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D.C.7A

Town Planning

Ref. No.

4/0859/90

TOWN & COUNTRY PLANNING ACT 1971



DACORUM BOROUGH COUNCIL

To: Mr P Ellis
6B Glenview Gardens
Hemel Hempstead
Herts
HP1 1TF

Conversion of dwelling to form two flats -
Submission of details of sound insulation pursuant
to P/P 4/0971/87

6B Glenview Gardens
Hemel Hempstead

Brief
description
and location
of proposed
development

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder the Council hereby gives approval to the details which were reserved for subsequent approval in planning permission no 4/0971/87

granted on 26 August 1987 at the above-mentioned
location in accordance with the details submitted by you, with your
application dated 11 June 1990.

Dated

17th

day of

September

1990

Signed

Colin Barnard

Designation DIRECTOR OF PLANNING

NOTE: This is not a separate planning permission, but must be read in conjunction with any conditions attached to the permission indicated above.

4/0859/90



Planning Inspectorate

Department of the Environment

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Mr P F Flanagan
6A Glenview Gardens
Boxmoor
HEMEL HEMPSTEAD
Herts
HP1 1TF

Council Reference:

4/1592/89E

Your Reference:

Our Reference:

T/APP/C/89/A1910/5/P6

Date

15 MAY 90

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9

LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981

LAND AND BUILDINGS AT 6 GLENVIEW GARDENS, BOXMOOR, HEMEL HEMPSTEAD, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine your appeal against an enforcement notice issued by the Dacorum District Council concerning the above mentioned land and buildings. I have considered the written representations made by you, by the Council and by interested persons and I inspected the site on 28 March 1990.

2. a. The date of the notice is 21 August 1989.

b. The breach of planning control alleged in the notice is failure to comply with condition numbers 2 and 3 subject to which planning permission was granted.

c. The permission was granted on 26 August 1987 and was for the conversion of a dwelling to form 2 flats.

d. The conditions which are alleged not to have been complied with are as follows:

(2) The flats shall not be occupied until the two car parking spaces shown on Plan No 4/0971/87 have been provided and they shall not be used otherwise than for car parking.

(3) Before development is commenced a scheme shall be submitted to and approved by the local planning authority illustrating the means by which sound transmission between ground and first floors and adjoining properties shall be resisted. Such scheme as is approved shall be implemented prior to occupation of the flats hereby permitted.

e. It is alleged that the condition has not been complied with in that:

1. The two car parking spaces shown on Plan No 4/0971/87 have not been provided.

2. No scheme was submitted to the local planning authority prior to commencement of the development, illustrating the means by which sound



transmission between ground and first floor and adjoining properties shall be resisted, and no approved scheme was implemented prior to occupation of the flats.

f. The requirements of the notice are:

1. Provide the two car parking spaces shown on Plan No 4/0971/87 and indicated coloured yellow on the plan attached hereto within one month from the date on which this Notice takes effect.
2. Submit a satisfactory scheme to the local planning authority for approval illustrating the means by which sound transmission between ground and first floors and adjoining properties shall be resisted within one month from the date on which this Notice takes effect.
3. Implement fully such approved scheme within two months of its approval by the local planning authority.

h. The appeal was made on the grounds set out in Section 88(2) (b) of the 1971 Act as amended.

3. No 6 Glenview Gardens is one of a terrace of 12 small 2-storey houses facing Glenview Road across a shared access way and front garden land about three quarters of a mile north of Hemel Hempstead station. Several of the houses have been subdivided into 2 units, but Nos 2, 3, 4, 5, 11 and 12 appear to be occupied as single dwelling houses. No 6 Glenview Gardens has been split horizontally, with one flat on each floor. No 6A is the upstairs flat.

4. One of the parking spaces referred to in the notice is to the front of No 9 Glenview Gardens, which has a concrete area across the full plot width along the footway boundary. The other is one of the garages in a courtyard to the rear of the church on the opposite side of Glenview Road.

5. You say that you occupied your flat about a year after it was converted, and that the legal work undertaken at that time showed that parking space had been provided. You argue that as part of the conversion the floor was covered with soundproofing polystyrene and tongue and grooved chipboard, and that no noise problems have arisen. The Council, however, maintains that only 1 space has been provided, not 2 as required by condition No 2, and that no scheme of soundproofing has ever been submitted or approved by the local planning authority.

The alleged breach of Condition No 2

6. On my inspection I saw both the parking space outside No 9 Glenview Gardens and the garage indicated on the plan. There is no evidence that either are used other than for car parking. The condition requiring the provision of car parking spaces does not require that they be retained for use by the occupiers of any particular property. It merely requires that they be provided before the premises are occupied. The spaces coloured yellow on the plan attached to the notice exist and in my opinion Condition No 2 has been complied with. Therefore your appeal on ground (b) succeeds in so far as it relates to the alleged breach of that condition.

The alleged breach of Condition No 3

7. I accept that some soundproofing works have been carried out to the property. However, it is clear from the representations that whatever the character of the work undertaken no scheme of soundproofing has been submitted to or approved by the

local planning authority following the grant of planning permission as required by that condition. To my mind, therefore, this condition has not been complied with, the breach of planning control alleged in the notice has taken place, and your appeal on ground (b) fails in so far as it relates to Condition No 3.

8. You do not appeal against the notice on ground (a) but when an appeal is made under Section 88 of the Act an application is deemed to have been made for the development to which the notice relates. As the appropriate fee has been paid in accordance with the Fees Regulations I will determine this deemed application in so far as it relates to Condition No 3.

9. From the representations and my observations of the site and its surroundings I consider the main issue in my consideration of the deemed application to be whether continuation of the use without complying with Condition No 3 is likely to lead to unacceptable noise and disturbance to the occupiers of the flat below or the occupiers of Nos 5 and 7 Glenview Gardens.

10. I note some discrepancies between your description of the works that have been carried out to the floor of your flat and those specified on the approved plan. On my inspection it was not possible to see exactly what has been done. There is in the representations no indication of noise transmission problems between your flat and Nos 6B or 7 Glenview Gardens. This may or may not be due to the internal arrangement of those properties or work that has already been carried out, but it seems that no objective assessment has been undertaken.

11. However, the occupiers of No 5 Glenview Gardens report that they are frequently disturbed by noise from your living room (which adjoins their main bedroom) and by noise and vibration from your washing machine. In my experience these are common problems where the living accommodation of one unit is separated from the bedroom of another by a party wall in terraces such as this. I have concluded that continuation of the use without complying with Condition No 3 is likely to lead to unacceptable noise and disturbance to the occupiers of at least one of the adjoining residential units. Therefore I will uphold the notice in so far as it relates to Condition No 3 and I will not grant planning permission on the deemed application. Since your appeal on ground (b) succeeds in so far as it relates to Condition No 2 I will vary the requirements of the notice by deleting the first of them.

12. I have taken into account all the other matters raised in the written representations, including the references to the chronology of the events leading to the issue of the notice and the fact that as far as you were aware when you purchased your flat all the relevant conditions had been complied with, but they do not affect the above conclusions or my decision.

FORMAL DECISION

13. For the above reasons and in exercise of the powers transferred to me I hereby determine this appeal as follows:

1. I allow your appeal in so far as it relates to the alleged failure to comply with Condition No 2 subject to which planning permission was granted and direct that the notice be varied by the deletion of sub-paragraph (i) from both Schedule 2 and Schedule 3;

2. I dismiss your appeal in so far as it relates to the alleged failure to comply with Condition No 3 subject to which planning permission was granted and refuse to grant planning permission on the application deemed to have been made under Section 88B(3) of the Act;

3. subject to the variations specified above I uphold the enforcement notice.

RIGHT OF APPEAL AGAINST DECISION

14. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant

John Roberts

J G ROBERTS BSc(Hons) DipTP MRTPI
Inspector

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RIGHTS OF APPEAL

- (a) On an enforcement appeal (except any decision to grant planning permission on the deemed application under section 88B(3) of the Act)

An appeal against the decision given in the accompanying letter on the enforcement notice appeal may be made to the High Court on a point of law under the provisions of section 246 of the Town and Country Planning Act 1971. Any appeal must be made within a period of 28 days of the date of receipt of this letter (unless the period is extended by the Court).

- (b) i. On a decision to grant planning permission on the deemed application under section 88B(3) of the Act
ii. On any appeal under section 36 of the Act

Section 245 of the Town and Country Planning Act 1971 provides that a person who is aggrieved by the decision given in the accompanying letter (on the appeal made under section 36 of the Act/to grant planning permission on the deemed application), may challenge its validity by an application to the High Court within 6 weeks from the date of this letter. The grounds upon which an application may be made to the Court under section 245 are that:-

1. the decision is not within the powers of the Act (that is, the Inspector appointed by the Secretary of State has exceeded his powers); or
2. any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

The "relevant requirements" are defined in section 245 of the Act: they are the requirements of that Act, the Tribunals and Inquiries Act 1971 (or any other enactment replaced thereby) and the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. This includes the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974 (SI 1974 No 420); the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981 (SI 1981 No 1743); and the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1981 (SI 1981 No 1742).

A person who thinks there may be grounds for challenging the decision should first seek legal advice.

INSPECTION OF DOCUMENTS - Only on appeals decided following a local inquiry.

Under the provisions of rule 16(2) of the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974, and rule 16(5) of the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981, any person entitled to be notified of the decision given in the accompanying letter may apply to the Secretary of State, in writing, within 6 weeks of the notification of decision, for an opportunity of inspecting any documents, photographs and plans listed in the notification. Any application under this provision should be sent to the address from which the decision was issued quoting the Department's reference number shown on the decision letter and stating the proposed date and time (in normal office hours) for the inspection. At least 3 days' notice should be given, if possible.