The Planning Inspectorate

Appeal Decisions

Site visit made on 26 July 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2022

Appeal A Ref: APP/B5480/C/22/3291362
88 White Hart Lane, Romford, RM7 8JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Naomi Thomas against an enforcement notice issued by London Borough of Havering.
- The notice, numbered ENF/196/18, was issued on 22 December 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of a dwelling into two self-contained dwellings.
- The requirements of the notice are to:
  1. Cease the use of the property as 2 Self-Contained dwellings; and
  2. Permanently remove all cooking facilities including kitchen equipment and all bathrooms, washing facilities and toilets and remove all electricity metres/fuse boxes from the premises so that only one remains for the main dwellinghouse; and
  3. Remove all rubble and debris accumulated when taking steps 1 and 2 above.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/B5480/W/20/3256593
88 White Hart Lane, Romford, RM7 8JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Naomi Thomas against the decision of London Borough of Havering.
- The application Ref P0132.20, dated 28 January 2020, was refused by notice dated 28 May 2020.
- The development proposed is house conversion from single dwelling into 2 flats.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected and varied by:

   - Deleting 'self-contained dwellings' from paragraph 3 and substituting with 'flats'.

   - Deleting '2 self-contained dwellings' from paragraph 5.1 and substituting with 'flats'.

   - Deleting paragraph 5.2 and substituting with 'Permanently remove the kitchen and all cooking facilities from the first floor and retain only one electricity meter;'

   - Adding the words 'and fixtures and fittings' after the word 'debris' in paragraph 5.3.

- Deleting 'Four' and substituting with of 'Six' as the time for compliance in paragraph 6.

2. Subject to the corrections and variations, the enforcement notice is upheld.

Appeal B

3. The appeal is allowed and planning permission is granted for house conversion from single dwelling into 2 flats at 88 White Hart Lane, Romford, RM7 8JJ, in accordance with the terms of the application, Ref P0132.20, dated 28 January 2020, subject to the condition set out in the Schedule attached to this decision.

Appeal A

The Enforcement Notice and the Appeal on Ground (f)

4. An enforcement notice must be drafted fairly to tell a recipient what he has done wrong and what he must do to remedy it[1]. A notice may be a nullity if it is 'hopelessly ambiguous and uncertain'[2].

5. In this case the breach of planning control is the material change of use of a dwelling into two self-contained dwellings. That clearly tells the appellant what she has done wrong but would be more precise if corrected to refer to flats, rather than dwellings. Nevertheless, the enforcement notice is not rendered a nullity on the basis of the allegation.

6. An appeal on ground (f) is that the requirements of the enforcement notice are excessive. The first requirement is to cease the use of the property as 2 self-contained dwellings. Although not hopelessly ambiguous, the risk of requiring use as two dwellings to cease is that the property will be used for more than two dwellings/flats. The requirement should therefore be varied so that it requires the use of the property for flats to cease. It is correct that the enforcement notice does not require the appellant to revert to the lawful use as a single dwelling because a notice cannot require that a lawful use is actively carried out.

7. The first part of the second requirement to '*Permanently remove all cooking facilities including kitchen equipment and all bathrooms, washing facilities and toilets*…' is not ambiguous, but is clearly excessive given the lawful use of the property as a single family dwelling. I will therefore vary the notice to require the removal of the first floor kitchen. It is also unnecessary and excessive to require removal of either the bathroom or shower room, as both facilities are commonly found in a single dwellinghouse.

8. The second part of the second requirement is '*and remove all electricity metres/fuse* [sic] *boxes from the premises so that only one remains for the main dwellinghouse'*. That is ambiguous, but not hopelessly so, as it explicitly allows for the retention of one electricity meter/fuse box, which makes sense in the context of the notice overall. Nevertheless, for reasons of clarity, I shall also vary that part of the requirement to require retention of only one electricity meter. There is no reason to retain reference to fuse boxes.

[1] S173 of the 1990 Act
[2] *Miller-Mead v MHL* [1963] 2 WLR 225

9. The final requirement is to remove all rubble and debris accumulated from complying with the first two requirements. For consistency purposes, that should be varied to include the removal of all fixtures and fittings associated with the removal of the first floor kitchen.

10. I've noted the appellant's case law references but, for the reasons explained I do not find the notice, or any part of it, to be hopelessly ambiguous or uncertain so as to amount to nullity. Nor do I find the notice to be punitive as suggested. I am able to make the above corrections and variations to the notice under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

11. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. In this case, having regard to the allegation and the requirements, it is evident that its purpose is to remedy the breach.

12. Part of the appellant's case argues an 'obvious alternative' or 'fallback position' that overcome any planning objections at less cost and disruption, which could be secured by way of condition(s). However, such arguments primarily relate to the merits of the alleged development and not the requirements of the notice.

13. Since the appellant has chosen not to pursue an appeal against the enforcement notice on ground (a), for consideration of the deemed planning application, I cannot consider the merits of the alleged use under ground (f). Indeed, given the absence of a ground (a) appeal and the purpose of the notice, any lesser step that would not remedy the breach cannot be accepted through a ground (f) appeal.

14. Varying the notice as suggested to require the first-floor layout to be amended from a two bedroom flat to a one bedroom flat would not remedy the breach of planning control. The same applies to the 'fallback layout', even if it were demonstrated that the first floor flat is of sufficient size to be able to provide additional living space equivalent to the area of the private open space requirement.

15. Nevertheless, the appeal on ground (f) succeeds to the extent explained.

The Appeal on Ground (g)

16. The ground (g) appeal is that the four months given to comply with the notice is too short. The appellant requests a period of 12 months to allow time to explore, negotiate and make further planning applications to the Council. In support of her case, the appellant also refers to an appeal decision[3] where an Inspector allowed 12 months to comply and argues that similar scenarios and circumstances are in play in this case.

17. However, difficulties arising from the COVID-19 pandemic are no longer germane. A period of 12 months is therefore excessive and unjustified. Nevertheless, notwithstanding my decision on Appeal B, a period of six months would allow reasonable opportunity for any revised applications to be discussed and submitted to the Council.

[3] Appeal Ref: APP/N5090/C/21/3279969

18. I note the Council's argument that the appellant could have used the time since the enforcement notice was issued to prepare for compliance. However, the appellant is entitled to assume success on any ground in an appeal under s174 of the 1990 Act. Consequently, any suggestion that the period for compliance should not be extended because of time afforded during the appeal proceedings must be rejected.

19. I shall therefore vary the enforcement notice accordingly prior to upholding it. The appeal on ground (g) succeeds to that extent.

Appeal B

Preliminary Matters

20. The Council has confirmed that since making its decision, the Core Strategy and Development Control Policies Development Plan Document (adopted 2008) has been replaced by the Havering Local Plan (2016-2031) (HLP). As my decision must be made on the basis of the development plan in place at the time of my decision, the appellant has been offered opportunity to comment on that material change in circumstances.

Main Issues

21. The main issues are:

- whether the proposed development provides acceptable living conditions for occupants, with particular regard to the provision of internal and external living space; and
- the effect of the development on parking and highway safety.

Reasons

Living conditions

22. The appeal relates to an extended, two storey, semi-detached dwelling, which has been converted into two, two-bedroom flats.

23. London Plan (LP) Policy D6 requires housing development to meet minimum internal space standards. Similarly, HLP Policy 7 states that the Council will support residential development that meet the National Space Standards. Both the ground floor and first floor flat would meet the minimum gross internal floor areas of 61m^2 for a two bedroom, three persons dwelling (at 69.2m^2 and 63.2m^{2}respectively).

24. However, London Plan Policy D6 states that a two bedspace double (or twin) must have a floor area of at least 11.5m^2. The Council say that would not be achieved in the ground floor unit. The appellant acknowledges a marginal shortfall with the second bedroom but a precise figure is not provided. Nevertheless, that failure is not obviated by providing compliant ceiling heights.

25. The Council accept that the first floor flat broadly complies with the standards and provides an acceptable standard of accommodation. The Council also accept that each unit has reasonable outlook and aspect. I find no reason to disagree on either finding.

26. Although the Council's case references its Residential Design SPD in respect of suitable outdoor private or communal amenity space, it has subsequently been

confirmed that the SPD is no longer adopted. Nevertheless, LP Policy D6 states that a minimum of 5m^2 of private outdoor space should be provided for 1-2 person dwellings and an extra 1m^2 should be provided for each additional occupant.

27. The ground floor flat has direct access to the rear garden which is clearly well in excess of those standards. However, the first floor flat has no such access and has no associated private or communal external space, thereby failing to meet the minimum standards set out in LP Policy D6. That failing takes on greater significance given that the accommodation provides two bedrooms so could be potentially used as family accommodation.

28. The appellant refers to open space provision at Lawn Park but given the separation and convoluted route to it, occupants are very unlikely to utilise the same as an alternative provision. In any case parks and school playing fields do not provide private amenity space to meet reasonable occupier expectations such as sitting/dining out and drying clothes.

29. The appellant suggests that future occupants when deciding to reside at the property will be aware of the internal and external space provision and that an informed choice can be made. However, paragraph 130 of the National Planning Policy Framework (NPPF) states that planning decisions should ensure developments should create places with a high standard of amenity for existing and future users. Accordingly, I give very limited weight to that line of argument.

30. I find that the absence of any private outdoor space available to the occupants of the first floor flat and the space deficiency of the ground floor bedroom results in a substandard form of development which does not meet the reasonable residential needs of existing and future occupants, contrary to LP Policy D6 and HLP Policy 7. Those policies seek, amongst other matters, to ensure a high quality living environment for residents of new development.

Highway safety

31. HLP Policy 24 states that London Plan maximum parking standards apply across the Borough. LP Policy T6.1A states that new residential development should not exceed the maximum parking standards (set out in Table 10.3 of the Plan)[4].

32. The site has a Public Transport Accessibility Level[5] (PTAL) of 2 and it is not confirmed to fall within an Outer London Opportunity Area. Policy T6.1 therefore requires a maximum parking provision of up to 0.75 spaces per dwelling.

33. Although the site frontage can physically accommodate two cars, its configuration is such that two households cannot utilise the space independently. One car would inevitably block another from exiting the property and/or entering, if a car was already parked close to the access.

34. The appellant has offered to provide a parking management plan for future occupants, which is capable of being required by condition. However, it is not

[4] Policy T6 states that the maximum parking standards set out in Policy T6.1 should be applied to development proposals

[5] PTALS are a measure of the accessibility of a point to the public transport network. Each area is graded between 0 and 6b, where a score of 0 is very poor access to public transport, and 6b is excellent access to public transport

explained how that could reasonably resolve the existing constraints which would necessitate an unrealistic cooperation between occupants of differing households to be available at all times to move cars around. Moreover, such manoeuvring would likely compromise highway safety.

35. Effective car parking provision is therefore one space for two, two-bedroom flats. Nevertheless, that is compliant with Policy T6.1A and LP Policy 24 insofar as the provision does not exceed the maximum applicable parking standard of 1.5 spaces. Although LP Policy 24 sets out a minimum parking standard of 1 space per unit, that applies to areas with a PTAL rating of 0-1, which is not applicable to the appeal property.

36. Nevertheless, with a PTAL rating of 2, there is an expectation that car demand may be higher than in more accessible locations. Moreover, the maximum parking provision is higher than that of its pre-existing use as a single dwelling. I also note the Council's concerns regarding precedent and that the use of the property for two flats will result in potential overspill into surrounding roads. However, against that maximum standard, the degree of shortfall is 0.5 of a space, which should be balanced against local considerations. In that respect, there are bus stops on White Hart Lane, in both directions, in very close proximity to the property, thereby providing an alternative sustainable travel option. White Hart Lane also benefits from relatively wide footways and a flat terrain. The Council has also suggested a cycle storage condition, which would facilitate another alternative sustainable transport option.

37. I have not been provided with a parking survey to show whether there is on-street capacity to accommodate any excess or overspill parking safely. The Council's observations are of visible parking stress with limited spaces available. At the time of my site visit, the delineated parking space directly outside the property was vacant. There were also dedicated footway parking spaces free on the opposite side of the street. Although I appreciate that represents a limited snapshot of local circumstances, the evidence does not suggest that the limited shortfall against a maximum standard exacerbates parking stress and associated annoyance and inconvenience for existing residents, to the detriment of their living conditions.

38. Street parking along this section of White Hart Lane is in the form of designated spaces fully on the footway. Although manoeuvring into those spaces will be via the highway, any limited additional parking demand will not have the same effect on the free flow of traffic compared to parking on the carriageway.

39. Whilst there is insufficient space to turn around within the site and visibility is compromised by the adjacent boundaries, presumably that arrangement is no different to that which previously served a single dwelling. Moreover, I have not been provided with evidence, such as personal injury collision data, which suggests that the existing highway arrangement in the vicinity of the site has caused a particular safety problem.

40. In the absence of clear evidence of a local parking issue I do not consider that the development results in a material shortage of on-street parking provision in this location. Nor has it been demonstrated that even if there was a material deficiency it would be bound to have a harmful effect on highway safety.

41. In the circumstances explained, the development does not necessitate a maximum parking provision of 1.5 spaces, or one space per dwelling, and does not result in unacceptable harm to highway safety so as to conflict with LP Policy 24 or London Plan Policy T6.1A.

Other Matters and Planning Balance

42. The Council confirm that it cannot currently demonstrate a five year supply of deliverable housing sites. In such circumstances, paragraph 11d)ii of the NPPF states that for decision making, the presumption in favour of sustainable development means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

43. I have found that the main harms are restricted to a lack of amenity space for the first floor unit and a likely undersized bedroom in the ground floor unit, along with the associated development plan conflicts.

44. The Council has also drawn my attention to new HLP Policy 9 which states that proposals for the subdivision of existing residential properties to self contained homes will be supported where it can be demonstrated that specified criteria are met, including that the subdivision would provide a minimum of one family unit of three or more bedrooms.

45. In providing two, two bedroom units, the development does not meet that criteria and therefore does not garner support from HLP Policy 9. Nevertheless, the development does contribute to the Borough's mix of dwelling type and size.

46. The development makes more efficient use of the land insofar as it provides two homes rather than one, although that benefit is limited due to the identified deficiencies in the accommodation.

47. I do not consider that there would be a significant difference in the level of support to local services arising from two, two bedroom flats compared to one family home. Although there would have been some economic benefit arising from the conversion works, in overall terms that would have been limited.

48. I have not found parking or highway safety harm so as to conflict with HLP Policy 24 or LP Policy T6, but the absence of such harm is a neutral matter in the planning balance.

49. Bringing the above together, I conclude that the adverse impacts of granting planning permission do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Therefore, despite the identified development plan conflict, material considerations indicate that planning permission should be granted.

Conditions

50. The appellant has confirmed that she has no objections to the conditions suggested by the Council. However, the time-limit and construction management conditions are not necessary as the appeal is retrospective in nature. As the facilitating works are largely internal, a materials condition is also unnecessary. Furthermore, the Council has not explained why conditions relating to water efficiency and low emission boilers are necessary and

reasonable in this particular case for a retrospective appeal. The Council has also suggested a condition which removes permitted development rights for new windows in the flank elevation of the property. However, no clear justification has been advanced to show that would pass the test of reasonableness or necessity.

51. The Council has suggested a condition that the development shall be carried out in accordance with the approved plans. In that regard, the proposed ground floor plan shows dedicated front doors for each unit. However, the access to the first floor flat is presently achieved through the ground floor flat. There is no partition which would stop occupants of the first floor flat wandering into the main part of the ground floor unit. From a privacy and safety perspective that is unacceptable. A condition is therefore necessary requiring the main internal access area to be split, as shown on the floor plans.

52. In the interests of providing additional sustainable transport options to occupants, a condition is necessary to ensure provision of suitable cycle storage. A condition is also necessary to ensure appropriate refuse and recycling facilities are provided.

53. The attached overarching condition includes a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the measures required before the development takes place.

54. The condition will also ensure that the development can be enforced against if the entrance works are not completed and if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion

55. For the reasons given above, having regard to the development plan as a whole, the approach of the NPPF, and all other relevant material considerations, I conclude that the appeal should be allowed, subject to the condition set out in the schedule below.

56. With reference to my decision on Appeal A, S180(1) of the 1990 Act provides that where planning permission is granted after the service of an enforcement notice for any development already carried out, the enforcement notice shall cease to have effect insofar as it is inconsistent with the planning permission.

Richard S Jones

INSPECTOR

Schedule of Conditions

1. The use hereby permitted shall cease within six months of the date of failure to meet any one of the requirements set out in (a) to (h) below:

   (a) Within three months of the date of this decision the main entrance to Flats 1 and 2 shall be completed in accordance with the proposed ground floor plan shown on drawing number 0120 P01.

   (b) Within three months of the date of this decision a scheme for the provision of refuse and recycling shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

   (c) Within three months of the date of this decision a scheme for the provision of cycle storage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

   (d) If within seven months of the date of this decision the local planning authority refuse to approve the refuse and recycling scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.

   (e) If within seven months of the date of this decision the local planning authority refuse to approve the cycle storage scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.

   (f) If an appeal is made in pursuance of (d) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

   (g) If an appeal is made in pursuance of (e) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

   (h) The approved schemes shall have been carried out and completed in accordance with the approved timetables.

   (i) Upon implementation of the approved schemes specified in this condition, those schemes shall thereafter be retained.

   In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/B5480/C/22/3291362	Mrs Naomi Thomas
Appeal B	APP/B5480/W/20/3256593	Ms Naomi Thomas