



Appeal Decision

Site visit made on 8 January 2025

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2025

Appeal Ref: APP/G5750/C/22/3301614

Land at 29 Denbigh Road, East Ham, London E6 3LF

- 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 Muhibur Choudhury against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 20/00247/ENFC, was issued on 23 May 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use to four self-contained flats.
- The requirements of the notice are 1. Cease the use of the property as self-contained flats; 2. Return the land to its condition prior to the unauthorised material change of use, by demolishing the single storey rear extension (as shown edged in yellow on the photograph attached at Appendix 1) and demolishing the extension to the roof (as shown edged in green on the photograph attached at Appendix 1), and returning the affected elevations to their form prior to the unauthorised works; 3. Remove from the property all but one kitchen; 4. Remove from the property any bathrooms, internal dividing doorways and internal partitioning that solely facilitates the use as self-contained flats, plus all duplicate doorbells, duplicate signage, and duplicate outside waste bins; 5. Remove from the property all but one supply of electricity, gas and water; 6. Remove from the site all debris arising from compliance with steps 1 to 5.
- The period for compliance with the requirements is six months.
- The appeal is made on the grounds set out in section 174(2) (a), (c), (d), (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.

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

Preliminary Matters

1. The allegation in the enforcement notice specifically targets a material change of use to four self-contained flats. However, the requirements of the notice include the demolition of a single storey rear extension and roof extension. The Council argues that the extensions, despite not being specifically attacked within the wording of the allegation, serve to facilitate the unauthorised use; are ancillary operational developments, and as such fall within the scope of the notice, having regard to the *Murfitt* principle¹.
2. From the evidence and my observations at the site visit it seems to me that the extensions are of such a scale that they are fundamental to, and causative of, the resulting layout and character of at least two of the flats² and as such are fundamental to the overall material change of use. Indeed, part of the Council's

¹ *Murfitt v SSE* [1980] JPL 598.

² Flats B and C.

own evidence is that the four flats could not have happened without the extensions as there would not have been enough room. It therefore seems to me, as a matter of fact and degree, the extensions should be regarded as more than simply ancillary / secondary works.

3. Drawing these considerations together, and having regard to case law in *Caldwell*³, I find that both the ground floor and roof extensions would not be caught by the notice in this case. I therefore take no further action in relation to the appellant's case on grounds (a), (c), (d) and (g), insofar as those grounds specifically relate to the extensions, because the extensions are outside the scope of this appeal and therefore the remit of my decision. Because the appellant's ground (c) appeal was entirely focussed on the question of whether the rear extension amounted to a breach of planning control, this element of the appeal therefore falls away in its entirety.
4. I have considered the Council's argument that *Caldwell* is not applicable in this case, because a) the extensions were built at the same time as the change of use took place, and would not therefore have gained immunity from enforcement due to the passage of time and b) that the *Caldwell* judgment should not be applied retrospectively, as it post-dates the issue of the enforcement notice. However, the relevant legal principle, as set out above, is that the enforcement notice requirements may not encompass operational development, not specifically enforced against, where that development is causative of or fundamental to, rather than merely ancillary to, the alleged use. The timing of that operational development is irrelevant to this point.
5. Furthermore, whilst I sympathise with the Council's point regarding the timing of its enforcement action, the case is nevertheless live, and I am duty bound to have regard to and apply any relevant Court judgments arising prior to my decision being finalised.

The appeal on ground (d)

6. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken. In order to succeed on this ground, in accordance with s171B(2) of the 1990 Act, it would be necessary for the appellant to demonstrate that the use of the appeal premises as four self-contained flats had continued for a period of four years or more prior to the date the notice was issued, that being 23 May 2022, so as to be immune from enforcement. The onus rests with the appellant to demonstrate their case on the balance of probability.
7. The onus also rests with the appellant to demonstrate, on the balance of probability, that the use has been continuous over this period, with the exception of any non-material breaks in occupation.
8. The appellant's case is that the property was originally sub-divided to form four flats and used as such since September 2016. There then followed a period of renovation when the flats were unoccupied, as corroborated by a Council tax related inspection in 2017, which found the property to be empty. The newly renovated flats are then said to have been occupied by new tenants in April 2018, since when, according to the appellant, the various flats have been occupied continuously.

³ *SSLHC v Caldwell* [2024] EWCA Civ 467

9. The appellant has submitted various documents in support of their case. These include invoices relating to the purchase and delivery of kitchen equipment for the flats, both in September 2016 and then more recently in April 2018, when the properties were said to have been renovated; also electrical safety certification relating to each of the flats, also dating from April 2018. There is no dispute between the parties that construction of the ground floor rear extension was completed in 2020. It would also appear, from the Council's aerial photographic records, that the present form of the dormer roof extension resulted from works to significantly enlarge a more modest previous dormer roof extension, sometime between June 2019 and March 2020.
10. However, very limited evidence has been provided to address the question of continuity of use of the respective flats, in terms of their 'actual use' through occupation. Typically, this may be demonstrated through the submission of evidence such as tenancy agreements, rental receipts and utility bills. However, in practice the appellant's representations have referred in brief and vague terms only to tenants having been present prior to renovation works being carried out by April 2018, and then the flats being occupied by different tenants continuously since then.
11. In addition, the Council served the appellant with a Planning Contravention Notice (PCN) in June 2021. Through this notice the Council sought various information, including when the flats were converted, what facilities they contain, when use of the flats commenced and whether such use had been continuous. However, it is undisputed that no response to the Council's PCN was given. Accordingly, the appellant failed to declare as part of this exercise, despite clearly having the opportunity to do so, when use of the flats commenced, the various identities of flat occupiers and whether use of the flats had been continuous, together with supporting documentary evidence. I consider the lack of response to the PCN serves to undermine the credibility of the appellant's statement, in the appeal representations, that occupation of the flats has been continuous.
12. In summary, when considering the evidence in the round, there is insufficient evidence of continuous use of the appeal premises for the requisite period. Furthermore, there is evidence of a break in occupation of the appeal premises to allow for renovation works. Added to this, the property was the subject of significant extension projects in 2019 – 2020. There is a lack of evidence to persuade me, on the balance of probability, that tenants would have continued to occupy the effected units for residential purposes during the period of these works, such that any continuity of use would not have been broken.
13. Drawing the above considerations together, I conclude the appellant has failed to discharge the evidential burden, on the balance of probability. The ground (d) appeal therefore fails.

The appeal on ground (a)

Main Issues

14. The appeal on ground (a) is that planning permission ought to be granted. The main issues are (i) the effect of the development on the supply of family housing; (ii) the effect of the development on the living conditions of the existing and future occupiers of the flats, in terms of the amount of internal space available and (iii) the

effect of the development on neighbouring residents, having particular regard to disturbance from comings and goings.

Reasons

Family Housing

15. The Council's housing strategy is set out within policies H1, H4, S1 and S6 of its Local Plan (NLP)⁴. Collectively these policies seek to secure a mix and balance of housing types, including a significant increase in the quantity of 'family housing'. Policy H4 seeks to specifically protect existing three and four bedroomed family dwellings from being lost due to conversion. The justification for the policy refers to there being sufficient capacity for flats and Houses in Multiple Occupation (HMOs) through new build projects, together with conversion of non-residential units. Whilst it suggests that conversion of dwellings may still be appropriate in exceptional circumstances, such as where sites are within or close to town or local centres and above commercial units, I am not provided with evidence that those circumstances apply in this case. Policy S6 seeks to restrict HMOs and flat conversions. It is clear that the provision of family housing is a policy priority for the Council.
16. The Council's position is that the appeal property was previously a four bedroom dwelling, as evidenced in previous marketing information when it was put up for sale. Whilst the appellant does not accept the property originally had four bedrooms, no evidence is provided to contradict the Council's claim. Furthermore, from observations during my visit, it seems plausible to me that the dwelling could have accommodated at least three bedrooms, prior to being converted and the aforementioned enlargements. I conclude the sub-division of the property has resulted in the loss of a family dwelling, which is in conflict with the Council's housing strategy and aforementioned policies. Taking account of the foregoing, I am not persuaded the proposed development can be justified on the grounds of promoting greater choice of affordable accommodation.

Living Conditions of Occupiers

17. Notwithstanding the above, the Council seek residential development to provide high quality living accommodation, with dwellings designed to meet the minimum internal space standards set out in the Technical Housing Standards⁵. These standards include a minimum gross internal floor area requirement for one bedroom, single person dwellings of 37 square metres.
18. It is undisputed that two of the flats⁶ do not meet this minimum floorspace requirement. Indeed from the evidence provided it would appear that the amount of floorspace available falls significantly short of the requirement in both cases, without any justification provided for the shortfall in provision. If the minimum standards cannot be met, then it follows that the high quality of living accommodation provision, aspired to by the policy, will not be achieved.
19. The Council also points out that three of the flats are lacking in the provision of private outdoor amenity space. In the absence of any compelling justification, this

⁴ Newham Local Plan 2018.

⁵ Technical housing standards – nationally described space standard March 2015.

⁶ Flats A and D.

compounds my view that the development as a whole falls short of the requisite quality.

20. I therefore conclude that the development is in conflict with Policies SP1, SP2, SP3 and H1 of the NLP; with Policies D6 and GG4 of the London Plan 2021 (LP); with the Technical Housing Standards and with the National Planning Policy Framework (the Framework) insofar as they seek to secure an acceptable quality of accommodation for occupiers and ensure safe and healthy living conditions.

Living Conditions of Neighbours

21. The occupation of the property by residents independently of one another, is likely to give rise to a wider variation in movement patterns compared with occupation as a single dwelling. Furthermore, it is likely that there could be a greater number of visitors, associated with the unrelated identities of the occupiers. The pattern of occupation could therefore potentially give rise to a larger number of comings and goings to and from the property, when compared to use as a single family dwelling.
22. However, I am mindful that the number of occupiers would still be limited to relatively few persons. In addition I have not been informed of any complaints in recent years specifically with regard to noise and disturbance arising from general comings and goings.
23. Drawing these considerations together, on balance, I do not find conflict with Policies SP2, SP3 and SP8 of the NLP, Policy D14 of the LP or with the Framework insofar as they collectively seek to avoid development having unacceptable impacts in terms of noise and disturbance.

Conclusion regarding ground (a) appeal

24. I have found conflict with the Council's development plan in terms of the loss of family housing and in terms of the standard of accommodation provided. I have not found harm in terms of the living conditions of neighbouring residents, however, this lack of harm is neutral in the planning balance.
25. I am not aware of any material considerations sufficient to outweigh the policy conflict I have identified. I therefore conclude that it would not be appropriate to grant planning permission for the four flats targeted by the notice. The ground (a) appeal therefore fails.
26. I recognise that the requirements of the notice would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998. However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. In this case I have found the proposed development to be in conflict with planning policies and would not outweigh the wider public interest. Accordingly, the degree of interference that would be caused to existing occupiers of the flats would be insufficient to give rise to a violation of rights under Article 8, and would not be disproportionate.

The appeal on ground (f)

27. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). The 1990 Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
28. With regard to the unauthorised development, the objectives of the notice are to discontinue its use and remove various fixtures, fittings and utility supplies that serve to support the unauthorised use. It follows that the purpose of the notice is to remedy the breach of planning control. To require that much does not, therefore, exceed what is necessary.
29. However, the objective of the notice is also to restore the building to its previous form, prior to the unauthorised use taking place, through the demolition of the ground floor and roof extensions that have been constructed. Given that the purpose of the notice is to remedy the breach of planning control, and I have found that the extensions are not included as operational development within the alleged breach of planning control and are not targeted by the notice, this can only therefore be achieved by the discontinuance of the unauthorised use (including ancillary facilitating works).
30. I conclude that the requirement to demolish the extensions would be a disproportionate step. I shall therefore correct the notice to remove the relevant requirement, and the ground (f) appeal succeeds to this limited extent.

The appeal on ground (g)

31. The appeal on ground (g) is that the time given to comply with the notice is too short. I am mindful of the importance of striking a balance between enforcement that is intended to be remedial rather than punitive, whilst maintaining public confidence in the planning system.
32. The appellant has requested that the compliance period be extended to 18 months in order to minimise upheaval, with some people having been resident at the property for a number of years. Whilst I understand that having to find and relocate to alternative premises is likely to be a stressful experience for tenants, I have not been provided with information to substantiate the claim that a period of six months would allow insufficient time to do so. I am also mindful that the appellant will no longer need to allow time for the removal of the extensions.
33. I conclude, taking into account the Council's reasons for issuing the notice and the aforementioned considerations, that the time available to tenants to seek alternative accommodation would be reasonable and would not result in a disproportionate burden. Accordingly the ground (g) appeal fails.

Conclusion

34. For the reasons given above I conclude that the overall 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 as amended.

Final Decision

35. It is directed that the enforcement notice is corrected by:

the deletion of the following wording in Section 5, Step 2 in its entirety:

“2. Return the land to its condition prior to the unauthorised material change of use, by demolishing the single storey rear extension (as shown edged in yellow on the photograph attached at Appendix 1) and demolishing the extension to the roof (as shown edged in green on the photograph attached at Appendix 1), and returning the affected elevations to their form prior to the unauthorised works.”

36. Subject to this correction 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.

R Merrett

INSPECTOR