



Appeal Decision

Site visit made on 9 August 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2022

Appeal Ref: APP/H5960/C/21/3273127

91 Broadwater Road, London SW17 0DY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Nasir Ahmad against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 9 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission and within the past four years a material change of use of the property from a single family dwellinghouse to use as two self-contained flats.
 - The requirements of the notice are:
 1. Cease the unauthorised use of the property as two self-contained flats and return the property to its layout as a single family dwellinghouse;
 2. Remove the additional kitchen at first floor level;
 3. Remove any internal partitions which subdivide the first and second floor flats from the ground floor flat;
 4. Remove from the property any furniture, fittings and fixtures associated with the unauthorised use and;
 5. Remove from the site all debris arising from compliance with steps 1-4.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of number *two* in requirement 1 and the letter *s* after *flat* in requirement 3 in section 5 of the enforcement notice (what you are required to do).
2. Subject to these variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

3. The London Plan 2021¹ has been adopted since the notice was issued. I have therefore had regard to the policy referred to from the adopted plan in determining the appeal. The Council referred to that policy in their appeal statement upon which the appellant has had the opportunity to comment so there is no prejudice to the appellant.

¹ The London Plan The Spatial Development Strategy for Greater London (March 2021)

The Enforcement Notice

4. The risk of requiring use as two flats to cease is that the property will be used for three or some other number of flats. It is sufficient to require the use as flats to cease, I shall therefore delete the number *two*.
5. Requirement three requires the removal of any internal partitions which subdivide the first and second floor *flats* from the ground floor flat. However, there are only two flats, a ground floor, and first/second floor flat. It seems the reference to *flats* in this requirement is a typographical error. I shall therefore delete the erroneous *s*. Since neither variation enlarges nor reduces the scope of the requirements, there is no injustice.

The appeal on ground (a) and the deemed planning application

6. The main issues are the effect of the development on (i) the supply of family housing in the borough and (ii) the living conditions of future occupants with particular regard to the standard of accommodation, and (iii) the availability of waste storage and collection, and cycle parking.

Reasons

Family housing

7. The appeal property is a relatively modest semi-detached dwelling. Notwithstanding that there is a school on the opposite side of the road, the immediate context is distinctly residential in character.
8. Policy DMH2 of the Wandsworth Local Plan - Development Management Policies Document (Adopted March 2016) (DMPD) relates to residential conversions and states that the conversion of dwellings with less than 150 sqms of existing habitable floorspace will only be permitted where the property is unsuitable for families.
9. The second paragraph (b) of the policy deals with a different situation; conversions of dwellings of 150 sqms or more of existing habitable floorspace (prior to any extensions carried out since the end of 2008). It is criteria-based and identifies factors to be satisfied including at least one family-sized unit is provided with access to a dedicated rear garden.
10. There is no dispute that the appeal property was, prior to its conversion, a dwelling. Based on the appellant's and Council's floor area calculations, the dwelling would not have more than 150 sqms of existing habitable floorspace, as such its conversion to flats would only be acceptable if it were unsuitable for families.
11. Given its size and layout, including a generous back garden, its location in a residential area, opposite a school and with excellent transport links, the property is entirely suitable for family occupation.
12. The development has therefore resulted in the loss of a dwelling suitable for families contrary to Policy DMH2 of the DMPD, and there is no evidence before me which would justify setting the requirements of the policy aside.

Living conditions

13. Notwithstanding the Council's case and the submitted plan, I could see that the property is in use as two, two-bedroom flats. However, although the rooms contained double beds, I have no details regarding the number of occupants.
14. Policy DMH6 of the DMPD requires two-bedroom, three bedspace units to have 61sqm of floorspace. Policy D6 of the London Plan 2021 and The Technical housing standards - nationally described space standards, require a minimum of 61sqm for the ground floor flat and a minimum of 70sqm for the first/second floor flat.
15. Based upon the Council's figures, both units would achieve and exceed these standards. Given this and my own observations, I find the first/second floor flat provides an acceptable standard of accommodation in terms of internal floorspace. There is therefore no conflict with Policy DMH6 of the DMPD or Policy D6 of the London Plan 2021 in this regard.
16. However, although the appellant stated that the garden could be divided between the two flats, it is not clear how this would be achieved. Consequently, in the absence of any private outside space for the first/second floor flat, the development is contrary to Policy D6 of the London Plan 2021.

Waste storage and collection, and cycle parking

17. It appears from a third-party representation that the use has been ongoing for around two to three years however, there is no evidence to demonstrate that the refuse storage and collection arrangements are inadequate. Consequently, there is no conflict with Policy DMS1 of the DMPD.
18. Additionally, whilst there is no provision for cycle storage and therefore conflict with Policies DMH4 and DMT2 of the DMPD, given the short walking distance to two tube stations and various bus routes, the lack of on-site cycle parking provision would not have been a reason alone to dismiss the appeal.

Other matters

19. That the appellant would be willing to sign a section 106 agreement preventing the first floor flat obtaining a parking permit is a neutral matter which cannot weigh in favour of the development, since no harm was identified in respect of car parking.
20. Policy DMH7 of the DMPD relates to residential gardens and amenity space. Since there is no family sized unit there is no conflict with Policy DMH7 of the DMPD. This policy therefore weighs neither in favour nor against the development.

Conclusion on ground (a) and the deemed planning application

21. My finding no harm in respect of the internal standard of accommodation, refuse storage and collection arrangements and cycle parking, cannot outweigh the harm in respect of the loss of a dwelling suitable for families. Consequently, the development does not accord with Policy DMH2 of the DMPD and is contrary to the development plan when taken as a whole.

Conclusion

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

Felicity Thompson

INSPECTOR