



Appeal Decision

Site visit made on 17 June 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 26TH JULY 2024

Appeal Ref: APP/G5750/C/22/3312843

6 Dormer Close, Stratford, LONDON, E15 4LQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Helal Ali against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 14 November 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: 1. Cease the use of the property as self-contained flats; 2. Demolish the single storey rear extension (as shown in the approximate location edged in blue on the attached plan); 3. Remove from the property all but one kitchen; 4. Remove from the property all but one supply of electricity gas and water; 5. Remove from the site all debris arising from compliance with steps 1, 2, 3 and 4.
- The period for compliance with the requirements is: six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Applications for costs

1. An application for costs has been made by the Council against the appellant. This is the subject of a separate decision.

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

Main Issues

2. The main issues are: (i) whether the appeal development offers adequate living conditions for its occupants with regard to privacy and outside space provision; (ii) the effect on the living conditions of neighbouring occupants with reference to privacy; and (iii) the effect on the supply of family housing in the Borough.

Reasons

Living conditions – occupants of appeal building

3. The appeal building is a former four-bedroom dwellinghouse which has been divided into a three-bedroom ground floor flat and two-bedroom first floor flat.
4. As to privacy, the only windows serving the ground floor flat's living area and adjacent bedroom face both the side alley and also a number of upper floor windows of the block of flats opposite. Passing views of these living room and bedroom windows are available to pedestrians using the alleyway. There is

also visibility between these windows and upper floor windows of the flats opposite at close distance and from a higher angle of view. I share the view of my colleague Inspector in an earlier appeal decision¹ that there is therefore an unacceptable level of privacy for occupants of the ground floor flat. A condition to require fencing or other screening would result in a harmful loss of outlook to these rooms and so would not overcome my concerns.

5. Turning to outside space provision, I agree with the Inspector in the 2022 Appeal Decision that the ground floor flat's rear garden access being through the bedrooms does not function well practically. Access for the first floor flat would be through the rear garden side gate and so there is not safe access to the garden from within the confines of the site for the young child occupant of the first floor flat, or for any child occupants in future.
6. I find then on this main issue that the appeal development does not offer adequate living conditions for occupants of the appeal building with regard to privacy and provision of outside space. It conflicts thus with Policies D3, D6 and GG4 of the London Plan 2021 ('London Plan') which together seek to ensure that new development delivers good quality homes with appropriate privacy and amenity and achieves indoor and outdoor environments that are comfortable and inviting for people to use, and that outside space usability should be maximised. It fails to accord with Policies S1, S6, SP1, SP2, SP3 and H1 of the LP which strive to deliver good quality homes that meet high standards of design.

Living conditions – neighbouring occupants

7. As detailed above, there is intervisibility between the living room and bedroom windows of the appeal property ground floor flat and the upper floor windows of the flats opposite. In view of the close proximity and, as regards the living room window, likely intensity of use of that room, I find an unacceptable loss of privacy to neighbouring occupants.
8. On the second main issue then, there is a harmful effect on the living conditions of neighbouring occupants with reference to privacy contrary to Policies GG4 and D3 of the London Plan and Policies SP1, SP2, SP3, SP8 of the Local Plan which aim to ensure that new development is well designed and neighbourly.

Supply of family housing

9. The Local Plan outlines an historic loss of family-sized dwellings in the Borough and emphasises the need for reversal of this trend. To this end, Policy H4 indicates that conversion of large family houses (four bedrooms plus) may be appropriate only where all resulting units are four-bedroom plus family dwelling units. The appeal development breaches this policy since neither flat has four bedrooms. In view also of the practical issues in relation to the outdoor amenity space and poor privacy afforded to occupants of the ground floor flat, the appeal development does not provide a family dwelling unit of equivalent quality to that lost by the conversion.
10. Both of the flats are of a size that could be occupied by families and there is one net gain of a family dwelling in this regard. However, the appeal development results in the loss of a larger family dwelling of better quality than

¹ Ref: APP/G5750/W/21/3285139 ('2022 Appeal Decision')

the resultant units. Thus on the final main issue, I consider there to be overall a resultant loss of quality larger family housing arising from the appeal development. There is conflict thus with London Plan Policies GG4 and H10 and Local Plan Policies H1, H4, S1, S6, SP1 and SP3 which strive to ensure an appropriate balance and mix of high-quality housing.

Human Rights and Best Interests of the Child

11. The appeal property represents home to its residents and the requirement to cease the use as self-contained flats amounts to interference with the residents' rights under Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998. The notice requirements to cease the use alleged will interfere with those Article 8 rights.
12. I am also mindful that there appears to currently be a young child living in the first floor flat. The 'best interests of the child' is therefore a primary consideration² in this case. Given the poor outside space provision, I do not consider that the best interests of the child would be served by permitting the appeal development. The six month compliance period would provide adequate time for occupants to seek more suitable living accommodation.
13. In view of the planning harm identified above, I consider that the requirements are legitimate in the public interest and cannot be achieved by any less interfering means. The best interests of the child do not indicate that I should permit the material change of use attacked by the notice.

Conclusion on ground (a) and the DPA

14. The appeal development results in planning harm as outlined in relation to the supply of family housing and as regards living conditions of appeal property residents and neighbouring occupants. It would offer one net unit of accommodation but as outlined this would be of a lesser quality than the original family dwelling converted. Thus it would conflict with the development plan, read as a whole and no material considerations arising outweigh this conflict and harm found. For these reasons, and taking into account all other matters raised, the appeal on ground (a) fails and planning permission is refused in respect of the DPA.

Overall Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice 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

16. 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.

V Bond
INSPECTOR

² Article 3(1) of the United Nations Convention on the Human Rights of the Child