The Planning Inspectorate

Appeal Decision

Site visit made on 31 August 2023

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2023

Appeal Ref: APP/B5480/C/22/3297817
Land at 133 Turpin Avenue, Collier Row, Romford RM5 2LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Dawid Kwasniewicz against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice, numbered ENF/724/18, was issued on 4 April 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the conversion of residential dwelling to two self-contained dwellings.
- The requirements of the notice are to:
    1. Cease the use of the property as two self-contained dwellings; and
    2. Revert the property back to a single family dwelling (use class C3); and
    3. Permanently remove all cooking facilities including kitchen equipment and all bathrooms, washing facilities and toilets and remove all electricity meters/fuse boxes from the premises so that only one remains for the main dwellinghouse; and
    4. Remove all rubble and debris accumulated when taking Steps 1-3 above.
- 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) and (f) 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 in the terms set out below in the Formal Decision.

Preliminary Matters

Enforcement notice

1. The notice is directed at the use of the property as two self-contained dwellings. With reference to section 55 of the 1990 Act the development involved is a material change of use. This development was facilitated by the carrying out of works to convert a single dwelling into two. The appellant understood the meaning of the allegation was not confined solely to the physical works of conversion, as shown by the evidence presented in the ground (d) appeal. The description of the alleged breach may be corrected without injustice to either the local planning authority or the appellant.

2. The appellant advised that the postcode of the property is RM5 2LU, not RM5 2JU stated in the enforcement notice. The local planning authority has not disputed this and so the address of the Land in the notice will be corrected.

Grounds of appeal

3. The appeal was initially made on grounds (a) and (f). Having regard to the officer report seeking authorisation for enforcement action (the enforcement

report) the appellant added an appeal on ground (d). The procedure was changed from written representations to an inquiry. In August 2022 an addendum statement and related documents were received from the appellant and additional documents were submitted by the local planning authority. In May 2023 the appellant requested that the procedure revert to written representations to take account of the availability of witnesses. In view of the change in circumstances as described by the appellant and the lack of objection by the local planning authority to the proposed change, the appeal is being determined through the written procedure.

Reasons

Appeal on ground (d)

4. 133 Turpin Avenue is a mid-terrace three storey residential property. To succeed on this ground of appeal the appellant must show on the balance of probability that the material change of use of the property into two self-contained flats took place on or before 4 April 2018 and that the property was in use as two flats continuously, without substantial interruption, for a period of four years thereafter.

Main points of the appellant's case

5. The appellant acquired the property in 2012. At that time the property was a single dwelling. He occupied the whole property with a lodger. In early 2018 the property was converted into two separate units, the work being completed by February 2018. The appellant continued to live in the ground floor flat and the lodger occupied the upper flat. The appellant moved abroad in April 2018 and the ground floor flat was occupied under an assured shorthold tenancy agreement commencing on 6 April 2018 (the AST). The tenant moved out in January 2019 and was replaced by a new tenant, who lived there until 1 July 2022 when she moved into the upper floor flat. The appellant submitted various documents to support this chronology of events and relied on the enforcement report that stated the property was in use as two self-contained units on 11 February 2018.

Reasons

6. The enforcement report stated the case was opened on 26 October 2018 following a complaint. The report continued that on 11 February 2018 an officer visited the site and established the property was subdivided and used as two self-contained units. On 13 February 2019 the owner was asked to submit an application to retain the two flats. The report then outlined the subsequent correspondence with the owner over the period 15 February 2019 to 13 October 2021.

7. The appellant places reliance on the stated date of the site visit being 11 February 2018. However, the Council's appeal statement refers to a site visit dated 11 February 2019, which is consistent with the chronology set out in the report[1] and the Council's photographic evidence. A photograph taken from the road and dated 17 December 2018 is of the front of the property and photographs dated 11 February 2019[2] are of inside the property. The

[1] Enforcement report section 5 Background/Enforcement Investigation
[2] The date of 11 February 2019 is on each photograph and is to be preferred to the date of 11 December 2019 forming the heading to the set of photographs. This typographical error is recognised by the appellant.

probability is that site visit(s) would post date and have been in response to the complaint received in October 2018. I conclude on the balance of probability the internal site inspection visit took place on 11 February 2019 and the date of 2018 in the enforcement report was a typographical error. Consequently, the Council's site visit date in the enforcement report cannot be relied on and does not show the conversion pre-dated 4 April 2018.

8. In the appellant's evidence, there is no description of the conversion works, nor is there any documentation such as invoices or receipts, to show the works were carried out in early 2018. These works would have been necessary to create the two separate and self-contained units of accommodation and change the type of use from owner/lodger in a single dwelling to use as two self-contained dwellings.

9. The AST relates to 133 Turpin Avenue and is a single page summarising tenancy particulars. The AST is not signed and the document does not detail the terms of the agreement, which typically would include the obligations on the landlord and on the tenant. As such it is of little weight. Furthermore, the date of 6 April 2018 is after the key date of 4 April 2018 for commencement of the use.

10. The declaration by BP supports the appellant's chronology of occupation in so far as BP confirms she lived in flat 1, a one bedroom flat, between 8 January 2019 and 30 June 2022 and on 1 July 2022 she moved into the larger flat on the upper floors. A tenancy agreement dated July 2022 is additional supporting evidence. However, the declaration makes no reference to the critical period in 2018.

11. The Council tax evidence for the ground floor flat (flat 1) includes documents addressed to Flat 1. However, the earliest period of charge is 25 October 2018 to 31 March 2019. There is nothing related to an earlier period including April 2018. Most of the documentation refers to outstanding payments for periods in 2019, 2020 and 2021.

12. Turning to the Council tax documents submitted for the top floor flat, the first document referred to a charge for the period 1 April 2017 to 31 March 2018 but was addressed to 133 Turpin Avenue. The invoice dated 19 February 2019 gave the property address of Flat 2. The period of charge was 25 October 2018 to 31 March 2019 and a single person discount was applied. The remaining documents related to later periods.

13. There is very little in the Council tax evidence to indicate two self-contained units were in existence and in use by April 2018. The declaration by the appellant dated 8 August 2022 is regarding a power of attorney. The declaration confirms purchase of the Turpin Avenue property in 2012 and the appellant now resides in Poland. Otherwise, it is of no assistance as to the facts on the subdivision and occupation of the property.

Conclusion

14. The appellant's evidence in respect of the period in early 2018 to the relevant date of 4 April 2018 is very thin, whether in terms of the use of the property or any conversion works. When read as a whole the appellant's evidence is not sufficiently precise and unambiguous to show on the balance of probability that the material change of use of the property into two self-contained flats took

place on or before 4 April 2018 and that the property was in use as two flats without substantial interruption for a period of four years thereafter. The Council's evidence does not support a change of use took place before the relevant date. The appeal on ground (d) fails.

Appeal on ground (a), the deemed planning application

Main Issue and Planning Policy

15. The development for which permission is sought is derived directly from the description of the breach of planning control as corrected, namely the material change of use of a dwellinghouse into two self-contained flats, including conversion works to facilitate the change of use.

16. The main issue is whether the two flats provide good quality living accommodation for the occupiers, having regard to meeting priority housing need.

17. The relevant development plan policies are set out in the London Plan 2021 (the LP) and the Havering Local Plan 2016-2031 adopted in 2021 (the HLP). The LP sets the strategic context on building strong and inclusive communities (Policy GG1), making the best use of land (Policy GG2) and delivering the homes Londoners need (Policy GG4). Within this context, Policy 9 of the HLP identifies criteria to assess subdivision of residential properties to self-contained homes. Other considerations include the National Planning Policy Framework 2023 (the Framework) and the document 'Technical housing standards – nationally described space standard' (the THS)[3].

Space standards

18. The ground floor unit is described as a one bedroom one person unit. The appeal site inspection confirmed that the internal layout provides a bedroom at the front, a living room and small kitchen at the back and a shower room and toilet off the hallway. The THS requires a minimum gross floor area of 37m^2 for a 1b1p unit where there is a shower room instead of a bathroom, plus 1.0m^2 built in storage. To provide 1 bedspace, a single bedroom is required to have a floor area of at least 7.5m^2 and be at least 2.15m wide.

19. According to the appellant's figures the net internal area is 36.23m^2. A gross floor area is not provided. The floor area of the bedroom is stated to be 11.18m^2. Therefore the stated dimensions are not all directly comparable to the THS requirements. The information suggests that the unit may comply with the minimum requirements if occupied as a 1b1p unit.

20. The top floor flat is described as a 2 bedroom 4 person unit (2b4p). The unit consisted of a kitchen/dining area and a sitting room on the first floor and 2 bedrooms, a boxroom used as a study and a bathroom on the second floor. The THS requires a 2b4p unit to have a minimum gross internal floor area of 79m^2 with 2.0m^2 of built in storage. In order to provide 2 bedspaces a double (or twin) bedroom should have a floor area of at least 11.5m^2. A double bedroom is required to be at least 2.75m or 2.55m wide.

[3] Technical housing standards – nationally described space standard, March 2015, Department for Communities and Local Government

21. According to the appellant's statement the unit has a net internal floor area of 88.53m^2. The small room at the front (the study) is 7.15m^2 and so below the minimum standard of 7.5m^2 for a single bedroom.

22. The evidence indicates that the two units may achieve the minimum floor space requirements, although there is no evidence on built in storage or width of bedrooms.

Additional Policy 9 criteria

23. Policy 9 of the HLP raises additional considerations. On the appellant's evidence the house had an area of 124.5m^2 and so was above the required minimum 120m^2 of floor space. A subdivision should provide a minimum of one family unit of 3 or more bedrooms, preferably on the ground floor with direct access to private, good quality usable amenity space. The provision of 3 bedroom family homes is a priority in the Borough. For the purposes of this criterion, the appellant relies on the study being a small bedroom. However, this room is not of a satisfactory size to be a bedroom. Also, the larger unit is on the upper floors, which is not a preferred position. This unit has insufficient internal space to provide a good quality 3 bedroom family home.

24. The upper unit has no direct access to the garden at the back because access from within the property is only possible from inside the ground floor unit. The appellant has proposed the back garden is divided to provide a garden area of 60m^2 for the ground floor unit, with the remaining smaller area of 40m^2 to serve the upper unit. The garden space for the upper unit would be at the far end of the garden, reached by walking between two nearby dwellings (nos. 135 and 137) and through the adjacent open space along the River Rom. Access would be through a gate in the boundary fencing. I found this was not the easiest route to walk due to a change in levels and other features. The space would not be easily accessible or be positioned to allow for good overlooking or surveillance from the home.

25. In addition, a small enclosed amenity space (13m^2) and a parking space for the larger upper unit is proposed to the front of the dwellings. This small space would not have a good level of privacy because of the comings and goings along the street and to neighbouring homes. The larger frontage space also would be required as a functional area for parking, storage of refuse bins and such like. As a result of these factors the proposed amenity area would not be good quality space. Local parkland and the riverside walk would not be an adequate substitute for convenient, quality garden space to serve a family home.

26. The property is in a residential area and there is safe, secure and convenient access to each unit from the street. The Council expressed concern about the impact on the availability of kerbside parking and potential conflicts with vehicular traffic on a busy primary route due to a lack of off-street parking. This concern was not substantiated either by reference to Policy 24 of the HLP or the plan submitted by the appellant of the proposed parking arrangements. There is off-street parking space to the front of the property. However, the evidence indicates minimum parking standards for two units would not be met and on-street parking could occur. A harmful effect on highway safety or amenity would be low level and so a failure to provide off-street parking to the required standard is a factor weighing slightly against the subdivision.

27. The appellant's statement that the living areas of the new properties do not abut the bedrooms of adjoining properties is not supported by evidence on internal layouts. The matter raised by the Council is over the adequacy of any mitigation measures to safeguard the living conditions of the occupiers of the two flats from noise between floors. Based on the layout seen on the site visit the bedroom of the ground floor unit is below the living room on the upper unit, which could lead to disturbance of the occupiers of the smaller unit.

28. With all the above considerations in mind, I conclude the development is not supported by Policy 9 of the HLP.

Housing need and supply

29. Policy 3 of the HLP seeks to ensure an adequate supply of high quality housing in the Borough. Targets are set and ways of achieving delivery are identified. The supporting text to Policy 9 acknowledges that subdivision of existing houses has been an important source of additional housing in the Borough, especially for smaller households. However, the Strategic Housing Market Assessment reported a pressing need for family homes of three bedrooms or more for both affordable and market housing. Therefore the criteria in Policy 9 is directed at ensuring subdivision (and conversions of commercial property) make a contribution to the priority housing need. The development has resulted in the loss of a unit of priority accommodation, even though an extra smaller unit has been created.

30. The requirements of Policies 3 and 9 are consistent with London Plan Policy D1, delivering good growth with good design and Policy D6, which requires high quality housing that achieves internal space meeting the minimum requirements and standards set out in the THS[4]. Emphasis is on enabling a home to become a comfortable place of retreat. The supporting text explains that the standards are consistent with ensuring efficient use of urban land (Policy D3). Regarding qualitative aspects, the flats are dual aspect which brings benefits such as increased daylight and sunlight. Increasing the rate of supply of homes from small sites is a strategic priority (Policy H2) but with subdivision account should be taken of the need within the borough to provide family sized units of 3+ bedrooms. The appellant refers to the proximity of the site to shops and services but does not provide the PTAL[5].

31. All matters considered, including priority housing need, internal space standards, amenity space and living conditions of the occupiers, my conclusion is that the development does not comply with the development plan when read as a whole.

32. The appellant drew attention to the housing delivery test result for 2021[6] that showed the London Borough of Havering delivered 46% of the houses that it was required to do in the last three-year rolling period. The consequence is the presumption in favour of sustainable development applies (the tilted balance). Paragraph 11 (d) of the Framework sets out that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

[4] Reproduced as Table 3.1 in the LP
[5] Public Transport Access Level. The LP looks for intensification in areas within PTALs 3-6 or within 800m distance of a station or town centre boundary.
[6] The Housing Delivery Test figures for 2022 have not been published.

33. The Framework explains that in delivering a sufficient supply of homes the needs of groups with specific housing requirements should be addressed. The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development. Following the national policy direction, the HLP identifies the contribution of subdivision schemes to the supply of priority family accommodation and clear expectations on required design quality and standards in such schemes. My assessment leads me to conclude that the adverse impacts of the loss of a 3+ bedroom family home and the failure to achieve high quality homes do significantly and demonstrably outweigh the benefits of the development.

Conclusions

34. The two flats do not provide good quality living accommodation for the occupiers, having regard to meeting priority housing need. The material change of use of the property to two dwellings is not in accordance with the development plan and planning permission should be refused. The Framework and other considerations do not indicate otherwise. The appeal on ground (a) fails.

Appeal on ground (f)

35. The issue is whether the requirements are excessive to achieve the purpose of the enforcement notice.

36. The notice is directed at remedying the breach of planning control, which has resulted in the use of the property as two self-contained dwellings. Therefore Step 1, to cease the use of the property as two self-contained dwellings, meets the purpose of the notice and is not excessive. Step 2, requiring the property to revert back to a single family dwelling, is excessive because an enforcement notice cannot require that a lawful use is actively carried out. This step will be deleted.

37. The appellant's representations focus on Step 3, which is directed at the features that facilitated the change of use. The appellant seeks the retention of the ground floor toilet and shower room because they would enhance the standard of accommodation for a single dwelling. The appellant also indicates these facilities may have been in place before the material change of use occurred.

38. An enforcement notice cannot require the removal of works that were undertaken for a different and lawful use and which could be utilised in that other lawful use if the unauthorised use ceased. However, there is no evidence to show the shower room and toilet were installed to serve the single dwelling before the unauthorised change of use occurred. The appellant cannot rely on showing the facilities could serve the lawful use.

39. Nevertheless, the facilities are a small element within the property as a whole and when considered in conjunction with Step 1 their removal is not necessary or proportionate to remedy the breach.

40. The appellant also submits that the kitchen in the ground floor unit should form a utility room for the larger property and therefore only the cooker should be removed. Future desirable internal arrangements, such as the provision of a

utility room, goes beyond the matters for consideration in the ground (f) appeal.

41. To conclude the only variation to Step 3 will be the deletion of the words "and all bathrooms, washing facilities and toilets". To this limited extent the appeal on ground (f) succeeds.

Compliance period

42. The appellant made no appeal on ground (g) regarding the length of the compliance period on the basis that there would be full success on ground (f) and only the cooker and the lock to the ground floor unit would have to be removed.

43. Given that ground (f) is successful only in part, I consider it is reasonable to allow a longer period than three months.

44. The units appeared to be occupied at the time of the site visit. The probability is that the tenant(s) would need to find a new home. In this respect a longer compliance period also would be justified, conscious of the Article 8 Convention rights of the tenants, where a person has the right to respect for their private and family life, their home and correspondence. The time for compliance will be increased to six months.

Conclusion

45. For the reasons given above, the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

46. It is directed that the enforcement notice is corrected:

- in paragraph 3 by the deletion of the description of the alleged breach of planning control and the substitution of "Without planning permission, the material change of use of the property from a single dwellinghouse to two self-contained dwellings, including conversion works to facilitate the material change of use."
- in paragraph 2 by the deletion of the postcode RM5 2JU and the substitution with the post code RM5 2LU.

47. It is directed that the enforcement notice is varied:

- In paragraph 5 by:
  - i. the deletion of Step 2
  - ii. the deletion of the words "and all bathrooms, washing facilities and toilets" in Step 3;
  - iii. in Step 4 the deletion of the words "Steps 1-3" and the substitution of "Steps 1-2,
  - iv. the renumbering of the varied Steps 3 and 4 as Steps 2 and 3.

- In paragraph 6 the substitution of SIX MONTHS as the time for compliance.

48. Subject to the corrections and variations, 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.

Diane Lewis

INSPECTOR