The Planning Inspectorate

Appeal Decision

Site visit made on 14 June 2023

by G Robbie BA(Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/X5210/C/22/3296760
88a Savernake Road, London NW3 2JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Ms Anna Szelest against an enforcement notice issued by London Borough of Camden.
- The notice, numbered EN21/0386, was issued on 10 March 2022.
- The breach of planning control as alleged in the notice is Without planning permission: Conversion of the ground floor from 1 x self-contained flat to 2 x self-contained flats.
- The requirements of the notice are to:
  1 Cease the use of the ground floor of the property as 2x self-contained flats; and reinstate the previous layout of the ground floor as one 3xbed self-contained flat.
  2 Completely remove one kitchen and WC from the ground floor level; and
  3 Make good any damage caused as a result of the above works.
- The period for compliance with the requirements is:
  Six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Formal Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. The appeal proceeds under the grounds set out at sections 174(2)(b) and (f) of the Town and Country Planning Act 1990 (as amended) (the Act). Whilst much of the Council's case is set out in relation to the planning merits relating to the alleged breach of planning control, the appellant has not advanced a case under ground (a); that planning permission should be granted for what is alleged in the notice. As the planning merits do not fall to be considered under the grounds upon which the appeal proceeds, this is not a matter before me and I have determined the appeal accordingly.

The appeal under ground (b)

3. To succeed on this ground, the appellant must demonstrate on the balance of probabilities that the alleged breach of planning control set out in the notice has not in fact occurred. As the ground of appeal set out at section 174(2)(b) of the Act is worded in the past tense, the matter is not whether the alleged breach continues at the time of my visit to the site, but whether or not the breach had occurred by the date of issue of the notice.

4. Planning permission was granted in 2017[1] for the extension of the ground floor of 88 Savernake Road, the approved plans for which were subsequently

[1] LPA Ref No: 2017/5272/P

amended in 2019[2] (together, the 2017 scheme). The 2017 scheme provided an extended ground floor and the reworking of the existing ground floor to provide a 3-bedroom flat with 3 bathrooms[3].

5. It is common ground that the appellant has let out part of the ground floor residential unit; to a lodger in the words of the appellant and a tenant in the Council's submission. The appellant also confirms that the extent of the 'let' part of the ground floor unit amounts to three rooms at the front of the unit; described by the appellant as a 'day room', bedroom and shower room and shown on a drawing from the 2017 scheme as bedroom, dressing room and shower room.

6. The layout described by the Council provides a plausible basis upon which to sub-divide the ground floor unit to facilitate separate occupation of the front portion of the ground floor. This is supported by the extract floor plan provided by the Council within their submissions of an estate agent's marketing details for the alleged residential flat.

7. The appellant does not deny the installation of a small kitchenette within the 'day room'. However, the appellant states that this was initially a temporary measure during earlier works for the extension of the ground floor unit at the rear (the rear referred to as the 'garden rooms' by the appellant) to allow the appellant to continue to reside at the property while building works were on-going. Together with a bedroom and a shower room, it is conceivable that these rooms are capable of providing accommodation that could be occupied separately to that of the garden rooms. Furthermore, I saw that access to the front portion of the ground floor unit could be achieved separately from, and independently of, the garden rooms at the rear of the appeal property via the communal hallway accessed from the building's front door, albeit that that means of access was not in use at the time of my visit.

8. What was not evident at the time of my visit however was occupation in the manner advanced by the Council. Although the door from the communal hallway was evident from the hallway, bookcases lined the internal hallway within the appeal property. Nor was the internal wall or sub-division, shown on the extract floor plan from the estate agent's marketing details, present. Instead, I saw the hallway to be unencumbered by any wall or doors, it instead running uninterrupted the length of the ground floor from the living area at the rear to the door leading to the day room.

9. There is no dispute that the appellant lets out, or has let out, part of her property. However, the circumstances in which the ground floor flat's layout came to be, as described by the appellant, is persuasive. I have no further detail to substantiate the basis for the Council's conclusion that the ground floor is being used and occupied as two separate self-contained flats beyond the reference to a visit by a Council tax inspector. No further details of that visit, or the basis upon which those conclusions were drawn have been submitted. Whilst the estate agent's details may well indicate that it was advertised as such, although the appellant suggests that the advertisement was incorrect and unauthorised by the appellant in any event, I cannot be certain that the flat was occupied in this manner.

[2] LPA Ref No: 2019/1786/P
[3] Shown as shower room, bathroom and wc on the approved proposed plans (Drwg No:1705_A001)

10. The extension at the rear of the property was an extensive addition to the property and, at the time, no doubt intrusive. The appellant shifting the focus of their occupation around the ground floor flat in the face of on-going construction works, including the installation of a food preparation area as part of the creation of a day-room at the front of the property, seems to be a reasonable adjustment to such disruption. Whilst these facilities seemingly allowed the appellant flexibility to occupy the ground floor in a changing manner with her daughter, and at times a lodger, I am not persuaded that this amounts to a material change of use of the ground floor of the appeal property through the creation of a separate self-contained flat.

11. The appellant maintains that facilities remained shared, something that the Council have not persuasively demonstrated to be incorrect, and that domestic costs and expenses remained the responsibility of the appellant. Whilst this may not, as the Council suggest, preclude separate and self-contained occupation, nor does it demonstrate that that is how it has been occupied and that a separate flat has been created. I have not therefore been presented with sufficient evidence to lead me to doubt the appellant's case that, on the balance of probabilities, a self-contained flat has not been created. Nor does the appellant's admission that that part of the flat is let and is a sole source of income or a stated desire of providing high quality accommodation demonstrate the creation of an additional self-contained flat.

12. With regard to the layout of the ground floor, based upon my observations at the time of my visit to the site, and having regard to the submissions before me regarding the evolution of the ground floor layout, there are sufficient facilities and accommodation capable of providing self-contained living accommodation. However, I am satisfied that the appellant has demonstrated, on the balance of probability, that the ground floor of the appeal property has not been occupied as separate self-contained flats and instead provides flexible accommodation for the appellant, the appellant's family member and, at times, a lodger within the whole of the ground floor of the appeal property.

13. Thus, I conclude from the evidence before me and on the balance of probability that the alleged breach of planning control comprising the conversion of the ground floor of the appeal property from 1 x self-contained flat to 2 x self-contained flats has not occurred. The appeal on ground (b) therefore succeeds.

Other Matters

14. As I have concluded that the appeal succeeds under ground (b), the appeal on ground (f) does not fall to be considered. Nor do the planning matters set out by the Council in respect of the quantum of internal living accommodation provided, the need for, or means by which, control of parking be exercised fall to be considered or the matter of planning conditions.

Conclusion

15. From the evidence before me and the reasons given above, I conclude that the appeal should succeed on ground (b) and the enforcement notice should be quashed and the appeal on ground (f) does not fall to be considered.

G Robbie

INSPECTOR