The Planning Inspectorate

Appeal Decision

Site visit made on 13 October 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2020

Appeal Ref: APP/B5480/C/20/3249255
15 Knighton Road, Romford RM7 9BS

- 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 Daljit Singh against an enforcement notice issued by the Council of the London Borough of Havering (the LPA).
- The enforcement notice was issued on 21 February 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the dwelling into two self-contained flats.
- The requirements of the notice are:
  1. Cease using the property as two self-contained residential units and return it to class C3 use; AND,
  2. Remove all the kitchen and cooking facilities except for one kitchen and all bathroom and bathroom facilities except for one bathroom; AND,
  3. Remove all electricity meters/fuse boxes from the premises except for one which serves the whole premises; AND,
  4. Remove any locking mechanisms from all internal doors that facilitate the use of the property as two self-contained residential units; AND,
  5. All materials and debris associated with steps 1, 2, 3 and 4 above, shall be totally removed from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

The Notice

1. The alleged breach of planning control is the material change of use the dwelling into two self-contained flats. However, the notice should reflect that it is a material change of use of the land from one use to another which is alleged to have occurred. As such I can correct the notice so that the alleged breach reads the material change of use of the land from a dwelling to two self-contained flats. I am satisfied the correction would not result in injustice to the appellant or the LPA.

Appeal on ground (d)

2. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too

late to take enforcement action in respect of the alleged breach of planning control.

3. Section 171B(2) of the 1990 Act sets out the relevant time period for taking enforcement action in the case of a breach involving a material change of use of any building to use as a single dwellinghouse is four years. Case law has established that the four year period applies to a material change of use by the sub-division of a residential building. Building is defined in section 336(1) of the 1990 Act as including any part of a building and flats are dwellinghouses for the purposes of the Act.

4. As a result, for the development to be immune from enforcement action, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the use of the land materially changed to a use as two self-contained flats on or before 21 February 2016 and the use continued for four years thereafter.

5. In assessing when the time period will begin to run in such circumstances, case law has established that it is necessary to look at the physical works - the date the premises were capable of providing viable facilities for living and when the use actually commenced, rather than the date the works were completed. It is a matter of fact and degree as to when the change of use occurs. Relevant considerations may include the former use of the building, the physical state of the building at the relevant date, the actual use of the building at that date, the intend use and the chronology.

6. The LPA's officer report indicates that assured shorthold tenancies dated 11 June 2012 and 5 May 2014 have been provided by the appellant, although these are not before me. In any event, these tenancies are said to be for the ground floor flat only. They do not therefore provide sufficient evidence to show that between June 2012 and May 2014 the first floor was occupied as a separate unit of residential accommodation and thus that a material change of use from a single dwellinghouse to two dwellinghouses had occurred.

7. The LPA indicates that at that time of a subsequent visit to the property on 5 August 2015 the ground floor flat was in place, but the first floor was still undergoing refurbishment and was not occupied at the time. The LPA's officer report notes there was no kitchen on the first floor at the time. Whilst I have not been provided with any detailed notes or photographs from the visit, no evidence to the contrary has been provided by the appellant.

8. Thereafter a planning application[1] was submitted to the LPA on 5 November 2015 seeking planning permission for the conversion of the existing dwelling to two, one-bedroom flats. Planning permission was refused on 8 November 2016. There is no clear, evidenced indication from either party that the development occurred before the LPA refused the application.

9. The LPA goes on to state that at a visit to the property on 18 May 2018 and again on the 22 May 2018 the internal layout was the same as that shown on the proposed plans in the 2016 application although there is no indication that the property was in use as two flats. Indeed, the Council indicates that the appellant confirmed at that visit that the entire property was being occupied by a single extended family. Whilst no notes or photographs of the visit have been provided, again I have no contradictory evidence from the appellant.

[1] LPA Ref: P1518.15

10. The appellant indicates that he has forwarded evidence to confirm the dates of when the first floor dwelling was previously occupied and confirmation from the architect that the property layout included the first floor kitchen, prior to his site survey conducted on the 15th October 2015. However, there is no such information before me. Beyond the appellant's written statement, I have been provided with excerpts of two emails. One of which from the architect has no content, the other from the builder simply sets out the dates the application was submitted and determined. Beyond the appellant's statement there is very little other evidence before me. I cannot therefore agree with the appellant that there is strong evidence that the property had been converted prior to the application being submitted.

11. The appellant states that if there are specific contract period or statements needed to support the appeal, they will be provided if the documentation required is clearly specified. However, the onus of proof in an appeal on ground (d) rests on the appellant. It is not for the LPA or indeed the Planning Inspectorate to suggest what evidence is required in support of an appeal.

12. Taking into account all the evidence before me, I consider that it has not been demonstrated, on the balance of probabilities, that the use of the land materially changed to a use as two self-contained flats on or before 21 February 2016 and continued for four years thereafter.

13. The appeal on ground (d) therefore fails.

The appeal on ground (a)

Main Issues

14. The main issues are:

- whether the development will provide acceptable living conditions for existing and future occupiers with regard to internal and external space;
- the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance;
- the effect of the development on highway safety; and,
- the effect of the development on the character and appearance of the area.

Existing and Future Occupiers

15. Policy 3.5 of the London Plan[2] sets out that LPA's should seek to ensure that new development reflects the minimum space standards set out in the Technical Housing Standards - Nationally Described Space Standard 2015 (NDSS) and Table 3.3 of the Policy.

16. The appellant indicates that the flats provide 35m² of floor space. Nevertheless, it appears from the plan provided and the floor space annotations that only the first floor flat provides 35m², the ground floor flat achieves 38.4m² excluding the communal hall. Whilst Table 3.3 indicates that staircases should be counted within the figure, the staircase in this instance lies outside of the entrance to the ground floor flat itself and is annotated as a

[2] The London Plan: The Spatial Development Strategy for London, consolidated with alterations since 2011 (2016)

communal hall. The NDSS also makes clear that gross internal area (GIA) figure is taken from the external walls and party walls within flats. I therefore consider it reasonable to omit the communal hallways figure from the GIA of the ground floor flat, in contrast to the hallway calculation for the first floor flat which lies within the entrance to the flat and provides circulation between the rooms therein.

17. I note that the layout of the flats has been configured to maximise the use of floor space by creating individual room sizes which comply with the required standards. However, the NDSS and Table 3.3 of Policy 3.5 require a minimum floor space of 39m² for 1 bedroom, 1 person single storey dwellings with bathrooms. I saw from my site visit that both flats had bathrooms rather than shower rooms. On that basis, the first floor flat falls 4m² short of the required minimum standard. At more than 10%, I consider that the shortfall is material and cannot be considered to be minor or inconsequential.

18. Whilst the shortfall of 0.6m² in respect of the ground floor flat could be considered to be minor, the cumulative shortfall across both flats results in constricting the amount of floor area available for movement around the internal space. I saw from my site visit that is has resulted in an internal living space which feels unacceptably cramped. In this regard I do not consider the flats to be functional or fit for purpose.

19. Moreover, whilst there is a reasonably size rear garden at the property, I saw from my visit that only the ground floor flat has access to it. No outdoor space is provided for the first floor flat. As a result, occupiers of the first floor flat will be unduly affected by their inability to have access to any private outdoor space for exercise or relaxation.

20. I conclude, therefore, that the development will fail to provide acceptable living conditions for existing and future occupiers of the flats with regard to internal and external space. Consequently, the development is in conflict with Policies DC4 and DC61 of the Havering Core Strategy and Development Control Policies Development Plan Document (2008) (the CS) which state that the subdivision of existing dwellings will only be granted where it provides a suitable degree of amenity space and meet the needs of people of all ages. There will also be conflict with Policy 3.5 of the London Plan. The development would also fail to adhere to the guidance set out in the Havering Design for Living Residential Design Supplementary Planning Document 2010 which states that all new dwellings should have access to high quality and usable amenity space that is not overlooked from the public realm.

Neighbouring Occupiers

21. The Council's principal concern derives from the relationship between rooms in the flats and those of the adjoining property. CS Policy DC4 states that planning permission will only be granted for the subdivision of existing dwellings provided the living rooms of the new units do not abut the bedrooms of adjoining dwellings.

22. In this instance the parties indicate that the living rooms of both flats will abut bedrooms in the adjacent property which is 13 Knighton Road. Whilst I note the appellant's point that no objections have been received from the neighbouring occupiers, the development nevertheless results in an increased risk for the harmful transmission of noise from the living rooms of the flats to

the bedrooms adjacent. There is a risk that such noise could occur at times when adjoining occupiers would have reasonable expectations for quiet in order to sleep. In the absence of any measures put forward by the appellant to reduce any potential noise transmission, I cannot come to the view that the impact on the adjacent occupiers would be acceptable.

23. I conclude, therefore, that the development will likely have a harmful effect on the living conditions of neighbouring occupiers, with regard to noise and disturbance. Thus, the development will conflict with CS Policy DC4 as well as CS Policy DC61 which states that planning permission will not be granted where the proposal has unreasonable adverse effects on the environment by reason of noise impact.

Highway Safety

24. The development does not provide any off-street parking spaces. I saw from my site visit that formal on-street permit parking spaces are provided on either side of Knighton Road. The proposal would increase demand for on-street parking by the introduction of an additional dwelling to the street. I nevertheless saw from my site visit that there were spaces available in close proximity to the appeal property. Whilst my observations were only a snapshot of a particular time of day, I have no evidence that they were anything other than representative of typical highway conditions.

25. Moreover, I have no evidence from the LPA that there are particular issues with congestion or accidents resulting from on-street parking on Knighton Road. Indeed, I saw from my site visits that traffic volumes and speeds are generally low in comparison to main routes such as London Road. Furthermore, whilst the site has a comparably low PTAL rating of 2, it nevertheless lies within a very short walking distance of bus routes, with Romford station less than 1 mile away. On that basis, I am satisfied that the additional on-street parking demand arising from the development will not result in unacceptable overspill on adjoining roads.

26. I conclude, therefore, that the development will not have a harmful effect on highway safety. As such, it will comply with CS Policy DC4 insofar as it states that the subdivision of existing dwellings will be acceptable where residents are able to park without detriment to highway safety, as well as Policy DC33 of the CS which states that car parking provision should not exceed the maximum standards set out in Annex 5.

Character and Appearance

27. The LPA's reasons for issuing the notice indicate that an inadequate provision of amenity space results in a cramped development of the site which is detrimental to the character of the area. However, whilst the lack of outdoor space provision for the first floor flat has a detrimental impact on the living conditions of its occupiers, the development has not result in any significant physical increase in the footprint of the property. External alterations are minimal and there is little discernible physical difference between the use of the property as a single dwellinghouse and its use as two flats. The provision of two residential properties is in keeping with the predominately residential character of the area.

28. I conclude, therefore, that the development will not have a harmful effect on the character and appearance of the area, in accordance with Policy DC4 and DC61 of the CS insofar as they state such developments will be allowed where there is no conflict with surrounding uses and where they maintain the character and appearance of the local area.

Alternative Scheme

29. The appellant has suggested an alternative development which he believes will overcome the planning harm. It is said that the appellant would revise the current layout of the flats, erect a first-floor extension and revise the garden access.

30. In the absence of any details of the proposed alternative, I cannot come to the conclusion that such matters would overcome the planning harm.

31. In addition, section 177(1)(a) only affords the power to grant planning permission for those matters alleged in the enforcement notice, either in whole or in part. Again, in the absence of any details of the proposed details, I cannot conclude that the alternative would form part of the matters as enforced against. As a result, I cannot under the appeal on ground (a) and the deemed application, grant planning permission for the alternative scheme put forward by the appellant.

Conclusion

32. Whilst I have found there would be no harm to highway safety or the character and appearance of the area, I have found the development will result in harm to the living conditions of existing and future occupiers of the flats, as well as neighbouring occupiers. They are the prevailing considerations in this instance.

33. Therefore, for the reasons given above, I conclude that the appeal on ground (a) should be dismissed.

The appeal on ground (f)

34. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.

35. Section 173(4) is clear that a notice can remedy the breach of planning control by either: making the development comply with the terms of any planning permission; by discontinuing the use of the land; or, by restoring the land to its condition before the breach took place.

36. The requirements of the notice are to cease the use of the property as two self-contained residential flats and return it to a C3 use, as well as remove all but one of the kitchens, bathrooms, electricity meters, fuse boxes and all locking mechanisms on the doors. I am therefore satisfied that the purpose of the notice falls within section 173(4)(a) of the 1990 Act on the basis that it seeks to restore the land to its condition before the breach took place.

37. The appellant's main argument on the appeal on ground (f) is that he could undertake an alteration to the current layout of the flats, erect a first-floor extension and revise the garden access. However, such matters would not

remedy the breach of planning control. Moreover, whilst it is incumbent on me to consider alternatives to complete cessation which would overcome the planning harm at less cost or disruption to the appellant, as set out in the appeal on ground (a), the absence of details regarding the alternative means I cannot conclude that it would suitably overcome the planning harm. As such, I am unable to vary the requirements accordingly.

38. Nonetheless, the notice requires the recipient to return the property to a C3 use. A requirement simply to cease the use is sufficient to remedy the breach. A positive requirement to restore the use to a single dwellinghouse is excessive. On that basis I shall vary the notice to delete the words "and return it to a class C3 use". I am satisfied no injustice to the LPA or appellant would arise.

39. The appeal on ground (f) therefore succeeds to a very limited extent.

The appeal on ground (g)

40. An appeal on ground (g) is made on the basis that the time period for compliance with the requirements of the notice is excessive.

41. The notice provides a compliance period of three months. The appellant indicates a time period of nine months would be needed to serve notice on the current occupiers and make the property vacant on the basis of the current restrictions in respect of the Covid-19 pandemic. An additional three months would then be needed to undertake the works.

42. I agree it would be unreasonable for the works to be carried out whilst the existing tenants are in residence and three months would be a reasonable timeframe for the works to be carried out.

43. However, I have no tenancy agreements or other evidence before me which shows the requisite notice period to be given. The appellant indicates that tenancy agreements can be provided if requested, however, the onus is on the appellant to provide the evidence to support his case. In the absence of any tenancy agreements I cannot be certain what period of notice the existing tenants have to vacate the premises.

44. Nevertheless, I agree that three months seems an unduly short period time to allow residents to vacate the property and find alternative housing elsewhere in the present circumstances of the Covid-19 pandemic. Whilst reopening of some businesses and the housing market has occurred, circumstances in respect of restrictions, both on a national and regional scale, continue to be fluid, with restrictions being tightened and eased on a continuous basis as a response to the pandemic.

45. Taking into account the timeframes necessary for occupiers to vacate the property and for the works to be done, I find a nine month compliance period would appropriately balance the need for expediency in overcoming the planning harm whilst ensuring existing occupiers would not be unduly affected. Such a time period would also provide an opportunity for the appellant to discuss with the LPA in more detail the alternatives he has suggested in this appeal.

46. The appeal on ground (g) therefore succeeds to an extent.

Human Rights

47. The loss of a person's home would be an infringement of their rights under the Human Rights Act 1998 (HRA). The cessation of the use of the property as two flats would amount to interference and would engage the right for respect for private and family life, home and correspondence set out in Article 8 of the HRA. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.

48. I acknowledge that the consequence of dismissing the appeal would be that any person presently residing in the flats would be required to vacate the accommodation. However, the notice, as varied, provides a nine month compliance period which would allow residents time to find an alternative home. Moreover, there is no indication that those persons would necessarily be made homeless beyond that date.

49. As a result, the planning harm I have identified is of such weight that upholding the notice as varied would be a proportionate and necessary response that would not violate those persons rights under Article 8 of the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Formal Decision

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

- the insertion of the words "land from a" between the words "the" and "dwelling" in section 2 of the notice;
- the deletion of the word "into" and the insertion of the word "to" between the words "dwelling" and "two" in the section 2 of the notice;

51. And varied by:

- the deletion of the words "and return it to a class C3 use" from section 5(i) of the notice; and,
- the deletion of "3 months" and the insertion of "9 months" as the period for compliance in section 6 of the notice.

52. Subject to the corrections and variations, the enforcement 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.

J Whitfield

INSPECTOR