



Appeal Decision

Site visit made on 19 July 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2022

Appeal Ref: APP/U5930/C/20/3259578

Land at 25 Rolls Park Road, London, E4 9BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Nnena Okoreaffia against an enforcement notice issued by Waltham Forest London Borough Council.
 - The notice, numbered 089172, was issued on 21 August 2020.
 - The breach of planning control as alleged in the notice is:
 - (i) Without planning permission, the subdivision of the Land to facilitate the material change of use of the dwellinghouse (Use Class C3) to two separate self-contained dwellings (Use Class C3) and internal alterations which facilitate this material change of use.
 - (ii) Without planning permission, alterations to the front façade to facilitate the unauthorised material change of use of the dwellinghouse (Use Class C3) to two separate self-contained dwellings (Use Class C3).
 - The requirements of the notice are to:
 - 1) Cease the unauthorised use of the Land as two separate self-contained dwellings;
 - 2) Cease the use of the ground floor flat as a separate self-contained dwelling;
 - 3) Remove any additional energy meters from the Land so that only one remains;
 - 4) Remove any additional boilers from the Land so that only one remains;
 - 5) Remove from the unauthorised ground floor flat all cookers, hobs, kitchen equipment, sinks, washing machines, fridge freezers and any other kitchen related accessories, fixtures and fittings and dispose away from the Land;
 - 6) Remove from the unauthorised ground floor flat all showers toilets, sinks and associated bathroom fittings and fixtures and dispose away from the Land;
 - 7) Reinstate the front façade to its former condition, ensuring that the front entrance serving the unauthorised ground floor flat is removed and the space for this front entrance is bricked up and finished in materials and detailing to match what was previously in situ;
 - 8) Reinstate the internal ground floor layout of the Land so that there is an internal means of traversing between the space for the unauthorised ground floor flat and the remainder of the property, so that the ground floor layout either:-
 - a) matches the layout as existed immediately prior to the unauthorised ground floor flat being created;OR
 - b) matches the layout shown in the existing plan attached to the application for a Lawful Development Certificate (Ref: 173372) (attached as Plan B);and
 - 9) Following compliance with Steps 1) – 8), remove from the Land any resultant debris or detritus.
 - The period for compliance with the requirements is six months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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.
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Summary Decision: The appeal is dismissed, the enforcement notice is upheld and planning permission is refused.

Preliminary Matters

1. The appeal site is occupied by a residential property and there is no dispute that this was originally a single dwellinghouse. It is the Council's case that one of the self-contained dwellings referred to in the allegation has been provided in the front part of the property at ground floor (hereinafter referred to as unit No 1), and that the second dwelling is provided in the remainder of the property (hereinafter referred to as unit No 2).
2. Although a point raised under ground (a), the appellant suggests that unit No 1 is accommodation that is ancillary to the dwelling occupying unit No 2. The appellant's case in this regard must be considered under section 174(2)(b) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is that the breach of planning control constituted by the matters stated in the notice have not occurred. I have, therefore, considered a ground (b) appeal in this case, after first consulting the parties and seeking their views on this matter.
3. Since the submission of evidence in respect of these appeals, the London Plan March 2021 (LP) has been published. This replaces the former version of the London Plan. As such, I have not had regard to the policies of the former London Plan referred to in evidence, including those mentioned in the enforcement notice. The comments of the parties were sought with regard to the effect of the change to the development plan. I have had regard to any comments received, including the policies of the LP drawn to my attention, in reaching my decision.

Ground (b)

4. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. The burden of proof is on the appellant.
5. It is worth noting at this point that, in order for the appellant's ground (b) appeal to succeed, she must demonstrate that the breach of planning control alleged in the notice has not occurred, either at the time the notice was issued or prior to its issue. That the breach of planning control may have ceased or been removed since the issue of the notice is not relevant to the ground (b) appeal.
6. With regard to the first allegation in the notice, in suggesting that unit No 1 is ancillary accommodation, it is the appellant's case that there has not been a material change of use of the property; that the property at the appeal site remains as a single dwellinghouse and the accommodation comprised in unit No 1 is part and parcel of the main dwellinghouse at the site.
7. I am mindful that the distinctive characteristics of a dwellinghouse are its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Having viewed the building occupying the appeal site, I note that unit No 1 comprises a room that accommodates a small kitchen area with some kitchen cupboards and a kitchen sink, as seen in the Council's photographs at page 14 of its statement. At the time of my visit the room did not appear to be occupied as shown in the photographs, but was being used to

store various domestic items, including home gym equipment. Nevertheless, I can see from the Council's photographs that the room once accommodated a bed, storage, a chair and desk. A door within the room provides access to an en-suite bathroom. This can also be seen in the Council's photographs.

8. The appellant's evidence of how the room was occupied at the time the notice was issued is limited. It is suggested that the room is for a poorly member of the family and I note the intention was for the accommodation to be ancillary. The appellant states that 'the close physical relationship is likely to be more conducive to being able to undertake shared activities and make use of facilities in the main house'. However, I note from the Council's photographs that there was a separate entrance to the room from the parking area to the front of the appeal site. Indeed, I noted at the site visit that, despite the new blockwork covering this entrance, this front door was still in place and visible within the room. Furthermore, whilst I observed an internal doorway between the room and the remainder of the property, this is not visible in the Council's photographs taken.
9. Clearly, the internal doorway has been installed and external doorway blocked up since the Council's photographs were taken on 29 July 2020. This is less than a month before the notice was issued. The appellant has not suggested that the works to install the new doorway and block up the existing front doorway were undertaken prior to the issue of the notice. Accordingly, the layout of the property, as it is more likely than not to have been at the time the notice was issued, is not conducive to the sharing of activities and facilities by the occupiers of unit No 1 and unit No 2. There was only external access between the two.
10. Having regard to the above, unit No 1 has within it the facilities required for day-to-day private domestic existence. Furthermore, I find it more likely than not that at the time the notice was issued, it was a separate planning unit from the remainder of the property at the appeal site, and that the use of this planning unit was as a single dwellinghouse. I have found as such, despite the appellant's stated intentions for its use. The appellant has failed to discharge the burden of proof that is upon her in demonstrating that the material change of use of the property to two self-contained dwellings has not occurred. Her appeal on ground (b) should fail so far as it relates to the first matter in the notice.
11. Turning to the second matter, the alterations to the front façade of the building are primarily the works to install a new entrance at ground floor. As mentioned above, at the site visit I noted that the external façade of the building differed from that shown in the Council's photograph. The right hand entrance visible in the photograph had been bricked up externally, while the front entrance door still remained in place internally.
12. Notwithstanding this, as the works to the façade of the dwelling are clearly visible in the Council's photograph taken on 29 July 2020, I find that the works comprised in the second matter stated in the notice have occurred, as a matter of fact and degree. In addition to this, there is no suggestion that the works to block up this opening had taken place prior to the issue of the notice. All things considered, I conclude that on the balance of probability the alterations to the front façade of the building have occurred. Accordingly, the ground (b) appeal should fail.

Ground (a) and the deemed application for planning permission

Main Issues

13. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
14. I note the appellant has stated that she seeks permission for ancillary accommodation, and has referred to permission having been granted at appeal for a granny annexe elsewhere. However, the deemed planning application that is the subject of the ground (a) appeal is for the matters stated in the notice, which in this case includes the material change of use of the dwellinghouse to two separate self-contained dwellings. Whilst section 177(1) of the 1990 Act allows me to grant permission for the whole **or any part** of the matters stated in the notice, the ancillary accommodation referred to by the appellant does not form part of any of these matters.
15. In view of the above, I cannot determine the deemed planning application on the basis of the use of the accommodation within unit No 1 as ancillary the dwellinghouse at the appeal site. My determination must be on the basis of the development as stated in the notice.
16. I note the substantive reasons for issuing the enforcement notice and from these I have identified the main issues to be considered in this case.
17. With regard to the first matter stated in the notice, the main considerations to be the effect of the development on:
 - the supply of large family homes;
 - the living conditions of the occupiers of the appeal site, with particular regard to both internal and external space; and
 - the living conditions of neighbouring occupiers.
18. With regard to the second matter stated in the notice, the main consideration is the effect of the development on the character and appearance of the site and the surrounding area.

Reasons

The Site and Surrounding Area

19. The appeal site is occupied by a residential property set within a terrace row. There is an open yard to the front of the property suitable for vehicle parking. The appeal site is within a predominantly residential area of similar types of properties.

Material change of use

- Large family home

20. Policy DM6 (Dwelling Conversions, Housing in Multiple Occupation and Buildings in Multiple Residential Occupation) of the London Borough of Waltham Forest Development Management Policies Local Plan adopted October 2013 (WFLP) is relevant to the conversion of homes to smaller self-contained homes. The

Council suggest that the original dwellinghouse at the appeal site was a larger home, but one that has a floor space of less than 124 square metres, which is not disputed by the appellant. As such the Policy informs that permission will not be granted for its conversion to smaller self-contained homes. The justification for the Policy informs that, within the Borough, there is a decline in the supply of housing suitable for larger households, yet the demand for larger family housing remains high, particularly for affordable housing.

21. Whilst of a modest size, the original property at the appeal site included space at first floor for three bedrooms and a bathroom, as well as an extended ground floor. As such, it is likely to have provided accommodation suitable for a larger household, as referred to in the WFLP. The loss of a substantial portion of the ground floor of the property to the unit No 1 dwelling has, in my judgement, hindered the use of the property's by a large household. The development has, therefore, caused harm to the Council's strategy for the retention of large family homes.
22. Despite the above, there is little from the appellant by way of a justification for development that conflicts with the Council's strategy. Accordingly, I conclude that the material change of use of the original dwellinghouse at the appeal site to two separate self-contained dwellings has an unacceptable effect on the supply of large family homes in the Borough. For this reason the development fails to comply with Policy DM6 of the WFLP.

- Living conditions of occupiers

23. In firstly considering the matter of internal space, the Council's concerns in this regard appear to relate to the accommodation comprised in unit No 1, rather than that remaining within unit No 2. As I have noted above, the accommodation within unit No 1 includes a main room with a small kitchen with space for some furniture. A bed, some storage, a chair and a desk are visible in the Council's photographs. There is also an en-suite bathroom with a shower, w.c. and a wash basin.
24. Policy D6 (Housing quality and standards) of the LP requires housing development to be of high quality design and provide adequately-sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures. The Policy and Table 3.1 of the LP set out the minimum that must be achieved for the floor area for private internal space within dwellings.
25. For a one bedroom dwelling with one bed space, Table 3.1 of the LP informs that the minimum internal floor area should be 39 square metres for 1 storey, reduced to 37 square metres where a studio or one single bedroom one person dwelling has a shower room instead of a bathroom.
26. The Council suggest that the internal floor space of unit No 1 is some 18.65 square metres, which it points out is around half the minimum internal floor areas stated in Table 3.1 of the LP.
27. In addition to the above, I note the Council's reference to Policy DM7 (External Amenity and Internal Space Standards) of the WFLP. This policy also provides minimum internal space standards, but informs that these do not include studio flats or 1 bed, 1 person homes as the Council does not support their provision. This is supported by Policy DM5 (Housing Mix) of the WFLP, which informs that

the Council will generally not support the provision of smaller homes (one and two bedrooms).

28. I acknowledge that unit No 1 has basic facilities for cooking and washing, and that this space can accommodate a bed and some storage. However, the size of the main room within the unit is confined and there appears to be very little space remaining for other household activities. There is insufficient space to accommodate furniture and circulation space that is necessary for the unit to function as a dwelling, whilst also providing sufficient and comfortable space for relaxation.
29. Having regard to the internal space provided within unit no 1, I find the dwelling causes harm to the living conditions of its occupier. The accommodation clearly fails to meet the standards set out in Policy D6 of the LP. Neither does it have the support of WFLP Policies DM7 and DM5.
30. Turning to the provision of external amenity space, the Council has referred to the minimum standard for flatted development, as set out in Policy DM7. However, this standard is for flats that have a bedroom, whereas the accommodation comprised in unit No 1 is a studio flat, where bedroom and living space is combined. Nevertheless, I have had regard to the 10 square metre minimum, as well as the requirements of the policy, which are to ensure that, amongst other matters, all homes have access to an element of private space, and that the role and function of the space is clear.
31. At the time the notice was issued it is more likely than not that the occupier of the unit No 1 dwelling would not have had access to the outdoor space to the rear of the site. The only external area for this dwelling is likely to have been the front yard area, the main purpose of which appears to be for vehicle parking. Whilst I acknowledge that this space may be appropriate for bin or bike storage, for example, this space is not private. It does not, therefore, provide an appropriate external area to meet the requirements of residents of Unit No 1 for other functional and relaxation space¹. The WFLP tells us that such space is important for the health and wellbeing of occupiers of dwellings.
32. The 10 square metre requirement for a 1 bed flatted development, as highlighted by the Council, is for 'amenity space'. Whilst not private, I have acknowledged above that the front yard can be regarded as provided external space for some purposes associated with the dwelling in unit No 1. I have not been provided with a calculation of the space provided by the front yard, but I note that a significant portion of this is taken up for vehicle parking. The evidence does not, therefore, lead me to conclude that sufficient external space is likely to remain in the front yard area to meet the needs of the unit No 1 occupier, such that it complies with the minimum standards set out in Policy DM7. Neither does it meet the requirements of the Policy for an element of private space, the role and function of which is clear. For these reasons, I find the dwelling provided in unit No 1 causes harm to the living conditions of its occupiers by reason of the inadequate provision of external space to serve the dwelling.
33. The Council have also pointed to Policy DM32 (Managing Impact of Development on Occupiers and Neighbours) of the WFLP. However, I do not find the development unacceptable with regard to daylight/sunlight, outlook

¹ Paragraph 8.5 of the WFLP.

and privacy, as mentioned in part A of the Policy. Notwithstanding this, facilities for the storage, collection and disposal of waste generated by the development have not been drawn to my attention, such that I can be satisfied that their provision would not have an unacceptable impact on visual amenity, in accordance with the Policy.

34. All things considered, I conclude that the material change of use of the original dwellinghouse at the appeal site to two separate self-contained dwellings has an unacceptable effect on the living conditions of the occupiers of the appeal site. For this reason the development does not comply with Policy D6 of the LP, as well as Policies DM5, DM7 and DM32 of the WFLP, already referred to above. The development also fails to comply with Policy CS2 (Improving Housing Quality and Choice) of the Waltham Forest Local Plan Core Strategy adopted March 2012 (WFCS) as the dwelling comprised in unit No 1 is not of a high quality design that makes a positive contribution to improving the urban environment of the Borough. Neither does it comply with Policy CS13 (Promoting Health and Wellbeing) of the WFCS as it fails to ensure satisfactory amenity is provided for its occupier. I also find the development in conflict with the relevant sections of the National Planning Policy Framework (the Framework) that have been drawn to my attention.
35. Whilst I note the Council's reference to Policy DM2 (Meeting Housing Targets), I cannot find the development in conflict with this Policy as this relates to the net loss of residential accommodation. The development subject of the deemed application in this case does not result in such a loss, either in terms of the floor space of existing residential accommodation or the number of residential units.
- Living conditions of neighbouring occupiers*
36. The shortfall of the internal space within unit No 1 and the shortcomings of any associated external open space are an indication of the unacceptable and confined nature of this accommodation. Added to this is the activity associated with two households. Whilst I acknowledge that the household occupying unit No 1 may be small, the comings and goings from that unit, both pedestrian and vehicular, are in addition to those from unit No 2.
37. The development plan supports housing that is of a high quality design so that it makes a positive contribution to improving the urban environment of the Borough. The inappropriate and confined nature of the accommodation provided at the appeal site and the activity associated with it, is far from high quality and only has the effect of causing harm to the surrounding environment, particularly the neighbouring occupiers whose properties are so close to the appeal site.
38. For these reasons, I conclude that the development has an unacceptable effect on the living conditions of neighbouring occupiers. Accordingly, I find conflict with Policies CS2 and CS13 of the WFCS, as well as the guidance within the Framework that has been drawn to my attention.

Alterations to the front façade

39. The appeal site is within an area characterised by rows of residential properties. Although there is a mix of housing design in the area, there is some uniformity in the appearance of properties in the row within which the appeal site is located. I note that some properties within the vicinity of the appeal site have an outer porch. Other larger, extended properties have been drawn to my attention that have the benefit of a second entrance elsewhere on the building. Nevertheless, there are few properties within the area that are mid terrace and have been altered so as to provide two main entrance doorways, side by side.
40. Although the alterations to the front façade of the appeal building are not extensive, they are out of keeping with the general character of dwellings in the area. In particular, the side by side entrance doors are out of place within the terrace row. The means of installation of the second doorway is also particularly poor, with an exposed lintel above the door and broken brickwork either side. For these reasons, I cannot conclude that the alterations to the front façade of the building respect the street scene or the character of the area, as required by Policy DM4 (Residential Extensions and Alterations) of the WFLP.
41. Neither can I conclude that the development is of a high standard of design that reinforces and/or enhances local character and distinctiveness, in accordance with Policy DM29 (Design Principles, Standards and Local Distinctiveness) of the WFLP. The development also fails to accord with the similar requirements of Policy CS15 (Well Designed Buildings, Places and Spaces) of the WFCS and the Waltham Forest Urban Design Supplementary Planning Document adopted February 2010. I also find conflict with Policy D3 (Optimising site capacity through the design-led approach) of the LP, which requires, amongst other matters, development to be of a high quality.
42. For the above reasons, I conclude that the alterations to the front façade of the appeal building have an unacceptable effect on the character and appearance of the site and the surrounding area.

Other Matters and Planning Balance

43. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
44. I acknowledge the Government's aim of significantly boosting the supply of homes and that the development makes a contribution towards that aim. This benefit is, however, limited as the development only provides a single home, the cost of which is the loss of a large family home that is in need in the Borough. Furthermore, I am not advised that the Council is failing to achieve its target for the supply of homes such as that provided by the development.
45. My attention has been drawn to an appeal decision reference APP/E5330/D/19/3237668. Whilst I have not been provided with the details of this, the appellant states that the development in that case was a granny annexe. The development subject of that appeal is not, therefore, likely to be comparable to the material change of use that is before me in this case.

46. I note the appellant's suggestion that a second entrance is required to provide better wheelchair access to the property. There is, however, little evidence to support this as a benefit of the development. Indeed, I note that the new doorway is similar in width to the existing and also has a step up to the property. There is, therefore, little evidence to demonstrate that the new entrance is better than the existing for wheelchair access. Accordingly this matter is given limited weight in the planning balance.
47. I have considered whether conditions would overcome the harm caused in this case, but conclude that they would not. This includes the suggested construction of a porch on the front entrance of the property, which may itself require the benefit of planning permission.
48. Accordingly, and having regard to the above, I have been unable to identify material considerations of sufficient weight to indicate that the determination of this ground (a) appeal and the deemed planning application should be made otherwise than in accordance with the development plan. As such, I conclude that planning permission ought not to be granted and that the ground (a) appeal should fail.

Ground (f)

49. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. Having regard to the requirements of the notice, the purpose of the notice must be to remedy the breach of planning control that has occurred.
50. The kitchen area and bathroom provided within unit No 1 are clearly part and parcel of the material change of use of the property to two separate self-contained dwellings. There is no suggestion that these were in place prior to the material change of use of the property taking place, such that I might find that they were not installed to facilitate the change of use. That in other circumstances their installation would not require planning permission does not alter my conclusion that the removal of these facilities do not exceed what is necessary to remedy the breach of planning control in this case.
51. Similarly, whilst I acknowledged the appellant's intention to make better provision for wheelchair access to the property, I have already found little evidence to demonstrate that the new entrance is better than the existing for wheelchair access to the property. Nevertheless, the evidence indicates that the works to alter the front façade of the building were carried out in order to facilitate the material change of use. The requirements regarding this element of the development do not, therefore, exceed what is necessary to remedy the breach of planning control.
52. With regard to requirement 8), this provides an either or option so as to reinstate the internal ground floor layout and achieve a means of traversing between unit No 1 and unit No 2. I acknowledge that the property may have originally had a separate front and back reception room and that at some point in the past the wall dividing these rooms was removed. The appellant suggests that she has simply reinstated the dividing wall. However, other changes to the layout of the property have been carried out, including the provision of a room to accommodate the bathroom in unit No 1. The internal doorway into

the front reception room would have also been blocked up at some point, although maybe not as part of the recent works. Nevertheless, the evidence suggests that it is more likely than not that the work to construct the dividing wall and the bathroom was carried out to create a self-contained area within the house in order to facilitate the material change of use.

53. All things considered, I cannot conclude that the requirement to either reinstate the layout prior to the carrying out of the unauthorised works taking place, or provide a layout as shown on the plan attached to the notice exceed what is necessary to remedy the breach of planning control. Accordingly, the ground (f) appeal should fail.

Ground (g)

54. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of 6 months from the date the notice takes effect.
55. I have sympathy with the appellant's reasons for asking for more time to comply with the requirements of the notice. These would have been reasonable at the time the appeal was submitted. However, many of the restrictions imposed at the time during the Covid-19 pandemic have now been lifted, such that I cannot conclude that the difficulties suggested by the appellant persist today.
56. Whilst I am also sympathetic to the appellant's request related to her work pattern, the notice gives a 6 month period for compliance with its requirements. Even if the required works were undertaken at times that are sympathetic to the appellant's shift pattern, I cannot conclude that the period specified in the notice would be unreasonable, particularly having regard to the extent of the work required by the notice.
57. The appellant has not provided any substantiated evidence to show that the requirements of the notice cannot be complied with within 6 months. As such, I have no reason to conclude that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeal should fail.

Conclusion

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

59. 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.

J Moss

INSPECTOR