



Appeal Decision

Site visit made on 7 March 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal Ref: APP/H5960/C/22/3297767

Land at 46 Upper Tooting Park, London, SW17 7SZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jay Ramanbhai Patel against an enforcement notice issued by London Borough of Wandsworth.
 - The notice was issued on 22 March 2022.
 - 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 storage (Use Class B8) to residential accommodation (Use Class C3) (the "Unauthorised Use").
 - The requirements of the notice are [to]:
 1. Cease the Unauthorised Use of the Property as a self-contained residential unit (Use Class C3);
 2. Remove any kitchen, dividing walls, fixtures, fittings or equipment associated with the Unauthorised Use from the Property and ensure that the layout accords with the approved plans and conditions of planning permission reference 2020/4668; and
 3. Remove from the site all debris arising from compliance with steps 1-2 above.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground[s] 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. It is directed that the enforcement notice is varied by deleting the words "Six months" as the time for compliance in section 6 of the notice, and their replacement with "twelve (12) months".
2. Subject to the 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.

The Appeal on ground (a)

Main issues

3. The first main issue is whether the dwelling provides satisfactory living conditions for existing and future occupiers with particular regard to internal light, outlook, internal and external space. A second is the suitability of the dwelling with respect to accessibility and transport choices.

Reasons

4. The modest, 2-storey dwelling has been created by converting a building that

was constructed for commercial storage purposes. It is a detached building positioned between rear gardens of houses in Upper Tooting Park Mansions and a children's play area. The accommodation is over 2 levels with an open-plan living room with kitchen-dining area on the ground floor and a bedroom with separate shower on the first floor.

5. Within the building, on a rather grey, gloomy and rainy day outside, without the electric lights switched-on, I found that the ground floor living area was surprisingly bright. Natural light penetrates the space from the narrow glazed-frosted panels alongside the front door as well as the roof-window towards the front of the ground floor and also the large roof-window directly above the staircase and first floor landing. There are no windows enabling any outlook from the ground floor area. Upstairs, there is an even brighter environment with the roof-window over the staircase along with a bedroom window which provides some outlook out of the front of the property.
6. In terms of the size of the dwelling, the Council refers to the "Technical housing standards – nationally described space standard" (The Housing Standards) which are also referred to within the Wandsworth Local Plan¹ (WLP) Policy DMH6 as well as within London Plan 2021 (LP) Policy D6.
7. The appellant states that there is 39m² of floor area available. The building was the subject of a planning application refused by the Council in November 2021 (Council ref 2021/4425) which proposed the change of use from storage to residential. The plans submitted with that proposal provide some dimensions although neither party has provided any illustrative material to assist me in determining whose figures for the Gross Internal Area (GIA) are correct in terms of how they should be calculated in line with these documents.
8. The first-floor accommodation sits within the roof-space of the building which has the potential to limit useable space, an important factor within The Housing Standards. The only part of the first-floor bedroom affected by the roof-slope however is where the double bed was positioned when I visited. The head-board is logically placed against the wall which is affected by the slope of the ceiling. As such, the sloped ceiling has no impact upon the rest of the space for moving around the room. The internal cupboards within the bedroom have been cleverly positioned and designed in a different place from what was shown on the previously submitted plans. This has enabled a much better and efficient use of the most accessible floorspace within the full height of dormer on the southern side of the dwelling providing good floor to ceiling height around the bed. The room is light and airy with comfortable circulation space and substantial storage areas.
9. The first-floor shower room with the toilet is also within the side of the building which is more constrained by the slope of the roof although this did not appear to me to provide a significant restriction on access to the facilities. There is a light and airy landing area which leads off of the top of the steep stair-case which is efficiently designed to terminate in a semi-circular section within the living-room thereby taking up a small area. That room on the ground floor is large enough to contain a good-sized sofa, small table and an additional chair as well as an efficiently designed kitchen area with white-goods within cupboards. There is also additional storage beneath the stair-case which,

¹ Wandsworth Local Plan, Development Management Policies Document, adopted March 2016

although differently designed from the previously submitted plans which showed bin storage, appears to me to be even more efficient.

10. The Housing Standards do not provide a GIA requirement for 2 storey 1 bedroom, 1 person units such as this. Whilst both parties agree that for the purposes of the WLP and LP it is reasonable to apply the principle of a minimum of GIA for a 1-bedroom property of 37m², as is the case for a single storey dwelling, the Council suggests that an additional allowance should be made for the space required due to stairs and additional circulation. They suggest 6m² to 8m² which is comparable to the additional 8m² required for a second storey within the Housing Standards 1 bedroom 2 person unit. Hence, the Council consider that the dwelling in this instance only provides a GIA of 33m². However, in my view the way in which the stairs have been provided is extremely efficient in terms of minimising the space taken up by them, due to their spiral design. Furthermore, from my visit I do not consider that floor to ceiling heights are restricted in the way the Council suggests because of the way in which the upstairs of the property has been neatly adapted. The layout is more effective in the use of available space than the plans submitted previously.
11. I therefore consider, from what I saw and the available information, that in terms of the way in which the accommodation has been provided, the amount of useable floorspace within the dwelling meets the criteria within the National Standards and table 3.1 of the LP. I also consider that the design has made the most of a constrained site. Even though there is a single aspect to the front elevation of the building, the lack of a dual aspect is compensated for by the flooding of light by the skylights as well as the window within the bedroom facing to the south-west. In this regard as well the development does not conflict with what WLP Policy DMH4 is trying to achieve in requiring where possible, dual aspect dwellings. There is no evidence from the Council to indicate that the dwelling has insufficient passive ventilation or will overheat which are other requirements of LP D6. In a dwelling of this nature, although the only external view from a window is within the bedroom, I do not consider that this counts against the dwelling generally having a comfortable feel and access to a street outlook.
12. The red-line on the notice plan is drawn tightly around the building and at my site visit, I sought clarification about whether there was any external space within the appeal site for me to view. I was told that there wasn't and I referred back to the parties for confirmation of this after the event. There is no external amenity space for the dwelling now or that can be proposed. Whilst it is a small property that would suit a single person which may not lead to a need for large private garden space, WLP Policy DMH7 states that 10m² is normally required for 1 and 2 bedroom dwellings. This policy along with the Council's Housing Supplementary Planning Document, adopted November 2016 (HSPD), acknowledge that in conversion schemes, as in this case, it may be more difficult to achieve the standard.
13. The appellant refers to the outdoor spaces available nearby. Wandsworth Common, Tooting Bec Common and Clapham Common are specifically referred to. Although I am not given details of the best routes for walking or cycling to those spaces, I am aware of their locations. These pleasant open spaces provide opportunities for recreation. The HSPD however states that public open spaces should not be part of the calculation of amenity space. I also

consider that such spaces do not compensate for the benefits of an easily accessible outside space for sitting out. Even a small garden next to a dwelling in my view enhances the living environment in a way that is difficult to compensate for by parks that are within walking distance but not in the immediate vicinity. WLP Policy DMH7 suggests that where there is no potential to meet standards, indoor gyms and sports facilities will be encouraged but I have no details of any such facilities or how access to that type of facility can be secured in this case, even if that could adequately compensate for the lack of a garden. Furthermore, in the absence of any outside areas as well as the limited internal space, the appellant has also not demonstrated where there would be scope to secure a bicycle which, in addition to the matters I address within the second main issue, can be an important form of recreation enhancing living conditions generally.

14. The internal space provided allows for a comfortable standard of living within the dwelling as required by LP Policy D6 and WLP Policy DMH6. The lack of any external amenity space or any suitable alternative provision however means that overall, the property is not of an adequate standard. In relation to this main issue, the dwelling provides un-satisfactory living conditions for existing and future occupiers due to the lack of external space. As such this would not comply with WLP Policies DMH7 and the HSPD which require that residential development has dedicated amenity space.

Accessibility and transport choices

15. The appeal site is close to Tooting Bec and Balham underground stations and there are bus routes nearby. There is no dispute therefore that this is a neighbourhood with good public transport accessibility. There are also a wide range of shops and other services nearby that I could see for myself on walking from Tooting Bec underground station and then after the site visit to catch a bus in Trinity Road. WLP Policy DMS1 aims to optimise the potential of sites as well as ensuring development takes account of existing transport infrastructure and is designed to reduce the need to travel and minimise car use, amongst other requirements. There is an advantage to this site in these respects. Similarly, the appellant refers to LP Policies H1 and H2 which taken together encourage housing on small sites with good public transport access and on brownfield land.
16. In this location, the occupant of the dwelling should not therefore have reliance upon private vehicles. I do however consider that there would be more reliance upon cycling and LP Policy T2 seeks to ensure that barriers to cycling are removed to create a healthy environment in which people choose to cycle. As a consequence, that policy necessitates cycle parking in new development and refers to table 10.2 which requires 1 space for a 1-person studio or 1 bedroom accommodation.
17. Although reference has been made to the ability to park a folding bike in the property, no evidence is drawn to my attention to indicate that this would be an adequate provision. In my experience folding bikes are more limited in functional terms than standard sized bikes which can be cumbersome to store. The appellant does refer to the ability to provide an outdoor cycle-store but it has not been demonstrated that space is available for this. Even if the small triangular shaped space close to the development, at the back edge of the

pavement, could be secured there is no evidence that this would be of a satisfactory size or that it would be suitably secure.

18. In relation to this main issue, the dwelling is unsuitable with respect to accessibility and available transport choices due to the lack of provision for cycle storage. This does not comply with WLP Policy DMT2 and LP Policy T5 that require the provision of cycle parking and with the latter policy stating that development proposals should demonstrate how cycle parking facilities will cater for larger cycles. WLP DMH4 allows for residential development including conversions. The policy also requires amongst other things that car and cycle parking is provided that is appropriate to the nature of the development and location in accordance with transport policies and overall is not therefore complied with.

Other matters

19. The dwelling contributes to the housing stock of the area and the government through the National Planning Policy Framework seeks to significantly boost the supply of homes. However, it is not clear how significant the addition of this single dwelling has made to the overall supply or specific needs of the area. As such this factor has limited weight. LP Policies H1 and H2 do encourage more development on small sites. H2 also requires well-designed new homes. Due to the deficiencies set out above, these are not complied with.
20. The development has an acceptable impact upon the character and appearance of the area and there is no suggestion that features such as trees have been adversely affected by the conversion. I have no evidence that future works to the nearby London Plane tree would be more likely as a result of this building being occupied for residential purposes than the previous use. It may be also possible for waste to be suitably stored and it is agreed that such details could be subject to a planning condition. Although space is at a premium in this development, this may have been possible had the development been acceptable in other respects.

Conclusion on ground (a)

21. The other matters raised in this case do not outweigh my conclusions in relation to the main issues.
22. For these reasons, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal on ground (a) should fail and consequently, the deemed planning application shall be refused.

The Appeal on ground (f)

23. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The requirements of the notice include the cessation of the use, thereby its purpose is to remedy the breach of planning control rather than the alternative of remedying injury to amenity.
24. The notice is requiring the reversion of the building to its former layout. The Council considers that it is necessary to seek removal of fixtures and fittings that have been part and parcel of the breach. Given the purpose of the notice this is logical. The removal of the walls, fixtures fittings and equipment is to the extent shown on the previously approved plans and so it is clear that there

is no intention to require more than has been done to convert the building from the previous use. This is a reasonable requirement.

25. The appeal on ground (f) fails.

The Appeal on ground (g)

26. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice requires compliance within 6 months after the notice takes effect.

27. I have no evidence about the difficulties in requiring the occupant of the building to vacate or their ability to find suitable alternative accommodation. However, I can understand that this can be difficult. The harm in this case is limited to the living conditions within the property as well as their transport choices. This mainly affects the occupier rather than anyone else. I have to balance that harm with the difficulties that the same person may experience in having to vacate the property.

28. It seems to me in these circumstances that the occupant should not have to suffer any more than necessary in these circumstances through difficulties with finding alternative accommodation. A period of 12 months would provide a more reasonable and proportionate balance.

29. To this extent, the appeal on ground (g) succeeds.

Conclusion

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

Andy Harwood

INSPECTOR