



Appeal Decision

Site visit made on 16 May 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2023

Appeal Ref: APP/Y5420/C/22/3296626

The land and building(s) known as 113 Norfolk Avenue, London N13 6AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms R Arcan against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice, numbered UNW/2021/00406, was issued on 21 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to two self-contained flats.
 - The requirements of the notice are to:
 1. Cease the use of the property as self-contained flats;
 2. Remove from the property all but one of the kitchens (a kitchen includes cooking appliances, sinks, kitchen worktops and cupboards).
 3. Remove from the property all but one supply of electricity, gas and water.
 4. Remove from the property all but one of the doorbells.
 5. Remove from the property any internal dividing doorways and partitions facilitating the use of the property as self-contained flats.
 6. Remove from the land all debris arising from compliance with the above steps.
 - The period for compliance with the requirements is: 6 month(s).
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) 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 corrected by:
 - At section 3 of the notice, the deletion of 'self-contained flats' and the insertion of 'two separate dwellinghouses' so that it reads 'Without planning permission, the material change of use to two separate dwellinghouses'.
 - At section 5 of the notice, sub-section (1.) the deletion of 'self-contained flats' and the insertion of 'two separate dwellinghouses' so that it reads 'cease the use of the property as two separate dwellinghouses'.
 - At section 5 of the notice, sub-section (5.) the deletion of 'self-contained flats' and the insertion of 'two separate dwellinghouses' so that it reads 'Remove from the property any internal dividing doorways and partitions facilitating the use of the property as two separate dwellinghouses'.
2. Subject to the corrections above, 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

3. The allegation on the enforcement notice is the material change of use to two self-contained flats. On the evidence me and from my site visit, it appears that the premises has been subdivided vertically, rather than horizontally. The term 'flat' is defined by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) as 'a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally'. Section 55(3)(a) of the Act sets out 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 used. It is clear from the evidence that the Council's concerns relate to the use of the building as two separate dwellinghouses and the appellant's case is advanced on this basis.
4. I sought comments from the parties on correcting the allegation to read 'Without planning permission, the material change of use to two separate dwellinghouses' and correcting requirement 1. of Paragraph 5, so that the requirement reads 'Cease the use of the property as two separate dwellinghouses' and correcting requirement 5. of Paragraph 5, so that it reads 'Remove from the property any internal dividing doorways and partitions facilitating the use of the property as two separate dwellinghouses'. I have received no objection to these corrections and, since the parties have advanced their cases on the basis that there are two separate dwellinghouses, I consider there would be no injustice in making such corrections.
5. During my visit I was unable to access the entirety of the property. However, what could be seen was broadly consistent with the allegation as proposed to be corrected, and as detailed in the evidence, albeit there was an additional bedroom located on the top floor of No 113. The appeal is proceeding on grounds (a), (c) and (d) as set out at Section 174(2) of the Town and Country Planning Act 1990 (as amended). There is no appeal under ground (b) and it does not appear to be disputed that the breach has occurred. As a consequence, although I was unable to access the entire property during my visit, I am of the view that I have sufficient information before me to determine the appeal.

Ground (c)

6. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The Council advise that planning permission HGY/2004/1339 was granted on 3 August 2004 for the erection of part single and part 2 storey side and rear extension. The appellant states that the side extension was built around 2008 and was used for residential purposes and remained as a separate dwelling not long thereafter.
7. Section 55(3) of the Act states for the avoidance of doubt it is hereby declared that for the purposes of this section (a) 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 used. Consequently, while the extension may have had planning permission, the use of the dwellinghouse as two separate dwellinghouses is

development for which planning permission is required. The appeal under ground (c) therefore fails.

Ground (d)

8. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
9. For an appeal to succeed under ground (d), the appellant would need to show, on the balance of probabilities, that the material change of use occurred on or before 21 March 2018 and, if so, that it continued without significant interruption for at least 4 years thereafter. The main thrust of the appellant's case is that the premises has been used as two self-contained dwellings in excess of 4 years.
10. The appellant has provided a signed statement by an occupant of 113 Norfolk Avenue, which states that the side extension was building after planning permission was granted in December 2008 and was converted into two residential dwellings there after circa 2016. However, a witness statement signed by the appellant states that the side extension was converted into two residential dwellings circa 2008. The two statements therefore contradict each other, which undermines their accuracy.
11. While both witness statements assert that the use of the properties as two residential dwellings has been continuous and without break for over 4 years, it is not clear from the evidence provided what they mean by this term. To be immune from enforcement action under section 171B(2) of the Act, the use of a building as a dwellinghouse must be affirmatively established over the four year period.
12. The question, therefore, is whether there was any time during the relevant four year period when the local planning authority could not have taken enforcement action against the use of 113 and/or 113a as a dwellinghouse, even if it was available for use, because it was not actually occupied or used as a dwelling. While a period of non-occupation could be *de minimis*, a break that is significant as a matter of fact and degree would result in the four year clock starting again.
13. The appellant has provided a series of tenancy agreements, which cover the period 8 December 2017 to 6 January 2021. The 8 December 2017 and 15 December 2018 tenancy agreements identify the address of the premises to be let as 113a Norfolk Avenue but do not give the address of the Landlord. The tenancy agreement, dated 30 August 2019, gives the address of the premises to be let as 113 Norfolk Avenue, and the address of the Landlord as 113a Norfolk Avenue. The tenancy agreement dated 7 July 2020, gives the address of the premises to be let as 113a Norfolk Avenue, and the address of the Landlord as 113 Norfolk Avenue.
14. Significantly, the tenancy agreements do not cover at least a four year period for either 113a or 113. While they point towards No 113 and 113a being let separately, they do not show that either premises has been continuously occupied throughout a four year period.

15. I have been provided with a copy of a gas bill dated 6 July 2021 and a letter dated 30 October 2017 regarding a Warm Home Discount payment. Although the documents are addressed to No 113a, they are addressed to the Landlord. The address given for Landlord is both 113 and 113a at different times, however, it has not been explained how they have occupied the properties and it cannot therefore be assumed that they have continuously occupied No 113. Furthermore, the gas bills do not cover a period of at least four years.
16. I have been provided with a copy of a Council Tax Bill for 2022/23, which details the address as 'Split'. The document does not show when the property was 'split', what 'split' means in terms of the property as a whole, nor does it cover a period of at least four years. Moreover, the banding of a property for Council Tax purposes does not necessarily align with the definition of a dwelling for planning purposes and so registration of the building is not determinative.
17. While I note the appellant has provided evidence which was not previously available to the Inspector in respect of APP/Y5420/X/21/3279853, for the reasons given above, I find that the appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the material change of use of the premises began on or before the relevant date and that it continued without significant interruption for at least 4 years thereafter. The appeal under ground (d) therefore fails.

Ground (a)

Main Issues

18. The main issues of the appeal are the effects of the scheme on:

- The living conditions of occupants and future occupants, having regards to the provision of internal living space; and
- The provision of family dwellinghouses in the area.

Reasons

Living conditions

19. Policy SP2 of the Haringey Local Plan: Strategic Policies (2017)(HLP) seeks high quality new residential development which has regard to the space standards set out in the London Plan and policy SP11 seeks high quality development. Policy DM1 of the Development Management DPD (2017)(DPD) seeks high quality design which ensures a high standard of amenity for the development's users, amongst other things and policies DM12 and DM16 both seek high quality housing which meets the minimum internal space standards of the London Plan. Policy D6 of the London Plan (2021)(the LP) also seeks high quality development and sets out minimum internal space standards for new dwellings.
20. The Council has provided me with estimates of the internal space provided by each of the dwellings, based upon floor plans previously submitted. The Council estimates the floor space of No 113 to be 87sqm and the floor space of 113a to be 45sqm. The calculations provided have not been disputed by the appellant and I have no reason to doubt their accuracy.
21. The calculations show that the floor space provided by both No 113 and No 113a would fall well below the requirements set out in the LP, which seek floor

space of 97sqm for a 4 bed 5 person dwelling and 70sqm for a 2 bed 3 person dwelling. I consider the provision of such limited floor space is harmful to the living conditions of existing and future occupants.

22. The appellant suggests that the appeal scheme provides far better insulation and efficiency in heating, however, I have no substantive details of the design and construction of the building and am therefore unable to afford this matter weight. While the appeal dwellings may benefit from sufficient daylight, given the limited internal floor space provided by the dwellings, they fail to provide satisfactory living conditions to their occupants, contrary to policies SP2 and SP11 of the HLP, policies DM1, DM12 and DM16 of the DPD and policy D6 of the LP.

Family housing

23. The appeal building was a single dwellinghouse which has been subdivided to create two separate dwellinghouses. Policy DM16 of the DPD sets out that to maintain a supply of larger family homes, the Council will only permit the conversion of a larger home to small self contained homes where (a) it is located outside of the Family Housing Protection Zone; (b) the gross internal floor space of the existing dwelling is greater than 120sqm. It is not disputed that the property lies within the Family Housing Protection Zone, or that the original floor space was less than 120sqm.
24. The appellant suggests the appeal scheme would address the need for affordable housing within Haringey. However, I have no substantive evidence to show that the properties would meet the definition of 'affordable housing for rent' and so I afford this matter very limited weight. While the appeal scheme provides an additional dwelling, as set out above the accommodation provided falls below the standards expected, which significantly limits the benefits arising from the appeal scheme.
25. The purpose of policy DM16 is to address the availability of family housing for which there is a strong need. I have no evidence to show that this need no longer remains and whilst No 113 has 4 bedrooms, the internal space which is provided is inadequate. The appeal scheme therefore undermines the Council's aim to maintain a supply of larger family homes to meet Haringey's housing need and is contrary to policy DM16 of the DPD.

Conclusion: ground (a)

26. 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.

Overall conclusion

27. 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.

M Savage

INSPECTOR