



Appeal Decision

Site visit made on 6 November 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal Ref: APP/Q5300/C/23/3318268

26 Coniston Gardens, London N9 8NB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Yuksel Bekiroglu against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice was issued on 8 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the single-family dwelling into 2 self-contained units of accommodation involving the ground floor side extension as a 1x1 bedroom flat highlighted in blue for identification purposes only.
 - The requirements of the notice are:
 - 1 Cease use of the ground floor side extension as a 1x1 bedroom self- contained flat.
 - 2 Remove all electricity meters from the premises except one.
 - 3 Remove all gas meters from the premises except one.
 - 4 Remove the rear garden boundary fence that divides the rear amenity space (highlighted in green on the attached plan for identification purposes only).
 - 5 Remove all cooking facilities from the unauthorised 1x1 bedroom ground floor self-contained flat.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) 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 be:
 - Varied by deleting the words "Three (3) calendar months" within section 6 (time for compliance) and its replacement with "6 months".
2. Subject to this variation, 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 as amended.

Procedural Matters

3. The ground (a) appeal is for the matters alleged in the notice or part of those matters alleged. A set of proposed drawing have been submitted showing a revised scheme with an alternative layout proposed. If the ground (a) appeal should not succeed in relation to the development alleged, I shall consider if this proposed alternative scheme forms part of the matters alleged and

therefore can also be considered under the ground a) appeal, after dealing with the 'existing scheme.'

Appeal on Ground (a) appeal and the Deemed Planning Application (DPA)

Main Issues

4. The main issue is the effect of the unauthorised use on the living conditions for the occupiers of the appeal building with particular regard to privacy, outlook, daylight, sunlight and the provision of floorspace and amenity space.

Reasons

Living conditions – outlook, daylight, sunlight, privacy, internal floor space and amenity space for occupiers of the appeal building

5. The one-bedroom unit on the ground floor is accessed from the front porch, which is shared with the larger residential unit in the main building. The ground floor side dwelling comprises one main living room/dining/kitchen area, with a separate w.c. and bedroom. The only source of natural daylight, sunlight and outlook for the ground floor living/dining/kitchen are from the obscure glazed doors and windows at the entrance of this flat. However, as these windows are obscure glazed and face towards the front porch, which is shared with the other residential flat, they result in poor levels of daylight, sunlight and outlook for occupiers of the one-bedroom dwelling.
6. With regard to privacy, the position of these windows and doors opening onto the shared front porch also results in significant and intrusive overlooking to occupiers of this ground floor 1 bedroom dwelling, which harms their living conditions. Indeed, during the site visit, the curtains for these doors and windows facing the entrance porch were drawn during daylight hours to prevent direct overlooking from occupiers of the other residential unit within the appeal building. This in turn further increases the need for artificial light during the day and also the increases the sense of enclosure resulting in unacceptable harm to the living conditions of the occupiers of this dwelling.
7. Turning to the internal floorspace for the ground floor 1 bedroom unit, Policy D6, Table 3.1 of the London Plan, 2021 (The London Plan), and London Plan Guidance Housing Design Standards, 2023 (Mayor's LPG) requires a minimum gross internal floor areas of 37sq.m for 1 bedroom 1 person dwellings and 50sq.m required for 1 bedroom 2-person dwelling. This policy also requires a that single aspect dwellings should be avoided. However, contrary to this policy, the Council advise that the floorspace is approximately 35sq.m for the ground floor one bedroom flat. I also observed that both main living areas within this flat appeared cramped with a clear lack of built in storage and circulation space for occupiers.
8. Furthermore, as noted above, there are poor levels of natural light and outlook from the living/dining room/kitchen windows. As a result, the only aspect for this dwelling is the north facing bedroom window and door, contrary to Policy D6 of the London Plan.
9. I appreciate that the amount of amenity space for both dwellings is acceptable and commensurate with the size of the dwellings in accordance with Policy DMD9 the Enfield Development Management Document, 2014 (DMD). Nevertheless, the one-bedroom ground floor flat fails to provide a satisfactory

living environment, which feels gloomy, cramped, claustrophobic and oppressive for occupiers of the dwelling.

10. Therefore, whilst sufficient amenity space is provided for both dwellings, I conclude that the unauthorised use harms the living conditions for the occupiers of the one-bedroom ground floor dwelling, with particular regard to outlook, daylight, sunlight, privacy and the provision of internal floorspace, in conflict with Policy D6 of the London Plan, the Mayor's LPG, Policy CP4 of the Enfield Core Strategy (2010), and Policies DMD8 of the DMD. Amongst other things these require that new housing to be of high-quality design and that all development must preserve amenity in terms of daylight, sunlight, outlook, privacy, overlooking and meet or exceed the minimum space standards of the London Plan and the Mayors LPG.
11. Furthermore, the unauthorised use is contrary to the National Planning Policy Framework, 2023 (The Framework) which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Other matters

12. The appellant states that the Council cannot demonstrate a five-year supply of housing land supply (HLS) and considers that the Council can only demonstrate 3.8 years supply. I have no substantive evidence from the Council on this matter. Therefore, I have taken a precautionary approach for the purposes of determining this appeal and Paragraph 11d of the Framework and the presumption in favour of sustainable development is engaged.
13. The existing unauthorised use provides a net gain of one additional 1-bedroom dwelling. As such, its contribution to the HLS would be modest and therefore I consider that it would only be of limited benefit in this regard. I also note that the site is in an existing residential location with access to local shops, services, and public transport.
14. However, the adverse impacts of the unauthorised use in terms of the harm to the living conditions for the occupiers of the one-bedroom ground floor dwelling, with particular regard to outlook, daylight, sunlight, privacy and the provision of internal floorspace would significantly and demonstrably outweigh the limited benefits associated with one additional one-bedroom flat.
15. Overall, I find that the development would be contrary to the development plan as a whole, and the adverse impacts of the unauthorised use would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.

Alternative scheme

16. Section 177(1) of the Act allows me to grant planning permission in respect of the matters stated in the Notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the Notice relates.
17. The appellant has submitted further proposed drawings which he consider would overcome the harms. This alternative scheme shows the part demolition of the existing single storey side and rear extension and the erection of a new single storey side and rear extension, with a different footprint than the former. This new extension facilitates the revised design and layout of the building to

create two new self-contained flats. Therefore, I must consider whether or not this proposed alternative scheme amounts to 'part of the matters' and should be permitted.

18. It is clear from the Notice (including the heading, allegation, requirements and reasons for issuing the notice) that it is only 'attacking' the material change of use from a single-family dwelling into two self-contained units, and the 'erection a new single storey side and rear extension' does not form part of the matters stated in the Notice. Furthermore, the allegation cannot be corrected in order to change the DPA, and there is no power to grant planning permission for something completely different to that being enforced against and on the ground. As such, the proposed single storey side and rear extension falls outside of the scope of the notice.
19. The proposed scheme for the new extension combined with the proposed layouts for the two flats are fully integrated and there are no severable, acceptable parts. Therefore, the proposed revised layouts of the self-contained flats are not functionally and physically severable from the proposed new single storey extension. I therefore conclude that this alternative scheme does not form part of the matters alleged, and so I cannot consider it.

Conclusion on Ground (a) and the DPA

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The unauthorised use provides unacceptable living conditions for occupiers of the appeal site, in conflict with the development plan taken as a whole. The adverse impacts of the unauthorised use would significantly and demonstrably outweigh the limited benefit of one additional one-bedroom unit when assessed against the policies in the Framework when taken as a whole. Furthermore, the 'alternative scheme' does not form part of the matters alleged, and so I cannot consider it. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
21. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the DPA should be refused.

The appeal on Ground (f)

22. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
23. The enforcement notice requires a) the use of the ground floor side extension as a 1x1 bedroom self-contained flat to cease together with the removal of the additional electricity and gas meters; the cooking facilities from the 1-bedroom self-contained flat; and the fence that divides the garden. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
24. The appellant considers that the alternative scheme proposed under the ground (a) appeal would provide an alternative requirement which overcomes the issues raised in the Notice. However, I have already found under the ground

(a) appeal that the revised scheme does not form part of the matters alleged, and so I cannot consider it. Indeed, it is open to the appellant to submit a further planning application to the Council for this revised scheme if they so wish.

25. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.

26. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

27. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 to 6 months, to carry out the necessary remedial works and to discuss an amended scheme with the Council.

28. In my opinion, the 6 months suggested by the appellant would strike a more reasonable and proportionate balance in light of the circumstances of this case. This would also provide the appellant with additional time to explore an alternative scheme with the Council and for the existing tenants to relocate.

29. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

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

R Satheesan

INSPECTOR