



Appeal Decisions

Site visit made on 1 November 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal A Ref: APP/W5780/X/21/3267660 409 and 409A Ilford Lane, ILFORD, IG1 2SN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by MR NAVEED MOHSIN against the decision of London Borough of Redbridge.
 - The application ref 2272/19, dated 21 May 2019, was refused by notice dated 28 October 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is conversion of single dwellinghouse into two self-contained flats.
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Appeal B Ref: APP/W5780/C/21/3270969 409 Ilford Lane, ILFORD, IG1 2SN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MR NAVEED MOHSIN against an enforcement notice issued by London Borough of Redbridge.
 - The notice, numbered E0562/19, was issued on 18 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the conversion of the property into two flats.
 - The requirements of the notice are: (i) Cease the use of the Property as two flats. (ii) Remove all partitions including doors and walls which separate the two flats. (iii). Remove all kitchens including the units, stove, the sink, oven and kitchen appliances including the microwave and fridge. (iv) Remove all resulting materials, rubble and debris in compliance with steps (i) – (iii).
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (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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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. It is directed that the enforcement notice is corrected by the removal of the words 'Operational Development' in the title and replacement with the words 'Material Change of Use'; and varied by the insertion of the words 'but one' between 'all' and 'kitchens' in Section 5(iii).

3. Subject to the correction 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

4. Section 55(3) of the 1990 Act provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so being used. The notice alleges the conversion of the property into two flats and the parties understand this to include the use (as is its common meaning). The title of the notice should therefore be corrected to refer to a material change of use rather than operational development.
5. It is my duty to try to get the notice in order and I consider that the requirements should be varied to permit one kitchen to remain as the parties accept that the lawful use of the appeal property prior to the breach of planning control was as a single dwellinghouse. Requirement 5(iii) should therefore be varied to permit the retention of one kitchen.

Appeal A and Appeal B, Ground (d)

6. The main issue in Appeal A is whether the Council's decision to refuse to grant the LDC was well-founded. In both Appeal A and the ground (d) in Appeal B, the appellant must prove on the balance of probability that the appeal property has been used as two self-contained flats for a substantially uninterrupted period of 4 years prior to the date of the LDC application (in Appeal A) and the date of the issue of the notice (in Appeal B). These dates are 21 May 2019 and 18 February 2021 respectively.
7. The appeal property was being used as 2 self-contained flats during the site visit and each had the facilities required for day to day private domestic existence, the distinctive characteristic of a dwellinghouse.
8. The appellant states that the original single family dwellinghouse (3 bed-room flat unit) was converted into 2 self-contained flats in 2013. In support of this assertion he has provided; gas safety records dated 2016, 2017, 2018, 2019 and 2021 (all relating to Flat B with only one from Flat A from 2016); electrical installation condition reports dated 2015 and 2019; a water bill from 2019; Virgin Media bills from 2017 and 2019; an electricity bill dated 2019; tenancy agreements from 2015 (in relation to Flat B) and 2019 (one in relation to Flat A and one in relation to Flat B); and various bank statements dated 2016 and 2018.
9. The tenancy agreements do not cover a full 4 year period in relation to either flat. Only the gas safety records span a period longer than 4 years (and solely in relation to Flat B) but they are not proof that the flats were occupied as single dwellinghouses during that time. The other corroborative evidence does not span the necessary 4 year periods, and in addition does not all refer to both separate units nor prove that there was actual substantially uninterrupted use (i.e. occupation) of the units as self-contained flats. In the Enforcement Notice Appeal Form, the appellant referenced council tax and HMO licence records and an affidavit but these were not before me in this appeal nor referred to in the Council's evidence.

10. The appellant has therefore not proven on the balance of probability that either unit has been used as a self-contained flat for a 4 year period either prior to 21 May 2019 or prior to 18 February 2021. As a result Appeal A and the appeal on ground (d) in Appeal B cannot succeed.

Appeal B, Ground (a) and the deemed application for permission

11. The main issues are the effect of the development on the living conditions of the occupiers of each flat, and on the housing stock in the area.
12. The appellant accepts that these flats are not suited to single family dwellings as there are no gardens or off street parking.
13. The conversion of the appeal property into two flats is contrary to Policy LP6 of the Redbridge Local Plan (March 2018). This is because it is not within a Metropolitan, District or Local Centre, the original dwelling did not have a minimum floor area of 130 square metres (it was 89 square metres), the internal floor space does not meet the national space standards, and the conversion does not provide a larger family sized home of 74 square metres with at least 3 bedrooms on the ground floor with access to a dedicated rear garden.
14. There is some overlap with these policy requirements when considering the living conditions of the occupiers of the flats. Whilst the second floor flat does meet the space standards set out in the London Plan 2021 and Policy LP29 of the Local Plan, the size of both of the bedrooms and the overall size of the first floor flat does not meet these standards.
15. The first floor flat is very small, and notwithstanding that the appellant has argued that it could be used as a one bedroom flat this is not in fact how it was configured during the site visit (as it had 2 bedrooms). In addition, such restricted use could not be achieved by the use of a planning condition as it would not be reasonable to expect the Council to monitor the ongoing occupation of individual units and therefore not readily enforceable and contrary to planning practice guidance.
16. Irrespective of the internal floor areas, neither unit has any private external amenity space which is in conflict with Policy LP29.
17. The development is therefore contrary to policies LP5, LP6, LP26 and LP29 of the Redbridge Local Plan which seek to promote high quality design and ensure development meets national amenity and internal space standards, and the National Planning Policy Framework. As there are no other considerations of sufficient weight to overcome this conflict the appeal on ground (a) fails and the deemed application for permission is refused.

Appeal B, Ground (g)

18. The appellant has requested an extension of time from 6 months to 12 months. However, no explanation has been provided regarding what timescales would be required in order to evict the existing tenants, other than a general reference to the Covid Pandemic. In the absence of any further explanation there is no reason why an extension of time is needed or would be reasonable.

19. The appeal on this ground therefore fails.

Zoë Frank

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/W5780/X/21/3267660	MR NAVEED MOHSIN
Appeal B	APP/W5780/C/21/3270969	MR NAVEED MOHSIN