



Appeal Decision

Site visit made on 25 October 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 January 2024

Appeal Ref: APP/G5750/C/21/3289454

229 Katherine Road, East Ham, London, E6 1BU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Dr Jahangir Hussain against an enforcement notice issued by London Borough of Newham.
 - The notice was issued on 24 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to four self-contained units of residential accommodation and an office.
 - The requirements of the notice are to:
 1. Cease the use of the property as an office.
 2. Remove from the property all fixtures and fittings that solely facilitate the use as an office.
 3. Cease the use of the ground floor of the property as more than one self-contained unit of residential accommodation.
 4. Cease the use of the first and second floors of the property as more than one self-contained unit of residential accommodation.
 5. Remove from the property all fixtures and fittings that solely facilitate the use of the property as more than two self-contained units of residential accommodation.
 6. Remove all resulting materials and debris from the site.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) 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 appeal relates to a two storey mid-terrace property with roof extension. The breach of planning control as alleged in the notice is the material change of use of that property to four self-contained units of residential accommodation and an office.
3. Following my site visit I wrote to the parties to highlight that Appendix 2 to the Council's delegated report provides a sketch layout of the property prior to issuing the enforcement notice. That shows the office positioned at the front of the ground floor, with two flats behind. A third flat is shown to occupy the whole of the first floor. A fourth flat is shown in the extended roof space.
4. However, at the time of my site visit the office had been replaced by a restaurant and takeaway. It is unclear whether that takes up more of the ground floor than the pre-existing office as I only saw one flat at the rear of the

ground floor. At first floor level there were two flats and a porter's office. There was a fourth flat at roof level.

5. Having regard to those observations, I asked the Council whether it was content for me to proceed to determine the appeal based on the existing allegation and requirements, which suggest something different to what I saw on site, or whether it wished to consider if the '*second bite*' provisions of s171B(4) of the 1990 Act would apply, and, if so, whether to withdraw the enforcement notice and serve a fresh one reflecting the current situation.
6. In response, the Council confirmed it to be content for me to determine the appeal based on the existing allegation and requirements. The Council consider it common ground that the allegation was correct at the time the enforcement notice was served on the basis that the appellant has not made a ground (b) appeal¹. It also considers that, irrespective of the changes made to the internal composition of the property, the requirements of the notice remain sound and have been partially complied with.
7. I offered the appellant opportunity to comment on those submissions. No response was received.
8. Nevertheless, I have considered whether it is necessary to correct the enforcement notice, and if so whether any injustice would be caused by doing so. However, despite the internal reconfiguration, the overall number of flats remains at four.
9. Moreover, even if, as a result of the changes, some of the requirements of the enforcement notice have been complied with, such as ceasing the use of the property as an office and ceasing the use of the ground floor for more than one self-contained unit of accommodation, s181(1) of the 1990 Act provides that compliance with any of the requirements contained in an enforcement notice shall not discharge the notice.
10. Under s181(2), any requirement of an enforcement notice that a use is discontinued shall operate as a requirement that it be discontinued permanently, and so the resumption of the use at any time after discontinuance shall be in contravention of the enforcement notice. The requirements of an enforcement notice thus have an enduring effect. If it is complied with but there is a later breach of the requirements, s181(1) and (2) mean that remains enforceable under s179.
11. Since submitting the appeal, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2023) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the policies most relevant to this appeal, I have not reverted to the parties for comment.

Appeal on ground (d)

12. The ground (d) appeal is made in respect of the four flats.
13. In order to succeed, it is for the appellant to demonstrate, on the balance of probabilities, that a breach of planning control consisting of the material change of use of the property to four self-contained units of residential

¹ That the breach of control alleged in the enforcement notice has not occurred as a matter of fact

accommodation began more than four years before the date of issue of the enforcement notice and continued without material interruption for a period of four years thereafter, so as to meet the immunity period from enforcement action under s171B(2) of the 1990 Act. The material date is therefore 24 November 2017.

14. The Council accepts that the immunity period has been met for a single, ground floor residential unit, and that historically the first floor has been lawfully used as a single flat. However, its position is that the additional flats at ground floor and roof level are not immune from enforcement action through the passage of time.
15. Although the appellant has stated his intention to produce confirmation of the continuous residential use over a period of four years, no evidence has been provided to that effect.
16. As the evidential burden lies with the appellant to make his case, it follows that it has not been shown that at the time the enforcement notice was issued, it was too late to take enforcement action. The appeal on ground (d) fails.

The Appeal on Ground (a)

Main Issues

17. The main issues are:

- the effect of the development on the vitality and viability of designated town or local centres;
- whether the proposed development would provide acceptable living conditions for occupants, with particular regard to the provision of light and internal and external living space; and
- the effect of the development on the living conditions of neighbouring occupiers with particular regard to noise and general disturbance.

Reasons

Vitality and viability

18. London Borough of Newham Local Plan (NLP) Policy J1 seeks to encourage smaller-scale office development in Town Centres, Local Mixed Use Areas and Micro Business Opportunity Areas and on appropriate mixed use Strategic Sites, and to direct new town centre uses within the defined hierarchy to a centre. NLP Policy S6 states that the economic role of the area will be based on its town and local centres.
19. NLP Policy INF5 expects proposals to contribute to the re-definition and management of Newham's interrelated town centre hierarchy and network, securing accessible shopping, services and employment in focused, successful centres across the Borough. The policy seeks to direct town centre uses to designated Town and Local Centres first. NLP Policy SP6 seek to manage the centres as part of a clearly defined network and hierarchy (in line with Policy INF5), encouraging consolidation of commercial uses within their boundaries.

20. The appellant does not dispute that the front part of the ground floor of the property had been subject to a material change of use to an office at the time the enforcement notice was issued.
21. As the appeal site is not located within a designated centre or shopping parade, the principle of an office use would be contrary to NLP Policies S6, INF5, SP6 and J1. Moreover, due to its position within a primarily residential area it would be contrary to NLP Policy SP7, which designates Katherine Road as a Key Movement Corridor and Linear Gateway and highlights the importance of consolidating ribbon developments of commercial uses into defined Local and Town Centres and Local Shopping Parades, in line with Policies INF5, INF8 and SP6.
22. I note the appellant's argument that the scale of the office use provides a safeguard such that it would not undermine or impair the hierarchy and network of town centres. However, such arguments could be repeatedly applied, resulting in significant cumulative harm to the vitality and viability of a centre. Moreover, whilst each application should be treated on its own merits, allowing the appeal would make it harder for the Council to resist other applications for similar development elsewhere in the Borough and therefore preventing that cumulative harm.
23. The office use would therefore also be contrary to London Plan Policies SD6, SD7 and SD8, which state, amongst other things, that the vitality and viability of London's varied town centres should be promoted and when considering development proposals, boroughs should take a town centres first approach.

Living conditions of the flats

24. The Council has assessed the accommodation against the minimum requirements set out in the 'Technical Housing Standards – Nationally Described Space Standard' (March 2015) on the basis that flats 1 and 4, located on the ground floor, and flat 3, located at roof level, were one-bedroom, two person units, and that flat 2, located at first floor level, was a two-bedroom, two person unit.
25. To measure the floor areas, the Council used the plans submitted under planning application ref: 17/01767/FUL for a dormer extension at the appeal property². It has also utilised the ground floor plan for a typical terrace property at Katherine Road and compared it to the floor plan created by officers whilst undertaking a site visit to the property.
26. The figures provided by the Council show that all four units fall substantially below the minimum gross internal floor area of the Space Standard. Although the appellant asserts that the standards are met, no evidence is provided to that end. Nor is any plan provided to demonstrate that the units can accommodate the furniture, access and activity space requirements relating to the declared level of occupancy so as to meet Standard 25 of the London Plan Housing Supplementary Planning Guidance (SPG).
27. Therefore, on the basis of the evidence before me, it is more likely that all of the units fall well-below the minimum standards, thereby resulting in undersized homes that are not fit for purpose and which do not allow sufficient flexibility to adapt to residents' changing needs and circumstances.

² Conversion of the loft space with rear dormer and roof lights.

28. However, as set out under ground (d), the Council accept that one ground floor flat and a single first floor flat are immune from enforcement action through the passage of time (flats 1 and 2 respectively). The ground (a) assessment is therefore focused on flats 3 and 4.
29. I saw that much of the bedroom and main living space for flat 3 is positioned under the main roof slope of the property and that natural light is restricted to that provided by small roof lights. Consequently, the cramped and oppressive living conditions are compounded by the limited functionality and lack of outlook.
30. The Council highlight that natural light and outlook for flat 4 is restricted to that provided by a relatively small window at the rear of the unit and a glazed back door. That would result in a dark and depressing living space where occupants would likely require artificial lighting at all times during the day. The flat would therefore provide wholly inadequate living conditions due to its meagre size, limited functionality, poor levels of ventilation and natural light, and severely limited outlook.
31. At least one of the ground floor flats has direct access to a very small courtyard, which the Council says falls below the minimum space standard of 5m². The appellant does not demonstrate otherwise. The space therefore provides no meaningful relief to the oppressive internal accommodation for the occupiers of flat 4, even if they had access to it. Moreover, as Flat 3 does not have access to any private amenity space, there is no mitigation to the cramped and claustrophobic internal conditions experienced by occupants.
32. The appellant refers to available open space provision at Plashet Park and Priory Park. However, given the separation and convoluted route to the latter, it is very unlikely that occupants would utilise the same as an alternative provision. Whilst Plashet Park is closer, it does not provide private amenity space so as to meet the reasonable expectations of occupiers, such as sitting/dining out and drying clothes.
33. The appellant argues that the Building Regulations provide rigorous requirements to ensure that the amenities of existing and future occupiers are safeguarded. However, it is not suggested, let alone shown, that the units have been subject to that regulatory framework and process. Moreover, whilst living conditions may be safeguarded under other legislation, it is necessary for me to be satisfied the appeal development is acceptable in planning terms, without reliance on other legislative regimes where the threshold for harm may well be different.
34. On this single issue, the Council has sought to identify conflict with no less than 15 policies, in addition to the Framework, the Housing SPG and the Technical Standards. Surprisingly, London Plan Policy D6 is not on that long list, even though it specifically concerns housing quality and standards. A greater focus on the most relevant policies would therefore have been more helpful.
35. Nevertheless, I conclude that accommodation provides unacceptable living conditions for occupants, contrary to London Plan Policies D3 and GG4, NLP Policies S6, SP2, SP3 and H1 and paragraph 135 of the Framework. Those state, amongst other things that all new homes should meet the internal space standards of the London Plan as a minimum, as well as provide adequate external private open space.

36. I note the appellant disputes the relevance of NLP Policy SP2, but it does, nonetheless highlight the need to improve housing quality. For the reasons explained, that is not achieved.
37. The Council also cites conflict with London Plan Policies D4 (delivering good design), D5 (inclusive design), D8 (public realm), GG1 (building strong and inclusive communities) and T5 (cycling) as well as NLP Policies, S1 (spatial strategy and strategic framework), SP1 (Borough-wide place making) and SP8 (ensuring neighbourly development). However, those policies have limited relevance to this main issue and the particular concerns raised.
38. I have not been provided with a copy of NLP Policy D5 so I am unable to comment on its relevance.

Neighbouring living conditions

39. The appeal property is located within a mainly residential area, although the terrace also includes similar properties with commercial uses.
40. As noted, the Council accept that the property can lawfully be used for two flats. The baseline position is not therefore a single household as alluded to in the officer report. Nevertheless, allowing the ground (a) appeal would double the number to four different households with differing patterns of usage and behaviour.
41. That amounts to a material intensification in the use of the property that is likely to generate more noise and disturbance as individuals come and go separately from one another for work, shopping and other day-to-day activities. A greater number of unconnected individuals living within the property will also likely generate a greater number of visitors and deliveries to the property, along with the associated noise and disturbance.
42. However, NLP Policy SP3 highlights the need to avoid problems with '*bad neighbour*' uses, including hot food takeaways. The Council's photographs show that was the pre-existing use of part of the ground floor. A small office would therefore amount to a significant improvement as a neighbouring use, in that it would be likely to generate fewer comings and goings and associated noise and disturbance, particularly during the evening and weekend times when residents are likely to be at home. Moreover, a takeaway has greater potential to generate other harms, such as odour and litter.
43. Therefore, the harm arising from a takeaway use would outweigh the additional harm from two additional households so that, taken as a whole, the ground (a) appeal development would not result in unacceptable harm to the living conditions of neighbouring occupants and thus would not result in conflict with NLP Policies SP3 and SP8, London Plan Policy D14, or paragraph 135 of the Framework. Those policies state, amongst other things, that all development is expected to achieve good neighbourliness.
44. The Council also cite conflict with NLP Policy SP2 (healthy neighbourhoods) but I consider it to have limited relevance to this main issue.

Other Matters

45. The appellant argues that the flats meet the spatial and strategic principles of NLP Policy S1 and provide a choice of housing. I do not agree. The flats provide

the type of sub-standard accommodation that NLP and London Plan Policies seek to prevent. Consequently, the contribution to housing choice and need, attracts very little weight.

46. I therefore find that the above identified harm is not outweighed by the benefits advanced and that the material change of use of the property to four self-contained units of residential accommodation and an office does not accord with the development plan, taken as a whole.

Ground (a) Conclusion

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

Appeal on Ground (g)

48. The ground (g) appeal is that the five months given to comply with the notice is too short to allow sufficient time for existing residents to vacate the premises. It is also argued that the lack of time would result in a high probability of occupants becoming homeless which, in turn, would generate a significant burden upon allocating temporary or permanent housing.
49. However, a period of 18 months, as suggested, is disproportionate and unjustified and, given my findings under ground (a), it is clearly undesirable for any tenants to have to live in the property any longer than necessary. That urgency has been compounded since issuing the enforcement notice as the first floor has been sub-divided into two flats and an office. That has created two exceptionally poor units of accommodation and awful living conditions for the occupants, which clearly include children.
50. In my view, five months would amount to a proportionate response to the breach of planning control which would afford existing tenants sufficient time to secure new housing, which is fit for purpose.
51. The appeal on ground (g) fails.

Richard S Jones

INSPECTOR