The Planning Inspectorate

# Appeal Decision

Site visit made on 14 February 2023

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 March 2023**

**Appeal Ref: APP/B5480/C/21/3283428**
**The land known as 1 and 1A Writtle Walk, Rainham RM13 7XB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Asad Chaudhary against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice, numbered ENF/668/19, was issued on 27 August 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the ground, first and second floors into a self-contained dwelling.
- The requirements of the notice are to:
  1. Cease the use of the ground, first and second floors as a dwelling;
     AND
  2. Remove the bathroom and kitchen on the first floor including the removal of all cooking equipment including the hob, oven, sink, kitchen worktop and storage cupboards;
     AND
  3. Remove all rubble and debris accumulated when taking steps 1 and 2 (above).
- The period for compliance with the requirements is: Four Months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) 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.

## Decision

1. It is directed that the enforcement notice is corrected and varied by:

   - At section 3 of the notice, the deletion of 'ground,' so that it reads 'Without planning permission, the material change of use of the first and second floors into a self-contained dwelling.'

   - At section 5 of the notice, sub-paragraph 1. the deletion of 'ground,' so that requirement 1. reads 'Cease the use of the first and second floors as a dwelling.'

   - At section 5 of the notice, delete sub-paragraph 2 and insert 'On the first floor, removal all cooking equipment including the hob and oven.'

   - At section 6 of the notice, delete 'Four' and insert 'Six' so that the period for compliance is Six Months.

2. 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.

## Preliminary Matters

3. Since the enforcement notice was issued, the Council has adopted the Havering Local Plan (2016-2031)(the HLP). The Council has identified those policies it considers of relevance to the appeal scheme through the appeal and I am satisfied the appellant has had the opportunity to comment on the HLP through the appeal.

4. I was unable to access the ground floor during my visit. Nevertheless, I was able to see much of the ground floor through the window and could see that it is not connected to the residential accommodation above. I am satisfied that I have sufficient information upon which to make a decision.

## Ground (b)

5. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. The main thrust of the appellant's case under ground (b) is that the ground floor of the premises remains as a retail/office use and is not in residential use. In a ground (b) appeal, the burden of proof is firmly on the appellants, to show that the matters have not occurred, on the balance of probabilities.

6. Although I was unable to access the ground floor of the premises during my site visit, as set out above, I was able to view much of it through the window. The ground floor was not in residential use at the time of my visit and appeared laid out as barbers' shop. I saw that there is no access from the ground floor to the living accommodation above and since they are physically separate and distinct and occupied for different purposes, I consider the ground floor is a separate planning unit.

7. The Council does not dispute that the ground floor is in use as a barber's shop but makes the point that the consented scheme for the premises had a condition attached which restricted the use of the upper level to use in a capacity ancillary to the ground floor use. However, whether the premises is in breach of a planning permission or not is not relevant to my consideration of the appeal under ground (b). The material change of use of the ground floor of the premises to a self-contained dwelling has not occurred as a matter of fact.

8. The first and second floors of the premises have been converted into a self contained residential unit and so a material change of use of that part of the building has occurred. Since a material change of use has occurred as a matter of fact, I must consider whether or not the notice can be corrected. I have wide powers of correction, subject to there being no injustice to either party.

9. I consider the notice should be corrected to delete reference to the ground floor. Since this would not expand the allegation, I consider there would be no injustice to either party in making such a correction. Reference to the ground floor in the requirements would also need to be deleted, to accord with the corrected allegation. Since this would reduce the scope of the requirements, I consider there would be no injustice to either party in making such a correction. The appeal under ground (b) succeeds to that extent.

## Ground (c)

10. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The main thrust of the appellant's case under ground (c) is that the first floor kitchen and bathroom has already been approved, reference P0850.18 and the use of the first and second floor as a flat is permitted development. The flat is self contained with a separate access from the rear, which was all approved under N0005.20.

11. The kitchen and bathroom are not included in the allegation and so whether they have previously been approved or not is not relevant under a ground (c) appeal. Significantly, planning permission has not been granted for the residential use of the first and second floor. Whilst the kitchen and bathroom are included in the requirements, this is a matter which should properly be dealt with under ground (f).

12. Part 3, Class G of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits development consisting of a change of use of a building (a) from a use within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a mixed use for any purpose within that Class and as up to 2 flats, subject to conditions, including the requirement that the developer must apply to the local planning authority for a determination as to whether prior approval is required. I have no evidence to suggest that such an application has been made.

13. Moreover, Article 3(4) of the GPDO sets out that nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order. While facilities may have been approved which could be used as part of a residential use, planning permission P0850.18 has a condition attached which requires the first and second floor extensions to be used only for activities ancillary to the ground floor commercial unit. The use of the first and second floor for residential use would be contrary to a condition imposed by a planning permission and is therefore not development which is permitted by the GPDO.

14. Thus, for the reasons given above, the appeal under ground (c) must fail.

## Ground (a)

### Main Issues

15. The main issues of the appeal are:

- Whether the appeal scheme provides satisfactory living conditions for its occupants, with regards to internal space standards, outdoor amenity space and light; and
- The effect of the appeal scheme on car parking in the area.

### Reasons

*Living conditions: Internal space standards*

16. Policy D6 of the London Plan 2021 (the LP) seeks high quality housing with adequately sized rooms and policy 26 of the HLP seeks high quality design. I

saw that there is a living/kitchen area on the first floor measuring around 16sqm, a shower room measuring around 3.5sqm and two bedrooms on the top floor measuring approximately 12.5sqm and 16.4sqm.

17. While I note the appellant identifies one of the top floor rooms as a lounge on submitted plans, each of the rooms on the top floor was laid out with a double bed at the time of my visit. Given the provision of living accommodation on the first floor, I consider the top floor is highly likely to be used in this way by future occupants. I do not consider it would be reasonable to restrict the use of the rooms by condition, since it would be very difficult to monitor and require an intolerable degree of supervision.

18. For a two bedroom, four person dwelling over two storeys, the LP states that a minimum gross internal floor area of 79sqm is required. The floor space provided by the appeal scheme falls well below this requirement. Even if I were to consider the appeal scheme as a one bedroom, two person dwelling, the internal floor space provided falls well below the 58sqm required by the LP. I consider the provision of such limited floor space is harmful to the living conditions of existing and future occupants, contrary to policy D6 of the LP and Policy 7 of the Havering Local Plan 2016-2031 (adopted November 2021)(the HLP) which seeks to ensure a high quality living environment for residents.

*Living conditions: Outdoor amenity space*

19. Policy 9 of the HLP supports the conversion to residential use where the new family unit is preferably on the ground floor with direct access to private, good quality, usable amenity space. However, no private outdoor amenity space is provided in the development. Although I saw that there is a terrace which can be accessed from the property, the space is shared by a number of other residential units along the parade. It would not provide private outdoor space for the occupants to enjoy or to carry out activities such as hanging out washing, nor would it provide private space for children to play.

20. The appellant asserts that because the property only has one bedroom there is no need for any amenity space. However, as set out above, the property was in use as a two bedroom dwelling at the time of my visit. Furthermore, policy D6 of the LP advises that where there are no higher local standards, a minimum of 5sqm of private outdoor space should be provided for 1-2 person dwellings and an extra 1sqm should be provided for each additional occupant. One bedroom units are therefore not exempted from providing private outdoor space.

21. I consider the lack of outdoor amenity space is harmful to the living conditions of current and future occupants of the dwelling, contrary to policy 9 of the HLP and policy D6 of the LP, the requirements of which are set out above.

*Light and outlook*

22. The principal elevation of the unit faces towards the south east and is recessed back from the rest of the parade, which is likely to limit the sunlight entering habitable rooms on this elevation, particularly on the first floor. As a consequence, occupants of the dwelling are likely to need to rely on artificial light much of the day, particularly in the afternoon given the orientation of the building and the position of other windows. Occupants are also likely to find the outlook from the windows on the principal elevation overbearing given the

projection of the adjacent wall forward of the principal elevation of the appeal premises.

23. This is harmful to the living conditions of occupants and future occupants, contrary to policy 7 of the HLP which seeks to ensure a high quality living environment for residents and the Residential Design Supplementary Planning Document (2010)(SPD) which advises new development should be sited and designed to maximise daylight and sunlight and all habitable rooms should contain at least one main window with an adequate outlook whereby nearby walls or buildings for not appear overbearing or unduly dominant and the National Planning Policy Framework (2021)(the Framework) which seeks a high standard of amenity for existing and future users.

*Parking*

24. The Council advise that the PTAL rating for the site is 1B which translates to poor access to public transport. Policy 23 of the HLP supports development which ensures safe and efficient use of the highway and policy 24 of the HLP states that in areas of the borough that have low public transport access (PTAL 0-1) where no improvements are planned, minimum residential parking standards will apply of 0.5 spaces per unit for a one bedroom property and 1 space per unit for a 2 bedroom property. Policy T6.1 of the LP sets out maximum parking provision in Outer London areas with a PTAL rating of 0 and 1, for 1-2 bedroom dwellings the maximum requirement is 1.5 spaces per new unit.

25. While the appellant asserts parking is plentiful close to the site, no substantive evidence showing parking demand in the area has been provided. The Council suggest that there is an existing level of parking stress in this location. While this was not particularly evident during my site visit, I am mindful that I visited the site at around 10:30 am, when occupants of nearby dwellings are likely to be at work. Given the generally residential nature of the area and the significant number of dwellings which do not appear to be served by private parking, demand is likely to be higher in the evening or at the weekends, when individuals are less likely to be at work.

26. The appellant suggests the use of a condition to ensure the development is car free. However, car free development can only be implemented effectively within a Controlled Parking Zone (CPZ) as occupants of the development would not be eligible for a resident's parking permit. I have no evidence to show that the area is a CPZ and during my visit on-street parking did not appear to be restricted in this way.

27. Although the level of additional demand generated by the appeal scheme is likely to be limited given the scale of the development, the failure to provide parking provision is likely to increase the likelihood of individuals seeking to park in locations which may impede driver or pedestrian visibility, which is harmful to highway safety, contrary to policies 23 and 24 of the HLP and policy T6 and T6.1 of the LP, the requirements of which are set out above.

**Other Matters**

28. The Council has drawn my attention to policy 3 of the HLP which sets out the Council's approach to increasing the amount of housing in the borough. The policy is positively worded and, since the appeal scheme results in the

provision of housing, I consider there would be no conflict with policy 3 in this regard.

**Planning balance and ground (a) conclusion**

29. The appellant asserts that the area has no demand for office or storage, however, I have no substantive evidence to support this assertion. Although the appeal scheme has resulted in additional residential accommodation, which weighs in support of the appeal scheme, the benefit arising from one unit is very modest and does not outweigh the harms I have identified above.

30. Thus, for the reasons given above, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

**Ground (f)**

31. An appeal under ground (f) is made on the basis 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 which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

32. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice, that its purpose is to remedy the breach.

33. The appellant says there is nothing for them to do except cease the use, because the layout has not changed since the approval of permission P0850.18 and application No N0005.20 was an application for a non-material amendment to planning permission ref: P0850.18 dated 20/08/2019 to allow for amendments to fenestration and internal layout. Although it is not clear whether or not the first and second floor have been used as ancillary to the ground floor unit, the planning permission has, in my view, been initiated for the purposes of section 56 of the Act.

34. The plans approved under N0005.20 show a separate shower and WC room on the first floor, with a storage area and what appears to be a sink. Although the sink is not labelled, I consider a reasonable reader of the plans would consider this to have formed part of the application for a non-material amendment, along with cupboards and the separate shower and WC room. I consider requiring their removal would therefore be excessive. However, the room is identified as storage and there is no indication that cooking facilities were to be included. As such, I consider it would not be excessive to require removal of all cooking equipment including the hob and oven.

35. I shall vary the notice and delete the requirement to remove the bathroom and kitchen but shall leave the requirement to remove all cooking equipment including the hob and oven. The appeal under ground (f) succeeds to that extent.

## Ground (g)

36. An appeal under ground (g) is made on the basis that any period specified in the notice…falls short of what should reasonably be allowed. During my visit I saw that the premises is occupied.

37. The appellant states they will require 12 months to comply as the tenants will need to be evicted and it is not possible to guarantee the date of eviction. However, restrictions on evictions are no longer extended as a result of the Covid-19 pandemic and so I consider extending the compliance period to 12 months to be excessive.

38. Nevertheless, I consider it reasonable to give the occupants additional time to find somewhere else to live. At this moment in time, I consider 6 months is a reasonable and proportionate time period, which would enable the appellant to give notice and allow the occupants of the building sufficient time to secure alternative accommodation.

39. The appeal under ground (g) therefore succeeds to that extent.

## Conclusion

40. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on grounds (f) and (g) succeed to that extent.

*M Savage*

INSPECTOR