



Appeal Decision

Site visit made on 26 March 2024

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

an Inspector appointed by the Secretary of State

Decision date: 25 April 2024

Appeal Ref: APP/P5870/C/22/3308795

1 Constance Road, Sutton, SM1 4QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Shirish Badiani against an enforcement notice issued by the Council of the London Borough of Sutton.
 - The enforcement notice was issued on 31 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the property from a single dwelling into two (2) self-contained dwellings (flats) without the benefit of planning permission within the last four (4) years.
 - The requirements of the notice are to:
 - (i) Cease the use of the property as two self-contained units of residential accommodation (flats),
 - (ii) Permanently remove all kitchen facilities, including kitchen units, cooking facilities, and worktops from one of the units,
 - (iii) Remove the internal division within the property that enabled the subdivisions of the property into two (2) flats, including internal locable doors and restore the land to the state it was, prior to the breach of planning control, as a single dwelling.
 - (iv) Remove from the land all building materials, rubble and equipment arising from compliance with (ii) and (iii) above.
 - 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 (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 corrected and varied by:
 - Deleting 'locable' in section 5(iii) and its substitution with the word 'lockable'.
 - Deleting six months and the substitution with nine months for the time for compliance.
2. Subject to the correction and 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.

Preliminary Matters

3. Requirement 5(iii) refers to 'locable doors'. That is evidently a typo so should be corrected to 'lockable'.
4. The reason for issuing the enforcement notice cites conflict with London Plan Policy 3.5. However, that is from the 2016 version of the London Plan, which was replaced by the March 2021 version, before the enforcement notice was issued in August 2022. Nevertheless, the Council's authorising report and statement of case correctly refer to relevant Policy D6 of the 2021 plan. The appellant is evidently aware of that mistake and no injustice has arisen.
5. Since submission of 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 the appeal, I have not reverted to the parties for comment.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issue

6. The main issue is whether the dwellings provide acceptable living conditions for their occupants, with particular regard to the provision of internal and external living space.

Reasons

7. No 1 Constance Road is a two storey end of terrace property which has been extended at the rear side at ground floor level and at roof level with an 'L' shaped dormer type arrangement.
8. The appellant seeks to highlight that those extensions provided two extra bedrooms and a larger kitchen, so that if the property hadn't been sub-divided into two flats, it would be a five bedroom (two double and three single), seven person family dwelling with an overall floor space of 136.6m².
9. Sutton Local Plan 2016-2031 (LP) Policy 9 states that the council will not grant planning permission for new residential development, including conversions, which does not meet the internal space standards set out in the London Plan. London Plan Policy D6 states that dwellings must provide at least the gross internal floor area and built-in storage set out in Table 3.1 of the plan. For a single storey, one bedroom, two person dwelling, as applicable to the ground floor flat (Flat 1), that is 50m² and 1.5m² respectively.
10. On the basis of measurements taken from drawings previously submitted, the Council calculate the gross internal area (GIA) of Flat 1 to be 54m², and thus policy compliant. However, the plans show the GIA to be 50.2m². As an architectural calculation, that is more likely to be accurate. On that basis, there is a very small shortfall against the floor space requirement of 51.5m² (including storage).
11. The minimum standard is 70m² for a two storey, two bedroom, three person flat, and 79m² for four persons, plus 2m² storage in both scenarios. The Council has quoted the figures as 61m² and 70m² respectively, but those standards apply to single storey dwellings, which is not applicable to the maisonette type

- arrangement of the second flat, which is set out over first floor and roof level (Flat 2).
12. For Flat 2, the Council calculate the floorspace to be 69m², whereas the plans submitted by the appellant annotate it as being 75m². On the basis of the latter¹, it is policy compliant as a two bedroom, three bedspace dwelling, as depicted on the plans and as referred to by the appellant.
 13. However, I saw that the space annotated as a dining room on the plans is being used as a third bedroom and that all three bedrooms contained double beds. An email from the occupant of Flat 2 to the Council also confirms it as having three bedrooms. In that scenario the floorspace is woefully short of the standard of 102m² plus 2.5m² storage required for three bedrooms and six bedspaces.
 14. It did, however, appear that two of the bedrooms are occupied by children or young persons, so it is unlikely that occupancy is that high. Nevertheless, with three bedrooms, the bed space occupancy could easily be four persons, for which the standards require a GIA of 84m² plus 2.5m² storage. The space available to Flat 2 falls materially short of those standards.
 15. I note that the appellant states that the bedrooms exceed the applicable floorspace requirements but that is not shown to be the case based on the actual use of two of the three bedrooms in Flat 2.
 16. In any event, LP Policy 10b sets out the criteria against which the Council will grant planning permission for development involving the conversion of existing dwellings to provide new self-contained housing units. The second criteria of LP Policy 10b requires the GIA of the dwelling considered for conversion to be at least 125m². Whilst the policy does not refer to the original dwelling, it does specifically exclude extensions and loft space. On that basis the Council calculate the pre-existing dwelling to have been approximately 90m², thereby falling significantly below that threshold.
 17. The appellant does not show that calculation to be wrong but refers to the policy explanation which explains that two and three bedroom market houses are the most required type of housing and that the figure of 125m² has been chosen because below it, a house would not be able to convert to two 61m² flats (which is the minimum standard for a two bed, three person flat in space standards). Nevertheless, the existing GIA of approximately 137m² is achieved because of the ground floor and loft extensions, which do not fall to be included.
 18. Given the identified space deficiencies, the development therefore also fails to meet criteria (v) of LP Policy 10b, which requires proposed dwellings to meet the Mayor's internal space standards.
 19. LP Policy 9 states that the council will not grant planning permission for new residential development, including conversions, which does not provide an adequate amount of private amenity space. An adequate amount of amenity space is to be considered on a case-by-case basis with reference to the minimum standards (used [as] a guide) set out [in] the council's Urban Design Guide SPD and taking into account local character.

¹ Which, for the reasons explained, is more likely to be accurate

20. The SPD standard for flats is 25m². Although, the SPD recognises that the Mayor of London Housing SPG sets a standard of 5m² of private outdoor space for one to two person dwellings, and an extra 1m² for each additional person, it explains that to be inappropriate in a suburban setting typical of large parts of the Borough.
21. In this case, the appellant states that the amenity space available amounts to 20m², and that is fully apportioned to Flat 1. Whilst that shortfall for Flat 1 may be considered acceptable, having regard to the relative proximity of Benhill Recreation Ground, Flat 2 has no access to private amenity space. The proximity of public facilities does not therefore mitigate the reasonable private amenity space expectations for occupants, such as sitting out and drying clothes.
22. Whilst I accept that the existing garden provision is better suited to a smaller dwelling rather than a five bedroom house, at least all occupants of the house would have had access to the garden. Moreover, the appellant would have made the decision to enlarge the property to that extent in the knowledge that the garden is of limited size. It does not therefore justify an arrangement whereby one dwelling has no access to private amenity space provision and thus does not even achieve the significantly lower standards of the Mayor of London SPG.
23. The appellant argues that Flat 2 has a higher GIA than that required for a two bedroom dwelling and that the additional internal space helps to mitigate against the lack of outdoor amenity provision. However, based on the actual use of Flat 2 there is also an internal space deficiency, rather than surplus. Even if it were used as a two bedroom, three bed space flat, it is not possible to make up even close to the equivalent SPD private open space requirement, and would even fall slightly short of the SPG standard.
24. I saw that both flats are well-appointed and that Flat 2 in particular benefits from good levels of natural light. Nevertheless, even if I were to condition occupancy of Flat 2 to a two bedroom, maximum three person occupancy, so as to meet the corresponding internal space standards, the external private space deficiencies would remain, as would the shortfall against the size threshold of LP Policy 10 for conversions of dwellings into flats, applicable to the development as a whole.
25. I therefore conclude that the dwellings do not provide acceptable living conditions for their occupants and the development is contrary to London Plan Policy D6 and LP Policies 9 and 10.

Other Matters

26. The Council refer to LP Policy 37 which states that new developments will be expected to provide car parking in accordance with the council's restraint based maximum car parking standards.
27. However, I have not been provided with a copy of that policy or any related standards. I note the parties dispute the site's Public Transport Accessibility Level² (PTAL) but based on the map provided, it is more likely that the site is

² PTALS are a measure of the accessibility of a point to the public transport network. Each area is graded between 0 and 6b, where a score of 0 is very poor access to public transport, and 6b is excellent access to public transport

- not as marked and is further to the east with a PTAL rating of 2 - rather than 4 as argued by the appellant. It is not therefore a highly sustainable location.
28. In any case, it is unlikely that the difference in the car parking required for a five bedroom house, compared to the two flats, is sufficiently different so as to justify withholding planning permission on this issue alone.
29. The appellant argues that the property provides a one bedroom and a two bedroom flat, adding positively to the mix of housing in the area, with two smaller high quality dwellings in place of a five bedroom house, which the Council are not seeking to safeguard through policy requirements.
30. However, given the identified space deficiencies, the flats, and in particular Flat 2, cannot be regarded as high quality. In terms of need, the preamble to LP Policy 9 sets out the council's Strategic Housing Market Assessment analysis of likely house sizes needed for the period 2013 to 2031. By a significant margin, the greatest need is for three bedroom homes (44%). Notwithstanding that the decision to increase the space in the property from three bedrooms to five bedrooms lies with the appellant, the preceding paragraph to the policy preamble explains that whilst *'the Council seeks to identify sites to provide the quantity of housing necessary, it is also important it pays attention to the quality of new housing, particularly in terms of housing size and the space standards'*. In this case, the use of Flat 2 as a three bedroom dwelling results in it falling significantly below the internal and external space standards.
31. Although capable of meeting the internal space standards for a two bedroom home, which is the next greatest need (28%), the external space deficiencies remain. Moreover, there is also a clear need for four bedroom plus homes (21%), as per the pre-existing, and a much lesser need for one bedroom homes (8%), as applicable to Flat 1.
32. Moreover, as noted, LP Policy 10b sets out the criteria against which the Council will grant planning permission for development involving the conversion of existing dwellings to provide new self-contained housing units. The first is that the proposal is within one of the Areas of Potential Intensification. Although the appeal site lies close to the boundary to such an area, it does not fall within it, as specifically required. The development therefore fails to meet the first criteria of LP Policy 10b, as well as the second and fifth.
33. Whilst the price or rent for the flats will likely be cheaper than that of a larger family home, it is not shown that they amount to affordable housing for the purposes of the Framework and the development plan.
34. In overall terms I have found conflict with LP Policies 9 and 10, the strategic objectives for both include meeting the Borough's share of London's future housing need and providing homes of the right price, of the right tenure and of the right size for the borough's current and future residents.
35. Moreover, because of the internal and external space deficiencies the weight attributed to the very modest increase in housing supply as sought by the Framework, LP Policy 1 and London Plan Policy H1, is in turn limited. For the same reasons, the development does not provide good quality homes as per objective GG4 of the London Plan and does not meet the social objectives of sustainable development as set out in the Framework. Accordingly, the presumption in favour of the same does not apply.

36. I note that the Council's considers there to be no harm to the living conditions of neighbouring occupants, or to the character and appearance of the area. Although I find no reason to disagree, the lack of harm is a neutral matter in the planning balance.

Conclusion

37. For the reasons given above, I conclude that the ground (a) development is contrary to the development plan as a whole, and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed. 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.

The Appeal on Ground (g)

38. The appellant considers that the six months given to comply with the enforcement notice is too short and that 12 months should be given to afford tenants enough time to find suitable new housing, and for the required works to be carried out after they have vacated the property. The Council does not object to that time period, should it be justified.
39. The appellant states that the area has been identified to have a shortfall in smaller units of accommodation, but I have little evidence to that effect. Nevertheless, I appreciate the difficulties tenants may encounter in the property market, and that the works required by the notice are not insignificant.
40. However, 12 months is excessive, and a period of nine months would amount to a proportionate response to the breach of planning control and would achieve an appropriate balance between any difficulties the appellant and tenants may encounter, and the public interest in this case.
41. I shall vary the enforcement notice as stated. The appeal on ground (g) succeeds to the extent explained.

Richard S Jones

INSPECTOR