP Policy D3 as they do not positively respond to local distinctiveness, whilst by not conserving the significance of the heritage asset as well as being unsympathetic to the assets' significance and appreciation within their surroundings there is conflict with LP Policy HC1.

Other Matters

26. The appellant argued that a reduction in household expenditure from lower heating bills and an increase in energy efficiency was attributable to installation of the UPVC units. Even so, it is highly likely that similar economic and environmental benefits could have been achieved by, for example, repairing the pre-existing windows and installing secondary glazing, draft-proofing and blinds or shutters, as advised by the CAA. There was no firm evidence to suggest otherwise. Consequently, when also having regard to their small scale, I afford any benefits in the above regard limited weight.

27. It was further suggested that the front boundary works contribute positively to a reduction in crime and the fear of crime by creating a semi-private space at the front of the property. However, in terms of preventing crime it is generally desirable for dwelling frontages to be open to view by using low walls, fences, or hedges. High enclosures largely result in a more 'defensive' appearance not overlooked from the public realm, having the opposite effect of that intended by the appellant. As a result, I also afford this matter little weight.

Planning Balance and Conclusion on Ground (a)

28. The UPVC units and front boundary works do not preserve the character or appearance of the CA and they do not accord with the Development Plan. There has been less than substantial harm to the significance of the designated heritage asset. The Framework advises that such harm should be weighed against any public benefits. It also advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to that asset's conservation. Any economic and environmental benefits of the UPVC units and front boundary works are of limited scale. Such benefits could equally have been achieved by alternatives that did not adversely affect the significance of the CA. As a result, the balance of

considerations is that the interests of conserving the heritage asset greatly outweigh any public benefits and the ground (a) appeal does not succeed.

Ground (f) appeal

29. The ground of appeal is that the requirements of the notice are excessive.

30. An enforcement notice can have two purposes. These are to remedy the breach, including by restoring the land to its condition before the breach took place, or; to remedy any injury to amenity caused by the breach. Whilst the purpose of the notice is not specified, it requires total removal of the UPVC units and the front boundary works. This is as opposed to, for example, requiring the UPVC units to be modified or a reduction in the height of the front boundary works, to an extent that amenity is no longer adversely affected. Therefore, the purpose of the notice must be to remedy the breach by restoring the property to its condition before the breach took place.

31. No lesser steps were suggested in respect of the UPVC units and there is no obvious alternative which would also remedy the breach in that respect. In any event, as noted above those units have been replaced. Painting the front boundary works was considered in the deemed application arising from the ground (a) appeal. In the context of ground (f), applying paint would not restore the property to its pre-breach condition as the front boundary works would remain in situ. Partially reducing the height of the front boundary works since the issuing of the notice does not alter that conclusion.

32. Nonetheless, as enforcement action is intended to be a remedial measure, whether the planning difficulties could be overcome at less cost and disruption than total demolition is a relevant consideration. An enclosure and a gate not exceeding an overall height of 1 m could be erected adjacent to the property frontage as permitted development by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(GPDO) at Article 3, Schedule 2, Part 2, Class A. It is not unreasonable to anticipate that the appellant might seek to provide some form of frontage enclosure and gate taller than the pre-existing wall. This raises the realistic prospect of the front boundary works being re-erected up to 1 m high, shortly after their removal following the upholding of the notice.

33. It is also possible to remedy the breach by making development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. This includes where that permission is granted by the GPDO. Reducing the front boundary works to an overall 1 m in height would bring the development within the relevant height limit in Class A. There are no other relevant limitations or conditions in Class A. Article 3(6) of the GPDO does not act to disapply the permission granted by Class A in this instance. The height of the front boundary works can be accurately measured. As a result, a requirement to reduce the front boundary works to not more than 1 m in height would be sufficiently precise.

34. Consequently, whilst I find that the requirements are not excessive, I shall vary the notice as set out above as an alternative remedy to part of the breach and the ground (f) appeal succeeds to that limited extent.

Conclusion

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

Stephen Hawkins

INSPECTOR