



Appeal Decision

Site visit made on 7 July 2020

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 July 2020

Appeal Ref: APP/T5720/C/19/3239083

Land at 33 Hassocks Road, London SW16 5EU

- 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 Zain Iqbal against an enforcement notice issued by the Council of the London Borough of Merton.
 - The enforcement notice was issued on 10 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission, conversion of a single dwellinghouse on the land into 2 x self-contained flats.
 - The requirements of the notice are:
 - a) Revert the property to a single family dwelling.
 - b) Remove from the land all materials and debris resulting from compliance with (a) 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) 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.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - Deleting the words 'conversion of a single dwellinghouse on the land into 2 x self-contained flats' and replacing with the words 'change of use of the building from a single dwellinghouse to use as two self-contained flats' in the allegation;
 - Deleting requirement a) and replacing with 'cease the use as two self-contained flats';
 - Deleting the words 'operational development' from the heading of the notice.
2. It is directed that the enforcement notice be varied by:
 - Deleting the words 'three months' from the period for compliance and replacing them with 'six months'.
3. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

4. An application for costs was made by Mr Zain Iqbal against the Council of the London Borough of Merton. This application is the subject of a separate Decision.

Matters concerning the notice

5. I have a duty try and get the notice in order, and I have wide ranging powers under Section 176(1)(b) of the 1990 Act to correct the notice, provided no injustice would be caused to the parties.
6. Section 55(2)(a) of the 1990 Act states that the carrying out of works which affect only the interior of the building or which do not materially affect the external appearance of the building shall not be taken to involve the development of the land. The allegation refers to the conversion of the building, but these works have affected only the interior of the building and therefore do not involve development of the land.
7. Section 55(3)(a) of the 1990 Act states that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in use of the building. It seems to me therefore that rather than operational development, the Council is alleging a change of use of the building from a single dwellinghouse to two self-contained flats. This does not change the substance of the allegation but clarifies that it is a material change of use. The words 'operational development' should also be deleted from the decision notice for the sake of clarity and consistency.
8. The requirements of the notice should flow from the allegation, and simply requiring the use as two self-contained flats to cease suffices to remedy the breach of planning control.
9. These corrections clarify the allegation and the requirements, and I am satisfied that they do not cause injustice to the parties.

The ground (a) appeal and the deemed planning application

10. The ground of appeal is that planning permission should be granted for the development. Having regard to the reasons for issuing the enforcement notice, the main issues are as follows:
 - The effect of the development on the supply of family dwellings in the Borough, and;
 - Whether the development results in satisfactory living conditions for occupiers with regard to internal space standards.

Supply of family dwellings

11. Policy CS14 of the London Borough of Merton Core Strategy 2011 (CS) part d(b)(i) requires that where single dwellings are converted into two or more smaller units of accommodation, they incorporate at least one family sized unit where the development results in the loss of an existing family sized unit.
12. The property originally provided a three bedroom dwelling. The explanation to CS Policy CS14 in paragraph 22.27 indicates that three bedroom dwellings are

considered to be family sized units. The development has therefore resulted in the loss of an existing family sized unit.

13. The appellant considers that the flats that have been created are one bedroom/two person flats, while the Council considers that they are two bedroom/four person flats. In any event, they are not of a size that would accommodate a small family. While the flats may be able to accommodate a family with one small child, even the larger flat would not provide family accommodation of a sufficient size to replace the original three bedroom dwelling.
14. For these reasons I conclude that the development has a harmful effect on the supply of family dwellings in the Borough. It is therefore in conflict with CS Policy CS14, insofar as it seeks to encourage well designed housing.

Living conditions

15. The two flats that have been created have a gross internal floor area of 65 square metres for the ground floor flat, and 79 square metres for the upper flat which is spread over the first and second floors.
16. CS Policy CS14 requires that residential development should comply with the most appropriate minimum space standards. In this case, the standards are set out in the Nationally Described Space Standards (NDSS), which are referred to by the appellant and the Council. For one bedroom/two person flats, the standards are 50 square metres for the ground floor flat and 58 square metres for the upper flat as it is over two storeys. The flats therefore substantially exceed the minimum space standards as one bedroom flats.
17. The Council has identified however that the flats were two bedroom/four person dwellings and the internal layout shown on drawing number F/3 Rev B indicates that they are capable of being used as such, notwithstanding the indicative room titles shown. As such, the upper flat meets the standard set out in the NDSS, while the ground floor flat would fall below the standard by five square metres. This results in cramped living conditions for a two bedroom/four person flat, and would fail to provide high quality accommodation.
18. I therefore find that the development does not result in satisfactory living conditions for occupiers with regard to internal space standards. It conflicts with CS Policy CS14, which seeks, amongst other matters, to ensure that residential development complies with the most appropriate minimum space standards. I have not been provided with a copy of the Residential extensions, alterations and conversions SPG 2001 which is referred to in the reasons for issuing the notice, but my attention has not been drawn to any conflict with its guidance.

Conclusion in relation to the ground (a) appeal

19. The appellant refers to CS Policy CS9 which sets out the amount of additional housing that is required in Merton in the plan period, which would be supported by the London Plan and the National Planning Policy Framework. However, the Council's evidence indicates that housing targets have been met for 2017/8 and I have seen no evidence of there is an inadequate supply of housing in the Borough. I do not therefore find that the need to provide additional homes overrides the need to safeguard the supply of family dwellings in the Borough.

20. For the reasons set out above, the appeal on ground (a) fails, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (g) appeal

21. This ground of appeal is that the period for compliance with the notice is unreasonably short. The notice provides for a three month compliance period.
22. The appellant requests a 12 months compliance period in order to give notice to the tenants, put in place financing, select a contractor and then undertake the works. He argues that three months would be harmful to the rights of those living in the property who would have to find alternative accommodation at short notice and potentially become homeless.
23. In order to achieve a balance between the interests of the appellant and the need to remedy the breach, I consider that extending the compliance period to six months is reasonable. To this extent the appeal on ground (g) succeeds.

N Thomas

INSPECTOR