The Planning Inspectorate

Appeal Decision

Site visit made on 20 March 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 MARCH 2023

Appeal Ref: APP/B5480/C/21/3283782
Land known as 42 Aldwych Close, Hornchurch, RM12 4JX shown edged in black on the attached plan and is registered under land registry title number EGL232028

- 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 Tony Derek Rider against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 2 September 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a dwellinghouse to a mixed use self-contained studio flat and a house in multiple occupation.
- The requirements of the notice are 1. Cease the use of the property as a self-contained studio flat and as a house in multiple occupation; 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. All materials and debris associated with steps 1, 2 & 3 above, shall be totally removed from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be varied by removing all of the words in paragraph 6 and replacing them with *'six months after the date when this Notice takes effect'*. 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.

Reasons

Appeal under ground (d)

2. The appeal made on ground (d) are that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

3. The appellant makes the claim that the self-contained studio flat '*was developed over four years ago and has been in continuous use for a period in*

excess of four years'. He claims that immunity from enforcement action for this part of the building has been established and, furthermore, that the *'10-year rule does not apply for the self-contained flat'.*

4. There is no dispute between the parties that the appeal building was originally a dwellinghouse. The evidence is that the appellant applied for a license to use the property as a house in multiple occupation on 25 February 2019. At this point, the applicant indicated at question 7.3 of the application form that there were no self-contained flats in the building. This casts sufficient doubt about the appellant's claim that the building has been used as a self-contained flat for more than four years before the date of the issued enforcement notice (i.e., issued on 2 September 2021). Furthermore, and, in any event, the appellant has provided no objective evidence to show continuous use of the building as a self-contained flat for more than four years.

5. Notwithstanding the above, the allegation in the notice relates to the material change of use of a dwellinghouse to a mixed use self-contained studio flat and a house in multiple occupation (HMO). The appellant appears to assert, as a 'hidden' ground (c) appeal, that planning permission is not needed for an HMO. However, that is not correct as the evidence is that the Council introduced, on 13 July 2016, an article 4 Direction in the area removing the right to convert a family dwellinghouse (C3) into a small (C4) HMO. In addition, the evidence is that a material change of use of the property has occurred from that of a family dwellinghouse to a mixed self-contained flat and HMO use and that is a sui-generis use. The appellant has not lodged an appeal under ground (b), but nevertheless, and as a matter of fact and degree, I find that an unauthorised mixed use planning unit has been created with some communal areas (e.g., hall, entrance, driveway etc) being physically available/shared by users of the building.

6. I conclude, on the balance of probabilities, that at the date when the notice was issued, enforcement action could be taken in respect of the breach of planning control. Even if I were to agree with the appellant that the correct immunity period was four years and not ten years, he has not provided evidence that is sufficiently affirmative and unambiguous to demonstrate continuous use for either time period. Therefore, the ground (d) appeal fails.

Ground (a) appeal and the deemed planning application

7. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.

Procedural Matters

8. Following the date of the issue of the enforcement notice, the Havering Local Plan 2016-2031 (HLP) was adopted in November 2021. I have been provided with copies of relevant policies in respect of the HLP. The Council has confirmed that the HLP supersedes the Core Strategy and Development Control Policies Development Plan Document 2008 (CS&DCP DPD). In this regard, any CS&DCP DPD policies outlined in the enforcement notice are no longer relevant for the purposes of determining this ground (a) appeal.

9. When the appeal was lodged, the appellant claimed that paragraph 11d of the National Planning Policy Framework 2021 (the Framework) was engaged based on local planning authority (LPA) failing to meet the Housing Delivery Test.

Clarity was sought from the LPA about this matter and on 13 December 2022 and it was confirmed that the HDT had not been met and hence paragraph 11d of the Framework was engaged.

Main issues

10. I have considered the reasons for issuing the notice and, in this context, the main issues are i) the effect of the loss of a family dwellinghouse, ii) the effect of the development on the occupiers of neighbouring dwellinghouses in respect of noise and disturbance, iii) whether the development is acceptable in respect of the size of internal living accommodation, and iv) the effect of the development on on-street car parking demand and the associated living conditions of nearby residents.

Loss of family dwellinghouse

11. Policy of the LP recognises that HMOs can make a valuable contribution to the private rented sector by catering for the housing needs of specific groups. However, Policy 8 of the LP indicates that this needs to be balanced with the potential harm that can arise from such development if they are not subject to control. Policy 8 of the LP indicates that the Council will support applications for HMOs where *'the overall size of the original property to be converted is not less than 120 sq m'.*

12. Paragraph 7.6.3 of Policy 8 states that the Council's policies seek to deliver appropriate residential conversions whilst maintaining a supply of family housing and that this is in line with the strategic housing need of the borough. It specifically states that *'the Outer North East London SHMA identified a need for three-bedroom properties in the borough, meaning the conversion of small family homes to HMOs would have a particularly negative impact on the supply of family housing'* and *'that in order to protect family housing, properties must be at least 120 sqm in order for a conversion to an HMO to be considered acceptable'.*

13. The allegation relates to a mixed use. Nonetheless, part of that mixed use includes an HMO. As part of the appeal, I afforded the main parties the opportunity to confirm the size of the original property. The appellant has relied on evidence from Rightmove floor plans for 40 Aldwych Close rather than a measured survey of the appeal site itself. He says that this is an identical property to the appeal property and the floor plans state '*total area: approx. 122.4 sq. metres (1317.8 sq. feet)'.*

14. The Council does not provide any evidence of its own relating to the original size of the appeal property despite a decision that it was expedient to take enforcement action. Furthermore, it does not dispute the appellants above calculation. In the absence of any objective evidence to the contrary, I have no reason to disagree with the appellant's claim that the original property at 42 Aldwych Close was not less than 120 square metres and hence it was not a small family dwellinghouse. On the evidence that is before me, I therefore find that that the development has not resulted in the loss of a small family home, and, in this regard, there is therefore no conflict with policy 8 of the LP.

15. To the extent that the proposal amounts to a mixed use and involves the 'conversion' of a dwellinghouse to a mixed HMO/self-contained flat use, I find conflict with policy 9 of the LP which states that proposals for conversion to

residential use and subdivision of existing residential properties to self-contained homes will be supported if *'the existing house being subdivided has no less than 120 sq m of original floorspace and the subdivision would provide a minimum of one family unit of 3 or more bedrooms'.* In this case, I conclude that while the evidence is that the house that has been subdivided did not have less than 120 sq m of original floorspace, neither the self-contained flat, nor any other residential accommodation, provides a family unit of 3 or more bedrooms. In this regard, I conclude that there is conflict with policy 9 of the LP.

Size of internal living accommodation

16. The self-contained studio flat is very small. The evidence indicates that it was previously an integral garage and that its conversion to a self-contained flat has also included an extension into the communal kitchen area associated with the use of the property as an HMO. Overall, I find that the studio flat is cramped and is an oppressive environment for its occupiers. The appellant says that it measures about 20 square metres, and this has not been disputed by the Council. Given its small size, there is material conflict with the space standards as laid out in table 3.1 of the London Plan 2021.

17. The evidence is that the loss of some kitchen space for the occupiers of the HMO element of the mixed use, arising from the formation of a self-contained flat, has resulted in a reduced communal kitchen area for residents. I acknowledge that there is a license in place to use the property as an HMO for up to five persons. However, I am not certain if that license has considered the loss of such kitchen space. Nevertheless, the Council's adopted East London HMO Guidance 2009 (HMO Guidance) states that *'kitchens must be of an adequate size and shape to enable safe use of food preparation by the number of occupiers'* and based on 4-5 sharers the room size should be 7.5 square metres. The appellant has confirmed that the HMO kitchen measures between 9-10 square metres.

18. On my site visit, I asked the Council representative if he wanted to measure the kitchen space. This offer was declined as the representative indicated that he did not dispute the appellant's measurement of between 9-10 square metres. I have no reason to disagree with this common ground position and, therefore, I find that in terms of its shape and size the HMO kitchen accords with the HMO guidance.

19. The appellant claims that the studio flat *'is more appropriately described as a bed sit'.* However, this would assume that some shared facilities elsewhere in the property were being used by occupants. The appellant says that it is not a studio flat as there is no separate utility or service connections to an additional dwellinghouse.

20. It is noteworthy that the appellant has not lodged a ground (b) appeal. Even if such an appeal had been lodged, or these later comments amounted to a hidden ground (b) appeal, I find that the said studio flat includes all three basic amenities, namely a toilet, personal washing facilities and cooking facilities, and is by definition a self-contained flat for the purposes of the Housing Act 2004. The absence of a 'utility' does not in my judgment mean that a bedsit has been formed, although it is noteworthy that there was a washing machine in this room on my site visit.

21. The facilities in the flat are shown in the Council's photographs dated 15 November 2018 (and also noted on my site visit) and in my judgment cannot reasonably be described as *'basic facilities for food preparation and hygiene'* to justify qualification as a *'bedsit'* in respect of the definition in the HMO Guidance. It is not clear from the evidence whether any occupier of the studio flat also uses shared facilities associated with the HMO. Even if that were the case, I find, as a matter of fact and degree, that a self-contained studio flat has been formed within the building.

22. In reaching the above view, I have taken into account the judgment of *Welwyn Hatfield Borough Council v Secretary of State for Levelling Up, Housing and Communities & Anor [2022] EWHC 3175 (Admin) (12 December 2022)* referred to by the appellant. This judgment does not lead me to reach a different view in terms of the breach of planning control. Indeed, I find, as a matter of fact and degree, that the breach of planning control has occurred.

23. I conclude that the self-contained studio flat fails to accord with the space requirements of policy 3.1 of the LP and is harmful in living conditions terms failing to accord with paragraph 130(f) of the Framework.

Noise and disturbance

24. I acknowledge that a license has been granted to use the building as an HMO for up to five persons. As part of this process, I recognise that some amenity issues have been considered. However, the licensing control regime is not entirely the same as the planning control regime. Furthermore, the breach of planning control relates to a mixed use flat/HMO and, therefore, there is potential for more residents to occupy the property than if it were solely used as an HMO.

25. Notwithstanding the above, I must consider the potential to control the number of residents that occupy the HMO/flat elements of the mixed use by condition in the context that the notice requires the cessation of such a mixed use and hence in the knowledge that the building could again be used as a single dwellinghouse. In respect of the latter, there is potential for a similar number of occupants to occupy the building if used as a dwellinghouse. While it is likely that there would be a greater number and frequency of visitors to a mixed HMO/flat facility than to a single dwellinghouse, in this case, and subject to conditional control, I do not find that the level of noise and disturbance would be significantly adverse in relative terms for those either occupying the building, or in respect of neighbouring residents.

26. I therefore conclude that subject to controlling the number of residents that occupy the property, the development would not cause material harm to the living conditions of occupiers of the building itself or to neighbouring residents. To this extent, the development accords with the amenity requirements of policies 7 and 8 of the HLP.

On-street car parking

27. The appellant has confirmed that the Public Transport Accessibility Level (PTAL) for this location is zero. Policy 24 of HLP introduces minimum parking requirements in locations with a PTAL of zero where no improvements are planned. In this case, there is a driveway at the front of the appeal property that would facilitate the parking of one vehicle. Table 11 of the policy 24 of the

HLP requires 0.5 spaces per unit which have 1 bedroom. In this case, there are five bedrooms in respect of the breach of planning control. Consequently, there is a minimum requirement for 2.5 spaces on-site and this is not provided in respect of the ground (a) appeal development. In this regard, I find that there is conflict with policy 24 of the HLP. I acknowledge that there are also London Plan Car Parking Standards, but the parking standards for outer London Boroughs allow for additional parking in comparison to central London Boroughs in accordance with the PTAL.

28. While I have found that there is conflict with policy 24 of the HLP, it is still necessary for me to determine whether there would likely be a resultant greater likelihood of resident and visitor car parking on nearby residential streets and, if so, whether this would likely give rise to on-street car parking demand pressures to the detriment of the living conditions of the occupiers of existing residents.

29. The appellant contends that the people who would live in the property would not likely own a car as the residential accommodation is at the more affordable end of the spectrum. It is of course possible that this might be the case, but nevertheless I do not consider that this would always be an inevitable outcome. The car parking standards in policy 24 of the HLP do not seek to differentiate based on the type of residential accommodation or affordability. Furthermore, given the low PTAL for the area, it is more likely than not that residents would seek to own or have access to a vehicle to undertake social and economic trips.

30. Neither the Council nor the appellant has provided me with any car parking survey information relating to use of the surrounding streets (particularly Aldwych Close) for car parking purposes. However, and accepting that my site visit was only snapshot in time, it was clear to me that there was very limited spare capacity within Aldwych Close to park vehicles. I find that it is highly likely that visitors and residents would wish to park in this cul-de-sac given its convenient location to the appeal property and so that there was some surveillance of vehicles. In this case, the limited number of available on-street car parking spaces is made worse as a result of the small number of designated car parking bays, extensive areas of double yellow lines and a large number of frontage driveways.

31. In my judgment, the development has the potential to lead to material overspill car parking in Aldwych Close from both residents and visitors leading to significant on-street car parking pressure issues, including potentially parking on double yellow lines or the blocking of driveways, to the detriment of the living conditions of the occupiers of existing residents. I acknowledge that use of the appeal property as a dwellinghouse would also contribute to car parking pressure, but this would not likely be to the same level as the appeal development and is not therefore sufficient to alter or outweigh my conclusion on this main issue.

32. I conclude that the development is not acceptable in respect of car parking provision and that, in this regard, harm is caused to the living conditions of surrounding residents in respect on-street car parking pressure. I conclude that the breach of planning control does not therefore accord with the car parking and amenity requirements of policies 8 and 24 of the HLP and paragraph 130(f) of the Framework.

Other considerations

33. The Local Planning Authority has confirmed that the housing delivery test has not been met and therefore paragraph 11d of the Framework is engaged. In this context, the provision of additional residential accommodation contributes positively to housing delivery.

34. I note the appellant's view that the proposal would contribute positively to the provision of low-cost housing in the area and would seek to offer a better housing mix and choice for members of the community. This is also positive matter in decision making terms.

35. Given the relatively low number of occupants/residential units associated with the breach of planning control, I afford the above benefits only limited weight in the overall planning balance.

Planning balance and conclusion – ground (a)

36. While subject to conditional control the development is not harmful in respect of noise and disturbance, I have found that there is conflict with policy 9 of the HLP. Furthermore, the self-contained flat is cramped and oppressive and hence harm is caused to the living conditions of those that occupy it. In addition, when the mixed-use development is considered as a whole, I find that there is a deficiency in on-site car parking and associated harm has been/would be caused to the living conditions of the occupiers of existing residents in respect of on-street car parking demand and pressure.

37. There is identified conflict with HLP policies in terms of the aforementioned harms, although I afford the conflict with such policies only moderate weight in the planning balance given that paragraph 11d of the Framework is engaged as such policies are deemed out of date. However, I conclude that the adverse impacts of the development, including conflict with HLP policies, significantly and demonstrably outweighs the identified benefits when assessed against the policies in this Framework taken as a whole. Therefore, the ground (a) appeal fails.

Appeal under ground (f)

38. The appeal made under ground (f) 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 or to remedy any injury to amenity which has been caused by any such a breach.

39. The appellant's claim under ground (f) is that the self-contained flat is immune from enforcement action and hence the requirement to remove the kitchen and other services would be excessive to remedy the breach of planning control.

40. I have concluded as part of the ground (d) appeal that the self-contained flat is not immune from enforcement action. Furthermore, it is not excessive to require the removal of works that facilitated the unauthorised use. The steps required in the notice are necessary to remedy the breach of planning control and so that the building is then put back to its position as a single dwellinghouse.

41. For the above reasons, the ground (f) appeal fails.

Appeal under ground (g)

42. The appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.

43. The notice gives the appellant three months to remove all kitchen, cooking and electricity metres/fuse boxes over and above one of each in the building. The appellant claims that 12 months is needed as extensive building works would be required including replumbing and re-wiring, that there may be *'new tenants in occupation than at the time of this appeal submission and that any such tenant would need to find alternative accommodation following the loss of their home'.*

44. I have not been provided with up-to-date information relating to any tenancy agreements which make clear the notice period which tenants are to be given. Furthermore, this appeal was lodged in September 2021 and, given the uncertainty surrounding such an appeal, it would be reasonable to assume that the appellant would not have opted for new or long tenancy agreements from this time.

45. Notwithstanding the above, I was able to see on my site visit that the property was occupied. While 12 months would be an excessive time period, I consider that three months would be an unduly short period of time to allow residents to vacate the property and find alternative housing elsewhere. On this basis, coupled with a more reasonable period to secure a plumber, electrician and builder to carry out the required works, I find that a period of six months would strike the appropriate balance between ensuring the planning harm is rectified and a reasonable compliance period.

46. I acknowledge that the loss of a person's home would be an infringement of their rights under Article 8 of the Human Rights Act (HRA). However, the notice, as varied, provides a six-month compliance period which would allow residents time to find an alternative home. There is no indication that such residents would necessarily be made homeless beyond that date.

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

48. For the above reasons, I conclude that the ground (g) appeal succeeds in so far that I shall vary the notice so that the compliance period is six-months.

Conclusion

49. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the varied enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR