

# Appeal Decision

Site visit made on 15 November 2016

**by Andrew Dale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 November 2016**

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**Appeal Ref: APP/T5150/C/16/3149027**  
**119 Harrowdene Road, Wembley HA0 2JH**

- 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 J Bhuvra against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice was issued on 16 March 2016 under ref. E/15/0760.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from one dwelling to three self-contained flats.
  - The requirements of the notice are set out as follows:
    - "STEP 1 Cease the use of the premises as flats.
    - STEP 2 Remove all kitchens, except ONE, and all bathrooms, except TWO, and remove all other fixtures and fittings, including partition walls, associated with the unauthorised use from the premises, so that the premises is converted back to one house."
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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## Decision

1. It is directed that the enforcement notice be varied by deleting from Schedule 4, Step 2, the text "", so that the premises is converted back to one house".
2. Subject to that variation, 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.

## Background

3. The appeal concerns a two-storey semi-detached residential property with further accommodation in the loft. A rear dormer window, a hip to gable roof extension and single-storey rear extensions have been added to the property but those operational developments are not directly before me in this appeal.
  4. The enforcement notice is directed at an alleged material change of use of the single dwelling (the property's last lawful use) to three self-contained flats.
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5. There is no dispute that the property was arranged as three flats when the enforcement notice was issued. This was also seemingly the internal arrangement of the property when the appeal was first lodged.
6. The appeal on both ground (a) and ground (f) is based on a proposal for an amended scheme consisting of two flats, each with three bedrooms. Since the appeal was lodged the appellant has in fact converted the three flats into two flats, as I saw on my site inspection, although not in accordance with the drawing numbered ENF-2 that was submitted with the original appeal. For instance, the second staircase proposed then has been omitted from the scheme as now built.
7. At my site visit, I saw a ground floor flat with three bedrooms, which could physically accommodate five persons and a second flat spread over the first and loft floors with three bedrooms which could physically accommodate five persons. The partitions around the rooms that once contained the utility space at first floor level and an additional kitchen at loft level had not been removed as indicated on the appellant's drawing numbered ENF-2 Revision A.

### **Matters of clarification concerning the scheme for two flats**

8. The appeal on ground (a) and the deemed application for planning permission under section 177(5) of the 1990 Act as amended are tied to the breach of planning control alleged in the enforcement notice. This is mirrored by the power to grant planning permission under section 177(1) of the 1990 Act as amended which is limited to a power to grant planning permission in relation to the whole or any part of the matters stated in the notice as constituting the breach. It is clear that something other than the grant of planning permission for all or part of the matters alleged in the enforcement notice to constitute the breach of planning control would be required to achieve the different scheme for two flats. I have no power to consider a grant planning permission for the scheme for two flats under ground (a) or the deemed planning application.
9. The Council and the appellant, in his final comments, accept that a ground (f) appeal is not the appropriate process to secure the reduction in the number of flats from three to two at the appeal site. In short, the ground (f) appeal could not be relied upon to bring about what in effect would be the grant of deemed planning permission for an alternative development which was not in existence when the enforcement notice was issued. I have no power to consider the scheme for two flats under ground (f).
10. The judgment delivered by the Court of Appeal on 31 October 2014 in the case between the Secretary of State for Communities and Local Government and Ioannou would appear to confirm the approach outlined in both paragraphs 8 and 9 above, even though it concerned a five-flat scheme and an alternative three-flat scheme.

### **The appeal on ground (a) and the deemed planning application**

11. The appellant, in submitting the amended two-flat scheme, has made no attempt to justify why planning permission ought to be granted for the use of no. 119 as three self-contained flats. Rather, in his final comments the appellant clearly states that he does not dispute that the retention of three

flats at the appeal site would be contrary to the provisions of the Council's relevant planning policies.

12. The lawful use of the appeal property is as a single family semi-detached house. Whilst I consider that bin and cycle storage could have been addressed by a suitable planning condition, the unauthorised change of use to three flats resulted in the loss of a purpose-built single family dwelling house, for which there is a recognised need in the borough.
13. Furthermore, the conversion scheme to three flats on the basis of drawing no. ENF-1 and the descriptions of the flats submitted with the original appeal did not provide family-sized accommodation (a self-contained dwelling capable of providing three or more bedrooms).
14. If drawing no. ENF-1 Revision A is followed – where a third bedroom is shown included in the ground floor flat – this has implications for the floor area of the unit with reference to the London Plan (LP) 2016 housing standards. A three-bedroom, five-bed space dwelling on one storey requires a minimum gross internal floor area of 86 sq. m, yet the plan is annotated to show that only 78.51 sq. m is available. If that was the layout when the notice was issued, it was not therefore a suitable addition to the stock of family-sized accommodation.
15. Other negative factors included the undersized flats that existed at first floor and loft level with reference to those same LP standards. The layout of the rooms was not ideal with a kitchen at first floor level located above part of a bedroom at ground floor level, making it difficult to avoid noise and bothersome disturbance to other occupiers in the building.
16. These drawbacks bring the development into conflict with several development plan policies as referred to in the notice. I find no other material considerations of sufficient weight to justify a grant of planning permission for three flats. The appeal on ground (a) and the deemed planning application cannot therefore succeed.

### **The appeal on ground (f)**

17. The conversion of the property to two flats comprises development requiring planning permission. Having regard to my observations in paragraphs 9 and 10 above, I do not have the power to consider the two-flat scheme put forward as a lesser step under ground (f).
18. The purpose of the enforcement notice is aimed at remedying the breach of planning control as clearly stated under Schedule 4 of the notice. It is not simply seeking to remedy the injury to amenity caused by the breach.
19. The purpose can only be achieved in this case by ceasing the use of the premises as flats and by the removal of works or items introduced to enable the building to be occupied as a number of self-contained flats. That is what the steps in this enforcement notice do. For instance, in seeking the removal of all kitchens, except one, the property would be put back to its condition before the breach took place as a single dwelling house.
20. The requirements of the notice do no more than seek to remove what has been done to facilitate the unauthorised material change of use; they go no further.

Thus, the appeal brought under ground (f) must fail as the requirements do not exceed what is necessary to remedy the breach of planning control that has occurred.

21. The planning merits of the alternative scheme suggested and evidently implemented by the appellant can be properly explored through a fresh planning application which would be determined by the Council in the first instance. The six-month compliance period outlined in the notice gives an opportunity for this matter to be explored further, should the appellant so wish.

*Andrew Dale*

INSPECTOR