



Appeal Decision

Site visit made on 29 October 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th November 2024

Appeal Ref: APP/Y5420/C/23/3323508

77 Arcadian Gardens, Wood Green, LONDON N22 5AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Margaret Olayinka Obiora against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 24 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property 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 kitchen (including and not limited to cooking facilities, extraction fan, kitchen cupboards and kitchen countertops), one doorbell and any internal dividing doorways and partitioning that facilitate the use of the property as a self-contained flat; and
 3. Remove from the site all debris arising from compliance with steps 1 and 2 above.
 - The period for compliance with the requirements is stated as "26 December 2023".
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 (as amended)(the 1990 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.
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Decision

1. It is directed that the enforcement notice is corrected by the removal of the date in the Time for Compliance and that it is replaced with "six months". Subject to this correction, the appeal is dismissed and 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.

The enforcement notice

2. The enforcement notice does not specify a period for compliance, as required by section 173(9) of the 1990 Act. Such a compliance 'period' must be specified and any notice which does not contain any period or does not set out a time which could amount to a period is likely to be invalid or a nullity depending on the circumstances. The notice as drafted merely states the Time for Compliance as being a set date, namely 26 December 2023.
3. The Officer's report seeking authority to issue the notice refers to a compliance period of six months. However, *Miller-Mead v MHL* [1963] 2 WLR 225 makes it clear that it is the job of the notice to tell the person upon whom it is served what he has done wrong, what he must do to remedy it and how long he has to do that.

4. This matter was raised with the parties in writing prior to the site visit. The Council accepted there was an error in the notice, which was issued at a time when the Council had switched over to a new planning system that specified a date rather than a period within their notices. There was no response from the appellant. I find the notice is invalid but capable of correction.
5. Section 176 of the Act enables the Inspector to correct any defect in the notice provided no injustice is caused to the parties. I believe this is the case here. Having regard to the date of the notice, 24 May 2023, the date it takes effect, 26 June 2023 and the Time for Compliance, 26 December 2023, it can be concluded from the four corners of the notice that the compliance period is 6 months. When the appeal was originally submitted, there was no appeal on ground (g) and none has been submitted in response to my letter. I shall therefore correct the notice to show the Time for Compliance as 6 months and proceed with my decision on the basis of the corrected notice.

The ground (d) appeal

6. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to show, on the balance of probabilities, that the material change of use of the property into two self-contained flats occurred before the relevant date. The relevant date is 24 May 2019, namely more than 4 years before the notice was issued.
7. The appellant states she bought the appeal site in 1997 and occupied it as a house. At some unknown point she began to rent it out. In 2018 she rented it to two brothers who were builders and agreed with them that they could convert it into two flats. These works were substantially complete in November 2018. A copy of the tenancy agreement dated 14 October 2018, signed by two tenants but not witnessed or signed by the landlord, sets out the arrangements made between the parties. A letter dated 21 December 2018 signed by two of the tenants confirms that the property was completely divided into two flats by 21 December 2018.
8. The appellant's version of events is contradicted by the Council's photographs dated 27 September 2021, taken during an inspection of the ground and first floor. The officer's site visit notes record that he met the "owner and tenant (who is also the builder)". He saw that the ground floor laid out as a 1 bedroom flat is occupied by the builder but the first floor was unoccupied and mid-conversion.
9. The photographs show that the door to the lounge from the hallway had been blocked up, that there was a locked door in the hallway just past the stairs providing access to the ground floor flat and that there was a kitchen clearly in use on the ground floor. In my view the kitchen looks very new and the bedroom looks like it is still being plastered or has just been plastered. The Wi-Fi router in the bedroom is covered in plastic as is some furniture to protect them from dust and there appears to be wet plaster drying out on the bedroom wall.
10. It is accepted that a self-contained ground floor flat had been created by September 2021. However, having regard to my observations, it has not been demonstrated, on the balance of probabilities, that this occurred before the relevant date.

11. The photographs of the first floor area show that it was not self-contained and there was no kitchen with cooking facilities. Floorboards had been lifted across the first floor and whilst there was a new boiler fitted on the wall in the room, which was to become the kitchen, bathroom vanity fittings remained to be fitted as they can be glimpsed on the floor through the doorway. The Council's officer re-visited on 3 April 2023 and the photographs show the stairwell had been separated from the hallway behind a locked door and a kitchen had been fitted.
12. The Planning Practice Guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probability.
13. In this case there is evidence from the Council but there is no other evidence from the appellant, such as dated photographs, Council tax or building control records to refute the Council's case. The appellant has not therefore discharged the onus of proof that is on her. I find it has not been demonstrated, on the balance of probabilities, with evidence that is precise and unambiguous, that two self-contained flats were created and occupied before the relevant date. The appeal on ground (d) therefore fails.

The ground (a) appeal and the deemed application

Main Issues

14. The main issues are the effect of the development on (i) the provision of family housing in the borough; (ii) the living conditions of the occupiers, having regard to the standard of accommodation; and (iii) the living conditions of neighbouring occupiers, having regard to noise and disturbance.

Reasons

Housing stock

15. For the purpose of my determination under the planning Acts, I am required to determine the appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this instance is The London Plan¹ published March 2021 (TLP) and Haringey London, Development Management DPD (the DPD) adopted July 2017.
16. The second reason for issuing the notice cites a loss of *small* (my emphasis) family housing, which I believe is a mistake. However, the reason does list DPD Policy DM16 Residential Conversions, which the appellant has addressed in her submissions and, as such, I consider there has been no confusion or injustice to the appellant caused by this typographical error.
17. Policy DM16 seeks to maintain a supply of larger homes in the borough to meet housing need. The Council will only permit their conversion to smaller self-contained units (within use class C3) where they are located outside the Family Housing Protection Zone (FHPZ). In addition, conversions will only be permitted where the gross original internal floor space of the existing dwelling is greater than 120sqm. In situations where the conversion would be within

¹ The London Plan – The Spatial Development Plan for Greater London, March 2021

the FHPZ, these would only be acceptable where there would be no net loss in the number of family sized units, amongst other criteria.

18. The appeal site lies within the FHPZ and the appellant states the floor space is 147sqm. In addition, she states when she bought the property, it was a 6 bedroom house. The appeal site therefore qualifies as a larger home and the development has not resulted in the loss of a family size unit (3+ bedrooms) as the first floor flat does have three bedrooms. The development has also provided a mix of units.
19. I therefore find no harm has been caused to the housing stock in the borough by the development and on this point alone the requirements of Policy DM16 are met. However, there are other aspects of Policy DM16 to be satisfied before I can reach an overall conclusion on whether the development has resulted in harm and I will discuss these next.

Standard of accommodation

20. According to the Council's calculations, the one bedroom ground floor flat has an internal floor area of 60sqm and the three bedroom first floor flat is 66sqm. These figures for each flat are not disputed by the appellant. The occupiers of the ground floor flat have access to the rear garden but there is no private outdoor space for the occupiers of the first floor flat by way of, for example, either a balcony or stairs to the garden.
21. Whilst the size and layout of the ground floor flat accords with the housing quality and size standards set out in TLP Policy D6, which require a minimum of 39sqm for a 1 bedroom/2 person flat, the first floor flat does not. A 3 bedroom/4 person flat should be at least 74sqm but there is a shortfall of 8sqm.
22. The appellant submits that the size of the bedrooms on the first floor meet the required standards, which may be the case but as I saw at the site visit, the shortfall of 8sqm is reflected in the provision of an extremely cramped space for the lounge. In addition, the lack of any private outdoor space to dry washing or to relax in results in harm to the living conditions of the occupiers. Furthermore, two of the first floor bedrooms are positioned over the ground floor lounge which means there is the potential for noise and disturbance to the first floor tenants.
23. Overall, I find there is harm to the living conditions of the first floor occupiers, which conflicts with Policy D6, Policies SP2 Housing and SP11 Design of Haringey's Local Plan Strategic Policies 2013-2026² (HLP) and DPD Policies DM1 Delivering High Quality Design, DM12 Housing Design and Quality and Policy DM16. All these policies require, amongst other matters, the provision of high quality homes.
24. The notice also cites as a reason for issue the failure to provide adequate refuse storage but I saw that each flat is provided with a waste, recycling and food bin. These are stored at the front of the site due to the terraced layout of the properties in the road. This is the case whether the property remains in use as a dwelling or has been converted. On this point I find no harm to the living conditions of the occupiers and therefore no conflict with Policy D6, which

² Haringey's Local Plan Strategic Policies 2013-2026 (formerly the Core Strategy) adopted March 2013, Consolidated with Alterations since, 2017.

requires easily accessible storage space that supports the separate collection of dry recyclables and food waste as well as residual waste.

Living conditions of neighbouring occupiers

25. It appears that the adjoining properties at Nos 75 and 79 have been converted into flats. I have not been provided with any information as to their internal layouts and therefore I can only surmise that there is the potential for the living conditions of the neighbouring occupiers to be disturbed by the new flats. For example, a bedroom could border a kitchen. The appellant submits that the internal dividing walls are well insulated and sound proofed but she “did not tamper with the original structural walls”.
26. With regard to the effects of the development on the wider area, I consider that the occupation of the new flats has little impact on a road where the majority of properties have already been converted into flats.
27. In the absence of any other information, I conclude that the development has the potential to harm the living conditions of neighbours that directly adjoin the property, having regard to noise and disturbance. This does not accord with TLP Policy D6, HLP Policy SP2 and DPD Policies DM12 and DM16.

Interim conclusion

28. Having regard to my findings on the housing stock, the standard of accommodation and the living conditions of neighbouring occupiers, the appeal on ground (a) fails.

Conclusion

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

D Fleming

INSPECTOR