



Appeal Decision

Site visit made on 6 September 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 September 2022

Appeal Ref: APP/N5090/C/21/3273839

269 Oakleigh Road North, London N20 0DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Antonios Neophytou against an enforcement notice issued by the Council for the London Borough of Barnet.
- The notice, numbered ENF/1752/19, was issued on 18 March 2021.
- The breach of planning control as alleged in the notice is without planning permission the use of the lower ground floor of the property as a self-contained flat.
- The requirements of the notice are:
 - 1 Cease the use of the basement as a self-contained flat.
 - 2 Permanently remove all facilities from the basement including [sic] the kitchen units, sinks, cookers and food preparation areas.
 - 3 Permanently remove all bathroom facilities from the basement, including toilet, basin, bath and shower.
- The period for compliance with the requirements is 8 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) 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: The appeal is dismissed, and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Matters concerning the notice

1. The use of land does not constitute development unless that use represents a material change of use. There is no doubt that the allegation should refer to the 'material change of use' of the lower ground floor of the property as a self-contained flat. It is clear from the appellant's case that they understood the allegation to mean a material change of use.
2. The allegation refers to use of the '*lower ground floor*' whereas the requirements refer to '*basement*'. The requirements should reflect the terminology used in the allegation. There is no doubt that the appellant understood that '*lower ground floor*' and '*basement*' refer to the same part of the building. The words '*lower ground floor*' should be substituted for the word '*basement*' in steps 1, 2 and 3.
3. Given the intention of the requirements, the word 'kitchen' is obviously missing from step 2 and the word 'including' should be 'including'. These are typographical errors.
4. For the reasons given, the corrections set out above will cause no injustice and I shall correct the notice accordingly. The grounds of appeal will be considered in respect of the corrected notice.

Appeal on ground (e)

5. A copy of an enforcement notice must be served on the owner(s) and occupier(s) of the land to which it relates. It should also be served on any other person(s) having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
6. The ground floor and upper floor flats fall within the land identified on the plan attached to the notice, and the occupiers of those 2 flats share use of the private rear garden. The allegation only relates to the use of the lower ground floor flat. The steps required to be taken also only relate to the lower ground floor flat. The occupiers of the ground floor and upper floor flats are not, therefore, materially affected by the notice and there is no need, under s172(2)(b), for a copy of the notice to have been served on the occupiers of the ground floor and upper floor flats.
7. Even if I had found that the occupiers of the ground floor and upper floor flats were materially affected by the notice, they have made no representations despite being notified of the appeal. An appeal has been lodged on several grounds, and it is unlikely that the occupiers of the ground floor and upper floor flats could have lodged an appeal on any ground not already before me for consideration.
8. The occupiers of the ground floor and upper floor flats have not therefore been substantially prejudiced by the failure to be served. Section 176(5) of the 1990 Act allows me to disregard the fact that the occupiers of the ground floor and upper floor flats were not served with a copy of the notice as neither they nor the appellant, has been substantially prejudiced.
9. For these reasons, the appeal on ground (e) fails.

Appeal on ground (a)

10. An appeal on this ground is that planning permission should be granted for the corrected matters alleged. The **main issue** is the effect on residential amenity of the occupiers of the lower ground floor flat and neighbouring occupiers.
11. The lower ground floor flat is a single aspect dwelling that is only accessible via an external staircase located at the side of the property. This external staircase is also used by occupiers of the ground floor and upper floor flats to access the rear garden. Accommodation within the lower ground floor flat includes kitchen/living area, bedroom and shower room. Glazed patio style doors provide natural light into the habitable rooms and access in and out of the communal garden.
12. Residents of the lower ground floor flat pass several windows serving the ground floor flat and the access route is adjacent to a neighbouring property. A one, or even two-person, one bedroomed dwelling is unlikely to generate a level of activity, over and above that which would otherwise exist, that would cause significant disturbance or security risk to neighbouring occupiers.
13. Policy DM02 of Local Plan Development Plan Document (September 2012) ('the LPDPD') expects development to demonstrate compliance with outdoor amenity space standards set out in the Sustainable Design and Construction SPD (2016). The private rear garden is of a size capable of providing an adequate level of shared private amenity space for 3 dwellings.

14. I saw nothing to suggest that the lower ground floor flat has access to its own dedicated private amenity space. An area of hard surface is located immediately adjacent to the principal elevation of the lower ground floor flat. The hard surface is set at a lower level than the adjacent lawned area, but there is nothing to prevent people using the lawn from accessing the hard surface or vice versa. Anyone using the shared garden area can look directly into the kitchen/living area and bedroom of the lower ground floor flat. The lower ground floor flat's blinds were closed at the time of my visit. The lack of privacy and over-looking arising from the shared use of the garden and the loss of outlook due to the blinds being kept drawn, causes significant detriment to the residential amenity of the occupants of the lower ground floor flat.
15. Providing a 1.7 m high fence around the area of hard surfacing and part of the grassed rear garden area could address the privacy and over-looking issues. Outlook could also be improved, as the blinds would not need to be kept closed. In the absence of any details to show where this fence would be erected, it is not however possible to establish whether outlook would be significantly improved or whether the fence would result in an unacceptable loss of natural light for the occupiers of the lower ground floor flat.
16. The provision of this additional dwelling makes a small contribution to the supply of new homes. However, that contribution does not outweigh the need for homes to be provided with adequate levels of residential amenity.
17. For the reasons given above, the development fails to accord with policies D3 and D6 of the London Plan (2021), DM01 and DM02 of the LPDPD, which require the provision of private amenity space, and adequate privacy and outlook for occupiers, amongst other things.

Appeal on ground (f)

18. An appeal on this ground is that the steps required to be taken go beyond what is necessary to remedy any breach of planning control, or injury to amenity, as the case may be. The purpose of this notice is to remedy the breach of planning control. The removal of any fixtures and fittings that facilitate the use as a self-contained flat are therefore necessary to remedy the breach.
19. The lower ground floor accommodation could be combined with the accommodation of the ground floor flat. However, there is no internal connectivity between these 2 levels of accommodation. The removal of the bathroom and kitchen fixtures and fittings are therefore necessary to remedy the breach.
20. For these reasons, the appeal on ground (f) fails.

Appeal on ground (g)

21. An appeal on this ground is that the period for compliance falls short of what should reasonably be allowed. Varying the period to '*9 months after the date of the part of the emergency "Corona" legislation prohibiting landlords from evicting tenants has been lifted*' would introduce imprecision, which would invalidate the notice.
22. While occupation of the flat may be on an assured tenancy, there is nothing before me to demonstrate that 8 months is insufficient to secure vacant

possession and carry out the works required by steps 2 and 3. A need to vary the period to 9 months has not therefore been demonstrated.

23. For these reasons, the appeal on ground (g) fails.

Overall conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with 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.

Formal Decision

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

In section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, insert the words 'material change of' between the words 'the' and 'use'.

In section 5. WHAT YOU ARE REQUIRED TO DO, delete steps 1, 2 and 3 and substitute the following steps:

1 Cease the use of the lower ground floor as a self-contained flat.

2 Permanently remove all kitchen facilities from the lower ground floor including kitchen units, sinks, cookers and food preparation areas.

3 Permanently remove all bathroom facilities from the lower ground floor, including toilet, basin, bath and shower.

Subject to the corrections 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.

M Madge

INSPECTOR