



Appeal Decision

Site visit made on 8 April 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2024

Appeal Ref: APP/N5660/C/22/3309958

147 Cricklade Avenue, London SW2 3HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Ms Ayesha Grant against an enforcement notice issued by London Borough of Lambeth.
- The notice was issued on 5 October 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a single dwellinghouse to 2 self-contained flats, one located at ground floor level and one located over the upper floor levels (the 2 unauthorised self-contained flats).
- The requirements of the notice are to:
 - a) Cease the use of each of the 2 unauthorised self-contained flats; and
 - b) Remove from the premises all internal doors and partitions; kitchen units and appliances, from the upper floors; and disconnect and remove all associated electrical, water and gas services, plumbing and wiring from the premises - that facilitate the unauthorised use; and
 - b) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Act.
- 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.

Summary of decision: The appeal is dismissed and planning permission is refused, as set out in the formal decision below.

The Notice

1. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. The requirements of the notice are sufficiently precise. However, minor rewording of requirement b) would increase clarity. I am satisfied that I can correct the notice accordingly without causing injustice, as set out in the formal decision.

The appeal on ground (a) and the deemed planning application

2. The appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation set out in the notice, as corrected. Hence, planning permission is sought for the material change of use of the premises from a single dwellinghouse to 2 self-contained flats, one located at ground floor level and one located over the upper floor levels.

Main Issues

3. The main issues are the effect of the development on:
- The supply of dwellings suitable for occupation by families;
 - Parking; and
 - The storage of bicycles, refuse and recycling.

Reasons – The supply of dwellings suitable for occupation by families

4. 147 Cricklade Avenue is part of a pair of matching semi-detached dwellings, located in a residential area. The appeal site side of the road contains pairs of semi-detached dwellings, with a terrace of two storey flats on the opposite side of the road. The development subject to this appeal has resulted in No 147 being sub divided into 2 self-contained flats, one at ground floor with 2 bedrooms and one over the upper floors with three bedrooms.
5. Key to the determination of this appeal is Lambeth Local Plan (2021) (LLP) Policy H6 which focuses on residential conversions. It seeks to ensure mixed and balanced communities with a choice of dwellings suitable for occupation by families and to manage the cumulative effects of residential conversions on environmental quality and local amenity. To this end, Policy H6 specifies that dwellings which are suitable for occupation by families, which have a floor area of less than 130 square metres, as originally constructed, will be protected from conversion. Dwellings suitable for occupation by families are defined as those with three or more bedrooms, with ground-floor access to a rear garden.
6. Prior to the development subject to this appeal, 147 Cricklade Avenue was a single dwelling, with direct access to the garden, suitable for occupation by a family (regardless of whether it was actually occupied by a family). The Council say the original floor area was 106 square metres, which is significantly less than the 130 square metres specified in LLP Policy H6. The appellant does not dispute that the original floor area was less than the policy requirement but states that the floor area was increased to around 180 square metres, prior to conversion into flats, through the addition of a ground floor and roof extension.
7. Despite the extension of the property, the original floor area did not meet the requirements of LLP Policy H6. Therefore, 147 Cricklade Avenue was a property which policy explicitly did not support being converted into self-contained flats.
8. Even if the original floor area of the dwelling had been 130 square metres or more, LLP Policy H6 still requires conversions to provide a mix of unit sizes including the provision, where practicable, of a family home, at ground-floor level with direct access to a rear garden. Policy H6 also specifies that residential conversions meet standards set out under LLP Policy H5 and London Plan Policy D6 regarding internal and external space.
9. The development contains a 2 and a 3 bed flat, so constitutes a mix of unit sizes. On the evidence presented to me, it seems that both flats meet the standards for internal space. The remaining question is therefore whether the outside space meets the policy requirements.
10. The minimum standards for external amenity space set by LLP Policy H5 is 10 square metres per flat, with family-sized units preferably having direct access to a private garden. In addition, LLP Policy Q2 requires the provision of adequate outdoor amenity space, including that it is practical in layout and free from oppressive enclosure.

11. The garden is modest but exceeds the minimum overall size necessary for 2 flats. Despite the overall size being acceptable, at present only the 2 bedroom ground floor flat has access to the garden. This is achieved via a door in a bedroom and patio doors from the lounge. The upper flat has 3 bedrooms but currently does not have access to the garden, or any other private or shared outside space. Therefore, neither of the flats provides a family home (as defined in the LLP), at ground-floor level with direct access to a rear garden, as required by policy. Prior to the conversion, the dwelling had direct access to the garden, so it is practicable. Consequently, the development has resulted in the loss of a dwelling suitable for occupation by a family, contrary to policy.
12. The appellant has suggested that the garden could be shared. Notwithstanding the lack of direct access, this would result in the occupants of the upper flat being able to look directly into the living and sleeping space of the ground floor flat at very close quarters, through extensive fully glazed doors and windows. The impact of this on the privacy of the ground floor flat would be unacceptable.
13. In an attempt to overcome the lack of garden provision for the upper flat, so it might classify as a family dwelling, the appellant has proposed a scheme to subdivide the rear garden. Their calculations show that each flat would have a garden of approximately 27 square metres. Access to the garden area closest to the house would be directly from the ground floor flat, as at present. Occupants of the upper flat would have to come down the stairs, out of the flat door, out of the main front door, along the side of the house and through a gate, in order to access their section of garden. The garden would be small and narrow and surrounded by close boarded fence. As a result, the garden would not be directly accessed from the upper flat, its layout would be of limited practical value for use by a family and it would be oppressively enclosed. I do not consider this to be a suitable solution.
14. The appellant has provided information which indicates that the majority of dwellings in the same postcode as the appeal site remain available for use as single family dwellings. A postcode is a limited area and policy seeking to maintain a mix of dwellings applies to the whole borough. I also note that while other single dwellings in the immediate area may not have been converted into flats, there is already a supply of flats in the terrace directly opposite the appeal site, so the area does not lack flats.
15. I conclude that due to the size of the original dwelling, its conversion into 2 self-contained flats is contrary to LLP Policy H6. Therefore, the development undermines policy as well as resulting in the loss of a family dwelling and reducing choice for families in the area. Even on the basis of the size of the dwelling as extended, neither of the flats provide a dwelling suitable for occupation by a family, as defined in the LLP. The proposal to provide a garden for the upper flat does not overcome the lack of compliance with LLP Policy H6 and does not comply with LLP Policies H5 and Q2.

Reasons - Parking

16. The site is within a controlled parking zone, where policy specifies that no additional parking permits will be issued to occupants of additional housing units. Arrangements to secure this have been proposed by the appellant in a draft legal agreement. However, the agreement is unsigned so I can give it little weight.

17. As I have found the development unacceptable for other reasons, I have not pursued this matter further. Consequently, on the information made available to me, the development does not make suitable provision for parking, so fails to comply with LLP Policy T6 and London Plan Policy T6.

Reasons - Storage of bicycles, refuse and recycling

18. Suitable provision for the storage of bicycles, refuse and recycling may well be able to be provided at the property and details could be secured via a suitably worded condition. However, no details have been provided, and as I have found the development unacceptable for other reasons, I have not pursued this matter further. Consequently, on the information made available to me, the development does not make suitable provision for the storage of bicycles and bins, so fails to comply with LLP Policies Q12 and Q13.

Other matters relating to ground (a)

19. Compliance with other elements of policy, a sustainable location, and the claimed benefits of the development, do not in this case outweigh the lack of compliance with policy set out above. Matters have been raised which do not sit under planning legislation or policy. Such matters have not been taken into consideration in the determination of this appeal. I note the dictionary definition of 'family'. I have used the definition of family accommodation set out in the LLP.

Conclusion on ground (a) and the deemed planning application

20. The development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. Therefore, the appeal on ground (a) fails and planning permission is not granted.

The appeal on ground (f)

21. The appeal on this ground is that the steps required by the notice to be taken, 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. It is clear to me from the reasons for issuing the notice, and its requirements, that the purpose of the notice is to remedy the breach of planning control.
22. The appellant argues that the requirements are excessive and go beyond remedying the breach, regarding what has to be removed from the premises. I am informed that internal partitions have been installed but have no details to specify their location. Such partitions will have facilitated the use of the premises as 2 self-contained flats, so it is not unreasonable to require their removal as part and parcel of remedying the breach. However, I consider the current layout, as created by the partitions, could also work for a single family dwelling across the whole house. Consequently, I do not consider it necessary to remove the partitions to remedy the breach.
23. Inside the main front door is a small hall. 2 lockable doors lead off this hall, one into the ground floor flat and one to the stairs to the upper flat. These lockable doors undoubtedly facilitate the use of the site as 2 self-contained flats. However, it is not unusual to have doors in the hall of a single family dwelling and they can provide both insulation from the weather and fire

resistance. It is the ability to lock the doors which facilitates the use as 2 self-contained flats. Therefore, I consider it necessary to remove the ability of the doors to be locked, but not to remove the doors themselves.

24. A kitchen on the upper floors is part and parcel of, and integral to, the use of the premises as 2 self-contained flats. Its removal ensures the premises is returned to use as a single dwelling. I therefore consider removal of the kitchen to be necessary to remedying the breach.
25. Although no detail has been provided for this particular premises, in many cases where a dwelling has been divided into flats, separate utilities have been provided (eg separate gas/electricity/water metres). Therefore, the removal of any such separate utility provision, which has been installed to facilitate the use as 2 self-contained flats, needs to be removed. This will ensure the breach is remedied in a way that does not enable it to be easily resumed.
26. I shall vary the terms of requirement b) to allow the retention of internal partitions and doors but require the removal of locks on the internal doors within the entrance hall. The requirement to remove the kitchen and separate utility provision will be retained. As explained above and set out in the formal decision, I have also made minor adjustments to the wording of requirement b) to ensure clarity.
27. For the reasons given above, I conclude that the requirements of the notice exceed what is necessary and the appeal on ground (f) succeeds in part. I shall uphold the notice but exercise my powers under s176(1) of the Act to vary the notice, as set out in the formal decision.

Conclusion

28. For the reasons given above I conclude that the appeal on ground (a) fails, but the appeal on ground (f) succeeds in part. I shall uphold the enforcement notice, with correction and 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.

Formal decision

29. It is directed that the enforcement notice is corrected and varied as follows:

- In section 4, Reasons for issuing this notice, remove the wording of requirement b) and replace it with the following wording –

“b) i) Remove the ability to lock the internal doors in the ground floor hall;
ii) Remove all kitchen units and kitchen appliances from upper floors;
iii) Disconnect and remove any electrical, water and gas services that facilitate the unauthorised use of the premises as 2 self-contained flats.”

30. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

H Davies

INSPECTOR