



Appeal Decision

Site visit made on 6 July 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 3rd August 2022

Appeal Ref: APP/P4605/C/22/3293166

Baldwins House, 290-298 Baldwins Lane, Birmingham, B28 0XB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A Khan against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 20 January 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use of the rear of the premises to two self-contained flats in the approximate position marked in green on the attached plan.
- The requirements of the notice are to
 - (a) Cease the use of the land shown green on the attached plan as self-contained flats
 - (b) Remove any fixtures and fittings associated with the unauthorised use.
 - (c) Remove all demolished building materials and rubble from the premises arising from compliance with the requirement (b) above
- The period for compliance with the requirements is 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.

Summary of Decision: Subject to corrections, the enforcement notice is upheld and the appeal is dismissed.

Decision

1. It is directed that the enforcement notice is corrected by:
 - i) the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
 - ii) the deletion of the allegation in full and replacing it with: "Without planning permission, the unauthorised change of use to two self-contained flats ("the flats") at the rear of No 290 and 292 Baldwins Lane as shown in the approximate position edged green on the plan."
 - iii) the deletion of requirement (a) in full and replacing it with "Cease the unauthorised use of the self-contained flats at the rear of No 290 and 292 Baldwins Lane as shown in the approximate position edged green on the plan."
2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. The Development Management in Birmingham (DMB) 2021 was adopted on the 7 December 2021 and the DMB replaces the policies in the Birmingham Unitary Development Plan 2005 referred to in the notice. However, both parties have

addressed those replacement policies particularly Policies DM2 which relates to amenity and Policy DM10 which relates to standards for residential development in their evidence.

Application for costs

4. An application for costs was made by Mr A Khan against Birmingham City Council. This application is the subject of a separate Decision.

The Notice

5. It is the duty of the Inspector to put the notice in order. The allegation is "the unauthorised change of use of the rear of the premises to two self-contained flats in the approximate position marked in green on the attached plan." The flats are not identified by reference to numbers and the "Premises" are defined in the Notice as Baldwin House, 290-298 Baldwins Lane. The plan attached to the Notice shows two separate green areas to the rear.
6. Whilst one green area relates to the block which forms part of the two self-contained flats to the rear which are 290 and 292, the second green area relates to a similar block which is to the rear of 296. There is no dispute between the parties that the notice does include two self-contained flats to the rear of 290 and 292. However, the Council confirmed during the course of the appeal that the second green area marked on the plan to the rear of 296 Baldwins Lane has been included in error. Part of the block to the rear of 296 is in use as a third flat but the Council states that it was unaware of that conversion when the notice was issued.
7. I therefore have to consider whether the notice can be amended without causing injustice to any party. I acknowledge that the appellant has construed the allegation as being wider due to the plan and also due to the absence of an address in the allegation itself. However, the allegation does refer to two self-contained flats rather than three and the appellant has been able to present all of his arguments in respect of the flats at 290 and 292. In the circumstances, amending the allegation to provide clarity and substituting a new plan does not cause injustice to any party. The position with regard to any other flat remains unaltered by the service of the notice. For the same reasons, amending requirement (a) to match the allegation does not cause injustice.
8. The allegation therefore does need to be corrected to "Without planning permission, the unauthorised change of use to two self-contained flats ("the flats") at the rear of No 290 and 292 Baldwins Lane as shown in the approximate position edged green on the plan." A new plan has been provided showing one green area and I will substitute that plan for the existing plan.
9. The requirements then need to flow from the allegation. Requirement (a) therefore requires amendment to "Cease the unauthorised use of the self-contained flats at the rear of No 290 and 292 Baldwins Lane as shown in the approximate position edged green on the plan." I will amend the notice accordingly.

Appeal under ground (a) and the deemed planning application (the DPA)

10. The main issues are the effect of the development upon:

- the living conditions of the occupants of the flats having particular regard to the provision of private outside amenity space.
- the living conditions of the occupants of the flats having particular regard to the provision of internal space, outlook and natural light.
- the suitability of the development for housing with particular regard to its location and context.

Reasons

11. 290 – 298 Baldwins Lane is a purpose built mixed use block with retail and commercial uses on the ground floor fronting onto Baldwins Lane. Residential use is on the higher floors. Baldwins House at 294 includes flats over three stories. The unauthorised use is taking place at ground floor level within the rear of 290 and 292 which together with a modest block which juts out from the main building forms the two flats. The original use was to provide back of house storage space for the businesses which front onto Baldwins Lane. Vehicular and pedestrian access to the flats is off Acheson Drive across an area of hardstanding.

Living Conditions – Outside Private Amenity Space

12. The hardstanding area to the rear is the only outside space for the flats. Although the appellant describes the area as a courtyard, it is not marked in any way as private or allocated to individual flats. Whilst no longer used for that purpose, its appearance is no different to an area of hardstanding used for deliveries and parking to the rear of a substantial mixed use building. The appellant states that nearby flat occupants also have no amenity space but no further details are provided. In any event, I have to assess the unauthorised use in this specific location with regard to the existing relevant policies. The development therefore lacks outside private amenity space which is harmful to the living conditions of occupants.
13. It is therefore contrary to Policy PG3 of the Birmingham Development Plan 2031 (Adopted 2017)(the Local Plan) which amongst other things refers to ensuring that private external spaces are attractive and functional. Other policies including Policy TP27 of the Local Plan, Policy DM10 of the DMB and the guidance contained in 'Places for Living' Supplementary Guidance collectively support the need for private amenity space and a strong sense of place with high quality design. It is also in conflict with Paragraph 130(f) of the National Planning Policy Framework (the Framework) which refers to creating places with a high standard of amenity for existing and future users.

Living conditions – Internal space, outlook and natural light

14. The two flats are of a similar size and layout. Each flat has a very modest kitchen area, a shower area as well as living space and a double bed. The flats have three windows each with two modest windows to the kitchen and shower room and a larger window to the living area. Whilst the living room windows appear to be of an adequate size and shower areas do not need a particularly large window, the kitchen windows are located close to roof level. Outlook and natural light are limited and where views are available they are of the hardstanding with a wall beyond. The Council advises that the internal area of each flat is around 22 square metres. The appellant states that the development complies with room sizes of Technical Housing Standards-

nationally described space standards (the Technical Standards). However, those standards refer to 37 square metres for a one bedroom flat with a shower room for one person and 50 square metres for two people. Even if assessed as one person flats, the size is significantly below those standards. Given the size of the flats and the overall window arrangement, there is limited natural light for the occupants with the kitchen areas being particularly cramped. I therefore do find harm to the living conditions of occupants with regard to lack of internal space, outlook and natural light.

15. The development is therefore contrary to policies TP27 and PG3 of the Local Plan whose collective objectives include the creation of places that are attractive and fit for purpose. It is also in conflict with 130(f) of the National Planning Policy Framework which refers to creating places with a high standard of amenity for existing and future users. It is also in conflict with Policy DM2 which requires all development to not result in unacceptable adverse impact on the amenity of occupiers with regard to matters including daylight, outlook. I do not find Policy TP35 of the Local Plan to be particularly relevant to living conditions as it relates to the existing housing stock and does not directly address amenity. The development is also in conflict with the Technical Standards which are supported by Policy DM10 of the DMB in prescribing minimum internal floor space areas.

Location and Context

16. The Council alleges that the unauthorised use is out of context with the character of the area and represents backland development. The appellant indicates that prior to the unauthorised use taking place, the appeal block was vacant for 20 years as it was not needed by the occupiers of the businesses and shops to the front on Baldwins Lane for storage.
17. The current uses of the businesses to the front are said to be a barbers shop and financial services. There are no details about the length of any leases or if at the time of entering into those leases, there was an option to also rent the storage block. Whilst the appellant considers that the current use makes efficient use of vacant space, I have no details as to what steps have been taken to bring the block back into use or whether other options have been considered other than residential use.
18. The absence of evidence of any changes to the exterior of the storage block means that the development does not represent good design. Small windows that were suitable for storage use are not necessarily suitable for residential occupation. The hardstanding area has not been altered to accommodate residential use. Whilst there is a need for housing and occupants have access to facilities such as shops and public transport, the fact that the flats are occupied does not mean that they are suitable for housing when assessed against the relevant policies as a whole.
19. The appellant has sought to rely upon Class MA, Part 3, Schedule 2 of the General Permitted Development Order 2021 (GPDO). It provides that subject to meeting relevant conditions and limitations, uses that fall within Class E of the GPDO can be converted to Class C3 residential use and that this represents a "fall-back position." However, the appellant has not addressed how the flats fall within the conditions and limitations. As well as the 3 month vacancy period referred to by the appellant, conditions include a requirement to have fallen within certain use classes for a period of 2 continuous years.

20. The prior approval process also involves consideration by the Council of a number of matters including access to natural light. Amendments to the GPDO¹ now also exclude areas of less than 37 square metres and require compliance with the nationally described space standards in order to fall within Class MA. On the information before me, I do not consider that future reliance upon Class MA is a fall-back position to which I can attach any weight within this appeal.
21. The extent of the Council's reason in the notice relating to the location and context is limited to it being backland development and the precedent effect of the allowing these commercial units to be used for residential purposes. However, it remains the case that each development has to be considered on its own merits and circumstances and allowing or dismissing this appeal turns upon the specific facts and circumstances of this appeal only. Although the Council has in its evidence referred to wider issues of surveillance and fear of crime, these are not matters that are highlighted in the Council's reasons for issuing the notice.
22. Nevertheless, the development was designed for ancillary storage use and there is limited evidence before me to show why that use or alternative uses have not been considered. The backland location with the limited space both inside and outside and the absence of any changes to the external appearance does mean that the development is out of context with the other flats which form part of a purpose built block and the semi-detached dwellings on Acheson Road.
23. I therefore do find that the development is backland development which is out of context with the surrounding area. It is in conflict with Policy PG3 of the Local Plan which amongst other things refers to development demonstrating high design quality, contributing to a sense of place.

Other matters

24. The DPA relates directly to the allegation which is the unauthorised use as two self-contained flats. The appellant has suggested that conversion to one flat would overcome any living condition issues. The Council has previously refused an application for conversion to one flat for similar reasons to the reasons for issuing this notice. Conversion to one flat is not part of the DPA which derives from the allegation which is use as two flats. However, even if I was able to determine such an application, I share the Council's view that creating one single flat does not overcome the reasons for issuing the notice. Whilst a single flat of 45 square metres would be larger, the flat would still not meet the Technical Standards of 50 square metres if it is intended for two people.

Planning Balance

25. The appellant considers that the development accords with the Framework and the development plan and should be approved under paragraph 11 c) of the Framework. However, I have found that there is harm to the living conditions of occupants with particular regard to lack of private amenity space, outlook, natural light, internal space. I have also found that the development is out of context with the surrounding area. All of these matters are contrary to the Framework and the development plan. The development does not therefore warrant the grant of approval under paragraph 11 c).

¹ The Town and Country Planning (General Permitted Development) (England)(Amendment) Regulations 2020

26. Although not addressed by the appellant, the Council does not have a 5 year supply of deliverable housing land and as a consequence the tilted balance is engaged. Planning permission should therefore be granted unless any adverse impacts in doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole as stated in Paragraph 11 d)ii.
27. In term of the benefits of the development, contributions to the local economy in terms of spending by occupants, building works and ongoing management providing employment are likely to be very modest in view of the limited extent of any building works, the size of the appeal building and the number of occupants. Whilst the flats do add to the housing stock, the contribution that two flats makes to housing numbers is very modest.
28. However, even applying the tilted balance, I do find that the adverse impacts of the development do significantly and demonstrably outweigh the modest benefits, when assessed against the policies in the Framework taken as a whole. The appeal under ground (a) therefore fails.

Appeal under ground (f)

29. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of a notice are set out in Section 173 of the Act and are to remedy the breach of planning control or to remedy any injury to amenity. The requirements include ceasing the use as self-contained flats and removal of fixtures and fittings used in connection with that use. The purpose of the notice is to remedy the breach of planning control.
30. The appellant considers that requirement (b) is to cease the use of the kitchen and bathrooms only as outlined in green or alternatively requires the repositioning of the kitchens and bathrooms within the main living area. That is not the case. Requirement (a) requires the use as self-contained flats to cease. The occupants will therefore have to vacate the flats within the 6 months compliance period. Requirement (b) requires the removal of fixtures and fittings not the cessation of use of kitchens and bathrooms. The wording of the notice does refer to the *approximate* (my emphasis) location in green and is meant to identify the location but not necessarily the extent of the flats.
31. Requirement (b) has to be read in conjunction with the other requirements. Case law² has established that the Council can require the removal of fixtures and fittings which have facilitated that unauthorised use to be removed. Requirement (b) is not excessive. The appeal under ground (f) therefore fails.

Conclusion

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

E Griffin

INSPECTOR

² Somak Travel v SSE & Brent LBC{1987}JPL 630

Plan

This is the plan referred to in the decision dated: 3rd August 2022

by **E Griffin LLB Hons**

Land at: Baldwins House, 290-298 Baldwins Lane, Birmingham B28 0XB

Reference: APP/P4605/C/22/3293166

Scale: Not to Scale

