The Planning Inspectorate

Appeal Decision

Site visit made on 16 October 2018

by Jason Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2018

Appeal Ref: APP/X5210/C/18/3198966
192a Finchley Road, London NW3 6BX

- 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 Finchley Properties Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice was issued on 14 February 2018.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised conversion of the first, second and third floors at the front of the property to create 3 additional self-contained residential units.
- The requirements of the notice are:
  1) Permanently remove the 3 additional self-contained units that have been created at the front of the property at first, second and third floor levels;
  2) Restore the first floor to its previous layout with a 1 x 1 bed self-contained residential unit at the front of the property as shown on the certificate of lawfulness granted on 24/10/2014 for the use of the premises as retail (Class A1) and 10 self-contained residential units (Class C3)(Ref: 2014/5243/P);
  3) Restore the second floor to its previous layout with a 1 x 1 bed self-contained residential unit at the front of the property as shown on the certificate of lawfulness granted on 24/10/2014 for the use of the premises as retail (Class A1) and 10 self-contained residential units (Class C3)(Ref: 2014/5243/P);
  4) Restore the third floor to its previous layout with a 1 x 2 bed self-contained residential unit at the front of the property as shown on the certificate of lawfulness granted on 24/10/2014 for the use of the premises as retail (Class A1) and 10 self-contained residential units (Class C3)(Ref: 2014/5243/P); and,
  5) Make good any damage caused as a result of the above works.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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 a correction and variation in the terms set out below in the Formal Decision.

The Notice

1. Where the allegation is of unauthorised development, the notice should distinguish between operations and a material change of use, principally because of the different time limits associated with each. The notice does not specify which it attacks in this instance. Nevertheless, the notice is clear on its face that it attacks a material change of use, that being the conversion of the first, second and third floors at the front of the property to create three

additional self-contained residential units. I am satisfied therefore that I can correct the allegation to distinguish the development as a material change of use without prejudice to the appellant or the local planning authority.

2. The notice requires the additional three units to be permanently removed. The use of the word permanently is both unnecessary and inappropriate having regard to the provisions of section 181(1) of the 1990 Act which states that compliance with an enforcement notice shall not discharge the notice. The notice can be varied to delete the word without injustice to the local planning authority or the appellant.

The appeal on ground (a) and the deemed application

Main Issues

3. The main issues are:

- whether the development provides satisfactory living conditions for existing and future occupiers with particular regard to internal space;
- whether the development provides an appropriate mix of housing; and,
- the effect of the development on highway safety.

Reasons

Living Conditions

4. The appeal relates to a property partly in residential use with a retail use at ground floor level. A certificate of lawfulness (LDC) was granted on 24 October 2014 for the use of the property for retail and 10 self-contained residential units[1]. That included two studio flats and a one bedroom flat on the first floor, two studio flats and a one bedroom flat at second floor and a two bedroom flat at third floor level.

5. Subsequent to that, further works have been undertaken to create an additional three self-contained residential units, one each on the first, second and third floors resulting in four studio units on the first floor, four studio units on the second floor and two one bedroom units on the third floor. It is those works that are subject of the notice.

6. The appellant argues that the additional three units are similar to those which previously existed and that they provide acceptable housing accommodation which meets essential needs and does not detract from the amenity of the existing occupiers.

7. However, Policy H6 of the Camden Local Plan 2017 (CLP) states that, in all housing developments, the Council will expect all self-contained homes to meet the national described space standard. The 2015 Technical Housing Standards – Nationally Described Spaced Standard (NDSS) sets out that a single person, one bedroom dwelling should have a minimum gross internal floor area of 37m². A single bedroom should be at least 7.5m² in area with a minimum width of 2.15m.

8. The Council indicates that the one bedroom units that previously existed on the first and second floors had gross internal floor areas of 21.6m². The sub-

[1] LPA Ref: 2014/5243/P

division of those units to create the two additional flats at first and second floor level has resulted in two units with floor spaces of 11.2m² and two units with floor spaces of 13m². The creation of an additional unit at third floor level has resulted in two units with floor spaces of 17m² and 19m².

9. Clearly, in all instances the amount of floor space provided is substantially below the minimum standards in the NDSS, particularly with the flats at first and second floor which provide only around 30% of the minimum space required.

10. Moreover, I was able to see from my site visit that the units at first and second floor level have little, if any, separation between the kitchen, living and bedroom functions. I note the appellant's point that the units have generous ceiling heights, however, some units are particularly narrow, in some instances achieving around just 2m in width.

11. Furthermore, whilst the flats on the third floor have separate bedrooms, I found all the units to have unduly small and poorly arranged bathroom facilities. Indeed, the Council indicates that in some instances, the bathroom spaces measure just 0.9m by 1.8m. In addition, one of the newly created third floor flats is single aspect, with no windows serving the kitchen area, resulting in a distinctly dark and unattractive living space. Indeed, this is exacerbated by the lack of internal storage in any of the flats. As a result, I find overall that all three of the newly created residential units are significantly cramped and provide a particularly poor standard of living accommodation. This has also resulted in an unacceptable standard of living conditions for occupiers of those existing flats which have been reduced in size because of the works.

12. The appellant considers the NDSS to be irrelevant, as, in their words, the Council 'had previously appeared happy to issue the relevant permissions to proceed'. The term 'relevant permissions' appears to refer to the 2014 LDC. Clearly, an LDC is not a planning permission. Rather the Council would only have had to consider whether or not the use of the building for retail and 10 self-contained residential units was lawful at the date the application was made. The fact that the previous 10 units were also below the NDSS space standards is irrelevant, as there would have been no scope under section 191of the 1990 Act for the Council to consider the size of the units against the NDSS. Thus I afford the appellant's point in that regard very little weight.

13. The appellant also argues that the units are aimed at young professional occupiers. However, regardless of whether that is the case or not, I see no reason why young professionals should be more accepting of poor standards of accommodation than any other type of occupier. Indeed, no evidence has been provided to support the appellant's assertion that young professionals have less material possessions than other social groups. It is, in any event, a moot point, as an individual's choice over the extent of their material possessions has little, if any bearing on whether the residential units in which they reside provide a suitable standard of living accommodation. The fact that no complaints have been made by existing occupants does not dissuade me from my findings.

14. I conclude, therefore, that the development has a significant, harmful effect on the living conditions of existing occupiers and would not provide acceptable standards for future occupiers with particular regard to internal space. As a consequence, the development is in conflict with CLP Policy H6. In addition,

allowing these units would conflict with paragraph 3.139 of the supporting text to CLP Policy H7 which is clear that housing quality will not be sacrificed in order to maximise housing delivery.

Housing Mix

15. The development has resulted in the loss of a one bedroom unit at first floor, a one bedroom unit at second floor and a two bedroom unit at third floor level. The first, second and third floors now provide eight studio units and two one bedroom units.

16. CLP Policy H7 aims to secure a range of homes of different size that will contribute towards the creation of mixed, inclusive and sustainable communities and reduce conflicts between housing need and housing supply. Consequently, housing developments should meet the priorities set out in Table 1 of Policy H7 which shows that there is lower priority for one bedroom or studio dwellings with a high priority for two bedroom dwellings.

17. The appellant indicates that Camden's existing stock of homes is largely made up of relatively small dwellings with the 2011 census showing that 70% of Camden households live in homes with two bedrooms or fewer. It is said that the same census data shows the average household size in Camden grew to 2.18 from 2.06 in 2001 whereas the proportion of one person households fell from 46% to below 41% in the same period. This, the appellant argues, means there is a need for small units as created by the development.

18. However, as the Council points out, the fact that there has been a reduction in one person households suggests that the need for smaller units has similarly reduced. In fact, as the appellant points out, the Camden Strategic Housing Market Assessment indicates that the greatest requirement is for two and three bedroom homes, following by one bedroom and studio units. This is reflected in the prioritisation of two and three bedroom units in CLP Policy H7. As paragraph 3.186 of the supporting text to Policy H7 points out, household projections suggest relatively little change to the composition over the CLP period whilst supporting paragraph 3.191 states that developments for self-contained general needs housing that contain only one bedroom or studio units will be resisted.

19. There is a lack of any compelling evidence that there are local needs that differ from borough wide priorities or that the development reflects different priorities for tenure types. Moreover, there is little evidence that there are physical constraints on the provision of a mix of housing or, that there are financial viability reasons to follow a more flexible approach to housing mix. Consequently, I find the development fails to secure a range of homes that would contribute to the creation of mixed, inclusive and sustainable communities and fails to reduce mismatches between housing needs and existing supply.

20. I conclude, therefore that the development does not provide an appropriate mix of housing, in conflict with CLP Policy H7.

Highway Safety

21. CLP Policy T2 seeks to limit the availability of parking and requires all new developments in the borough to be car free. The Council indicates that, in the absence of a legal agreement to secure car free housing by restricting the use

of land in prohibiting occupation of the property by anyone holding a parking permit, the development will likely contribute to parking stress and congestion in the area.

22. The appeal site has a high Public Transport Accessibility Level and is within walking distance of a large number of services, facilities and public transport connections. The site is located on a Transport for London red route where stopping is not permitted between 0700 and 1900 Monday to Friday. A significant proportion of the surrounding side streets are also permit controlled. I was able to see from my site visit that on-street parking on the surrounding streets was at a high level. Whilst I accept these observations provide only a snapshot at a particular time, there is no substantive evidence to suggest that this is not representative of the regular parking situation. Moreover, it would not be, in my view, unreasonable to consider that demand would be higher at peak periods.

23. The appellant argues that the flats are occupied by individual, young professionals and as such car ownership would not be a priority. However, little substantive evidence to support that has been provided and indeed, no mechanism put forward to ensure that would be the case. Furthermore, even if car ownership was lower amongst prospective occupants, there is nothing to suggest it would be completely absent. As a result, I agree that, if the development is not car free, there will be an increase in on-street parking generated by the additional three units which will harmfully exacerbate existing on-street parking levels in the surrounding streets.

24. The appellant indicates that they would be prepared to enter into a unilateral declaration that the development will not generate additional traffic. However, no indication is given of what is meant by a unilateral declaration and, in any event no such document has been provided.

25. The appellant points to the availability of a car club network in the area. However, although car clubs offer an alternative to the private car, there is no evidence or mechanism before me that suggests occupants would be members of such a car club.

26. A condition could be imposed which restricts occupancy until arrangements have been made to secure the development as a car free development in accordance with a detailed scheme or agreement. However, the Planning Practice Guidance[2] advises that 'in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk'. There is nothing before me to suggest that is the case here and thus exceptional circumstances justifying the use of a condition have not been demonstrated.

27. Overall, I am not satisfied the evidence demonstrates that an increase in demand for on-street parking resulting from the development will be capable of being accommodated within the area without harmful inconvenience to other road users or unacceptable detriment to highway safety. Consequently, in the absence of an appropriate mechanism to secure car free housing, I find the

[2] Planning Practice Guidance ID: 21a-010-20140306

development will generate additional demand for on-street parking to the detriment of highway safety.

28. I conclude, therefore, that the development has a harmful effect ton highway safety, in conflict with Policy T2 of the CLP.

Other Matters

29. I note the development contributes towards boosting the supply of housing in the area and that residents will contribute towards increases in spending in local business and the growth of local communities. However, such benefits would be relatively modest and would not outweigh the harm I have identified in respect of living conditions, housing mix and highway safety, either individually or cumulatively.

Conclusion on the appeal on ground (a) and the deemed application

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation 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

31. It is directed that the enforcement notice be:

- corrected by deleting the words "unauthorised conversion of the first, second and third floors at the front of the property to create 3 additional self-contained residential units" from paragraph 3 of the notice and substituting them with the words "the material change of use of the first, second and third floors of the Property from use as 7 self-contained residential units in total to use as 10 self-contained residential units in total"; and,
- varied by deleting the word 'permanently' from paragraph 5(1).

32. Subject to the correction and 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.

Jason Whitfield

INSPECTOR