



Appeal Decision

Site visit made on 10 January 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 February 2023

Appeal Ref: APP/A5840/C/22/3300067

Upper Floors, 46 Camberwell Church Street, London SE5 8QZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Huseyin Guzel against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The notice was issued on 25 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from one flat to three flats ("the Unauthorised Change of Use").
 - The requirements of the notice are to:
 - 5.1 Cease the Unauthorised use of the land as multiple flats and restore the premises to the layout that existed before the breach occurred as shown on the attached plan A.
 - 5.2 Remove all but one kitchen/cooking facility and remove all but one bathroom from the upper floors of the Land.
 - 5.3 Remove any other fixtures, fittings and other paraphernalia associated with the unauthorised change of use at the Land.
 - 5.4 Remove from the Land all materials, rubbish and debris resulting from the carrying out of the above steps.
 - The periods for compliance with the requirements is: Six (6) calendar months.
 - 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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Decision

1. 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

2. The appellant's name was entered onto the appeal form as Husseyn Guzel, however, they have since confirmed this was an error and the correct spelling is Huseyin Guzel. I have therefore used the correct spelling in the banner heading above.
3. The appellant submitted an appeal, reference APP/A5840/W/21/3287486 at the site for the creation of a one bedroom self-contained unit on part of the first and second floors. The appeal was dismissed on 10 June 2022.

Main Issues

4. The main issues of the appeal are:

- Whether the flats provide satisfactory living accommodation for existing and future occupants; and
- Whether sufficient provision would be made for social rented and intermediate homes, or for a financial contribution towards the delivery of new Council social rented and intermediate homes; and
- Whether the appeal scheme ensures the safety of all building users with respect to fire safety.

Reasons

Living conditions

5. The appeal site comprises a ground floor shop with three flats spread over two floors. Policy P15 of the Southwark Plan 2019-2036 (adopted 2022)(the SP) seeks to ensure that residential development provides a high quality of accommodation by meeting minimum internal space standards, amongst other things. Policy D6 of the London Plan 2021 (the LP) also seeks to ensure that housing development is of high quality design and provides minimum internal space standards for new dwellings. Similar standards are also set out in Section 2 of the 2015 Technical Update to the Residential Design Standards 2011 (the RDS).
6. For a one bedroom, one person dwelling the SP, LP and RDS set out that at least 37 square metres (sqm) is required. For a one bedroom, two person dwelling, at least 50sqm is required. Since the bedrooms for Flats A and B are shown as measuring 14sqm, they would be considered double bedrooms and so the 1 bedroom, 2 person floor space standard would apply.
7. I saw that Flats A and B have a similar layout, with a kitchen/diner/living area, shower room and bedroom set over one floor. Flat A is located on the first floor and Flat B is on the top floor. Flat C is set over the first floor and top floor and comprises a kitchen area and living space on the first floor, with stairs leading up to a bedroom with a single bed and a shower room.
8. The appellant has provided a plan which shows that Flat C measures approximately 19.8sqm and the other two flats measure just under 35sqm. The internal space provided by all three flats falls well below the minimum internal space standards set out in the SP, LP and RDS. The appellant accepts that the flats do not meet the space standards set out above.
9. Although the flats were not occupied at the time of my visit and therefore had very limited furniture and other residential paraphernalia, I consider the very modest internal space provided by Flat C means that future occupants would have insufficient space for the furniture they are likely to require. The space provided by Flats A and B is also modest and while they are more spacious than Flat C, they could be occupied by up to two people. The requirements set out in the SP, LP and RDS are the minimum considered necessary to provide satisfactory accommodation.
10. The premises is stated to have provided accommodation for a medical student at a nearby university. The appellant advises that future occupants would be

medical students, who would require limited internal space. However, a student occupying the property during term time only would still require furniture for their clothes, somewhere to relax and a desk to study. Moreover, student accommodation is not exempted from complying with the requirements of the policies above. The use of a planning condition to limit occupancy to students would not therefore address the harms arising from the provision of insufficient internal space.

11. The appellant suggests allowing the use for a minimum of 5 years. However, I consider even a temporary permission would be unacceptable in this case given the limited size of the flats, particularly Flat C. The Covid-19 pandemic is not suitable justification for allowing sub-standard accommodation. Indeed, the need for people to have satisfactory internal space was of particular importance during the pandemic as individuals, including students, were obliged to spend more time at home.
12. The flats provide additional homes, which I consider is of modest weight in support of the appeal scheme. However, due to their limited size and the awkward layout of Flat C, I find the flats would fail to provide satisfactory living accommodation for future occupants which outweighs any benefit arising from the provision of additional homes and is contrary to policy P15 of the SP, D6 of the LP and the RDS, the requirements of which are set out above. It is also contrary to the National Planning Framework (2021)(the Framework) which seeks a high standard of amenity for existing and future users.

Social and rented housing provision

13. Policy P1 of the SP states that development that creates 9 homes or fewer must provide the maximum amount of social rented and intermediate homes or a financial contribution towards the delivery of new council social rented and intermediate homes with a minimum of 35% subject to viability.
14. The appellant acknowledges that the appeal scheme does not comply with the parameters of this policy. Although the appellant intends the flats to be occupied by students, this does not exempt the development from the requirements of policy P1 of the SP. Limiting the duration of the permission to avoid having to comply with this policy is not reasonable and so could not be secured by condition.
15. Thus, I find the appeal scheme conflicts with the requirements of policy P1 of the SP, the requirements of which are set out above.

Fire Safety

16. Policy D12 of the LP seeks to ensure fire safety and sets out a number of criterion against which development proposals will be assessed, including information on space provision for fire appliances and assembly points, on passive and active safety measures, on construction products and materials, means of escape and evacuation strategy and access and equipment for firefighting.
17. Although the appellant contends that the appeal scheme accords with the policy, they do not explain why they consider this to be the case. It is not clear from the evidence, or from my inspection of the site, whether the units have been designed to incorporate features which reduce the risk to life and the risk of serious injury in the event of a fire, including passive and active fire safety

measures or whether it is possible to retrofit such features. It would not be appropriate to secure a scheme by condition, since this may necessitate works which require planning permission.

18. Consequently, I consider it highly unlikely that the appeal scheme would achieve the highest standards of fire safety, contrary to policy D12 of the LP, the requirements of which are set out above.

Ground (a) conclusion

19. Although the appeal scheme provides additional homes, I have found the accommodation provided does not meet the space standards required by policy, fails to make adequate provision for social rented and intermediate homes or a financial contribution towards the delivery of new council social rented and intermediate homes and fails to demonstrate it achieves the highest standards of fire safety.
20. Thus, for the reasons given above, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

21. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
22. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice, that its purpose is to remedy the breach.
23. Planning permission 18/AP/1601 was granted on 3 September 2018 for the conversion of a four bedroom flat into 2 x one bedroom self-contained flats and construction of rear extension at first and second floor levels. While making the development comply with the terms of any planning permission would also remedy the breach, the planning permission must be extant to be of relevance. The appellant confirms that the permission was never physically implemented and since more than 3 years has passed since the permission was issued, the permission has now lapsed.
24. I can see no obvious lesser steps which would remedy the breach and, given the above, the appeal under ground (f) must fail.

Ground (g)

25. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant has requested additional time to implement planning permission 18/AP/1601, however, as set out above the planning permission has now lapsed and is no longer capable of implementation. My consideration under ground (g) is limited

to whether the period specified in the notice is sufficient to enable compliance with the requirements of the notice.

26. The appellant suggests a period of 18 months is more appropriate and reasonable since they will have to serve 2 months notice, then may have to involve court proceedings, with a minimum of 12 months to get the property empty. However, during my visit, the flats appeared vacant, and the appellant has since confirmed that the tenants have vacated the property. In my view 6 months is sufficient time to carry out the works required by the notice. Consequently, the appeal under ground (g) must fail.

Conclusion

27. 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.

M Savage

INSPECTOR