
Appeal Decision

Site visit made on 28 November 2016

by K R Saward Solicitor

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

Decision date: 8 December 2016

Appeal Ref: APP/T5150/C/16/3157989
18 Mora Road, London NW2 6TG

- 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 Mrs Nusrat Anwar against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 2 August 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to three flats and the erection of side and rear extension ('L' shaped wrap around extension) to the premises.
- The requirements of the notice are:-
 - STEP 1 - Completely and permanently cease the use of the premises as flats and remove all kitchens, except ONE, and all bathrooms, except TWO, from the premises, remove all partitions, doors, facilities, fixtures and equipment that facilitate the unauthorised use of the premises, so that the layout of the premises is returned back to a single family dwellinghouse that existed before the unauthorised change of use took place.
 - STEP 2 - Demolish the "L" shaped side and rear extension, which has been built in connection with the unauthorised change of use of the premises to flats.
 - STEP 3 - Remove all waste materials, items and debris associated with the unauthorised use and development from the premises.
- 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 s177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections

Procedural Matters

1. Originally, a linked appeal had been brought under ground (a) in the name of Mr Nadeem Anwar. This appeal lapsed following non-payment of the prescribed fees within the specified period.
 2. Until the site visit, the Council had not accessed all parts of the property. In view of this, the Council indicated in its Appeal Statement that the enforcement notice may require correction if there are more than 3 flats. The appeal property is a two storey mid-terrace dwelling. The loft space has been converted into two studio flats, occupied by tenants. Each contains a fully fitted kitchen and en-suite bathroom. On the ground floor, two rooms are in use as bedrooms, there is an open plan lounge/kitchen and family sized bathroom. On the first floor, there are 3 bedrooms one of which has an en-suite bathroom. All bedrooms on the ground and first floor are apparently
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occupied by the appellant's family except one small bedroom at the rear of the property which is identified as being in use by the family's live-in cleaner/baby sitter. This room contains a microwave oven and fridge. Next to the bedroom is a small kitchen with oven and hob, sink unit, worktop and units, a fridge-freezer and microwave. A bathroom is on the same floor. All internal doors appeared to be lockable. There is a single front door.

3. It is the appellant's contention that apart from the two studio flats on the top floor, the ground and first floors are otherwise in use as a single unit of accommodation. I have no reason to believe otherwise. Even though there is a first floor kitchen and bathroom, there is nothing to indicate they are used solely by the employee and the layout is conducive to use of those facilities by the family also. In the absence of contrary evidence, I consider it likely that the employee is living as part of a single household occupying the ground and first floors without creating a separate fourth unit of accommodation.
4. Thus, the property has been sub-divided into three residential units. Where there is a deemed planning application to consider, it is important that the description of the breach is precise because the terms of this application are derived from the breach of planning control alleged in the enforcement notice. The allegation should be more appropriately framed as a material change of use of the premises to use as three 'residential units' rather than 'flats'. Corresponding alterations are required to Steps 1 and 2 of the notice. The steps cannot go beyond remedying the breach and so Step 1 requires re-wording to require the property to be restored to its condition before the breach took place. The required corrections can be made without causing injustice to the parties and I shall therefore use my powers under section 176(1) of the Act to correct the notice accordingly.
5. The Council refers in its Appeal Statement to the extension having a detrimental effect on neighbouring amenity. It has not elaborated upon what it means by this and it is not for me to speculate. Its reasons for issuing the notice relate solely to the effect of the extension on the character and appearance of the host dwelling. However, neighbouring occupiers have raised specific concerns over living conditions which I turn to below.

Main Issues

6. The main issues are:-
 - whether the change of use provides satisfactory living conditions for present and future occupants by virtue of the size of the units, the intensity of the use of the premises and the availability of outdoor amenity space, bin and cycle storage facilities;
 - the effect of the change of use on parking provision in the surrounding area;
 - the impact of the change of use on housing stock in the area; and
 - the effect of the extension on the character and appearance of the host dwelling; and
 - the effect of the extension on the living conditions of neighbouring occupiers with particular reference to outlook.

Reasons

Living conditions

7. The Council's concern over floorspace relates to the size of the two studio flats. Measurements were taken at my site visit in the presence of the appellant who was able to ensure that they were accurate.
8. Saved Policy H18 of the Brent Unitary Development Plan (UDP), 2004 refers to the quality of flat conversions. It requires, among other things, the provision of an acceptable standard of accommodation; no over-intensive use in terms of number and size of units; regard to internal size standards; units having adequate circulation and storage space; the provision of appropriate bin storage; and the retention of rear gardens.
9. Additionally, Policy 3.5 of the London Plan 2015 provides that housing developments should be of the highest quality internally and that they enhance London's residential environment. In particular, LDFs should incorporate minimum space standards that generally conform with Table 3.3. This specifies that a 1 person flat with shower room should have a minimum gross internal floor area of 37sqm. The Council's Design Guide For New Development Supplementary Planning Guidance (SPG 17), 2001 does not set a minimum room size standard but guides a minimum unit size of 33sqm for a 1 person studio flat.
10. Since the London Plan is the more recent document it carries greater weight although this is of little consequence. From the measurements taken on site, one studio flat measures approximately 16sqm which is extremely cramped. The other is larger, but is still under 30sqm and the circulation space is restricted by a sloping ceiling. Both studio flats fall below the minimum expected internal space standards and fail to provide an appropriate standard of accommodation for day-to-day living. There being three residential units within the same property, two of which are sub-standard in size, there is an over-intensity of use.
11. Moreover, whilst there is a rear garden it is only accessible by walking through the ground floor accommodation. Therefore, it will not be available to the tenants who are without access to any outdoor space as expected in SPG 17. This further impedes the overall quality of the accommodation.
12. There is a small front garden where several bins are stored in the same manner as other properties in the road. Adequate bin storage facility is therefore available. The policy requirement within UDP Policy H18 for secure cycle storage only applies 'where practical'. Aside from the front garden, which would clearly not be very secure, there is no other location available to tenants to store cycles given the access issues to the rear garden. As there is no practical solution, I find no conflict with Policy H18 in this regard.
13. Whilst I acknowledge the appellant's personal circumstances giving rise to the need to generate income from the tenancies, this does not obviate or offset the need for a suitable standard of accommodation as contemplated by policy. Similarly, the more recent registration of the flats for Council Tax purposes does not mean that the flats are acceptable in planning terms.
14. To sum up, I find no harm with regard to bin and cycle storage. However, the use nonetheless fails to provide an acceptable standard of accommodation for

current and future occupants in terms of the size of the two upper floor flats, the lack of outdoor amenity space and the intensity of use contrary to UDP Policy H18 and the space standards within Policy 3.5 of the London Plan. There is also conflict with Paragraph 17 of the National Planning Policy Framework (the Framework) insofar as it seeks a good standard of amenity for all existing and future occupants of land and buildings.

Parking provision

15. Pursuant to UDP Policy H19 on-street parking arising from converted dwellings will not be acceptable where a street or section of a street is heavily parked. UDP Policy TRN3 goes on to say that planning applications will be refused where any resulting on-street parking would cause unacceptable traffic management problems. Mora Road is listed in the Appendix to UDP Policy TRN3 as being heavily parked.
16. There is no off-street parking provision at the premises, nor could any be made available. On-street parking restrictions apply along Mora Road and adjacent roads. For the most part residents parking is for permit holders only. A small number of bays are available for limited duration for pay and display. Even mid-morning I noted that the road was heavily congested with very few spaces remaining for permit holders. No pay and display spaces were vacant. Demand for those spaces may have risen due to commercial premises in the area, but that does not account for the pressure on residents only parking spaces.
17. In the circumstances it is not difficult to see how any further on-street parking demand could increase the risk to highway safety as competition for spaces rises. Policy PS14 says that parking standards for conversions should be based on the difference between the pre-converted and converted dwelling. The conversion has resulted in the addition of two, 1 bedroom flats which according to the Table in Policy PS14 would generate a need for two additional spaces. I recognise that the tenants may not have cars, but that is not to say that will always be the position.
18. The change of use could exacerbate the availability of on-street parking provision to the detriment of parking in the area which would be contrary to the aforementioned development plan policies.

Housing stock

19. The Council's concern is over the loss of a small family dwelling. Before its conversion, the property was a 5 bedroomed house. The appellant argues that it is still a home for her large family plus their cleaner/babysitter and the studio flats are additional accommodation. As such, it is maintained that there is no loss of a family sized dwellinghouse.
20. The UDP recognises that the conversion of houses into two or more flats is an important means of increasing the number of dwellings in the Borough. The broad approach taken by the Council is to encourage conversions as long as the units created form satisfactory dwellings and provide a range of unit sizes. The London Borough of Brent Core Strategy (CS), 2010 also recognises the need for a wide range of accommodation sizes and types but emphasises the need for family accommodation with three or more bedrooms. One specific circumstance where conversions are not normally acceptable is where it leads

to a loss of small purpose built family dwellings which meet a specific housing need in the Borough which has a high number of larger families.

21. UDP Policy H17 protects small dwellings of less than 110sqm from loss by conversion to flats or 140sqm if the property is in a location where conversions are restricted. The Council calculates the original floor area to be approximately 115sqm. Conversions are restricted where the intensification of use is likely to have an adverse environmental and traffic impact, as described in UDP Policy H22. As Mora Road is defined as 'heavily parked' it is in a location where the higher 140sqm threshold and policy restriction on conversion applies.
22. Although there remains a family sized unit which is presently used for five bedrooms, it is no longer a single family dwelling. The configuration has changed and limits its future use as a family home. Tenants of the upper flats share use of the hall, stairs and landing which form part of the family accommodation. Such arrangement with tenants walking through part of the unit would not be acceptable to many potential future occupants seeking a family home. Thus, not only has the available space been reduced by the conversion of the loft area to separate flats, the sub-division has also resulted in a smaller and more cramped family home with poorer layout also evident from two bedrooms being on the ground rather than upper floors.
23. Whilst CS Policy CP 21 seeks to maintain and provide a balanced housing stock, the lack of accommodation with more than two bedrooms is emphasised in the supporting text. Moreover, the conversion of the premises into 3 residential units is a change of use that does not comply with UDP Policy H17.
24. Therefore, I conclude that the change of use has resulted in the loss of a small family dwelling contrary to development plan policy.

Extension – Character and appearance

25. Mora Road is predominantly composed of two storey period terraces of similar appearance with upper and lower bay windows fronting the highway. At the rear of the terrace containing No 18, the properties have two storey outriggers and a variety of small scale extensions are apparent.
26. The appeal property has previously been extended by a single storey addition. The extension attacked by the notice enlarges the existing kitchen extension and continues down the side of the original house in an L-shape. The narrow strip at the side has enabled a room used as a lounge to be widened. The extension virtually fills the full width of the plot with only a small gap closest to the boundary with No 16.
27. The flat roof has a deep overhang giving the roof a prominence that accentuates the extent of rearward projection and highlights the poor design and degree of discord with the host dwelling. Indeed, the rear is completely dominated by the scale and mass of its extensions. They also bear little resemblance to the host dwelling either in terms of materials or design. Although there are other single storey additions at nearby properties, most are far smaller. The one extension that I could see that does project rearwards by a similar distance does not appear as bulky.
28. The L-shaped extension has a significant adverse effect on the character and appearance of the host dwelling and the surrounding area. This is contrary to

UDP Policy BE2, which seeks to protect the character and/or appearance of an area, and UDP Policy BE9 which, amongst other things, requires extensions to be of a scale, mass and height appropriate to their setting. It also conflicts with paragraph 56 of the Framework which promotes good design.

Outlook

29. Representations have been made by neighbouring occupiers on a variety of issues, many of which fall outside the remit of this decision, including allegations of trespass, building control and environmental health matters.
30. During my site visit I was able to view from the neighbouring property at No 20. There had previously been a wall along the shared boundary between the appeal site and this property. With the further extension there is now a high wall projecting further along the boundary. The Council estimates it to be 1.6m longer than before. Whatever the precise figure, there is now a very large expanse of solid wall projecting a significant distance along the boundary. It has an enclosing and oppressive effect in views from the nearest ground floor room of No 20 and more particularly for anyone sitting on the patio in the area nearest the rear of the house. The gardens are not very wide and this exacerbates the enclosing effect.
31. It seems to me that there is also likely to be a similar effect for the occupiers of No 16 who will now have a very long wall close by the boundary where there was a gap before.
32. I conclude that there is a significant adverse effect on living conditions for neighbouring occupiers in terms of outlook contrary to paragraph 17 of the Framework, as aforesaid.

Other matters

33. Compliance with the notice will require cessation of the tenancies of the two flats. I recognise that upholding the notice will result in the loss of those tenant's homes. One tenant is said to be a mother and baby with a disability who has apparently been seeking accommodation elsewhere, but to no avail.
34. Six months has been given for compliance which will run from the date of this decision. No ground (g) appeal has been brought to seek an extension of time. The time provided should give sufficient opportunity for the tenants to find alternative accommodation. If appropriate, the Council can decide whether to extend the period using its powers under section 173A(1)(b) of the Act.
35. Any interference with the tenant's human rights would be outweighed by the wider public interest in upholding planning policy in accordance with the law. Having carefully considered the position, I am satisfied that dismissal of the appeal would not have a disproportionate effect on the appellant or occupiers so as to violate their rights.
36. Whilst I can sympathise with the appellant, an erroneous belief that the extension was permitted development would not give cause to allow unsatisfactory development.

Conclusion on ground (a) and the deemed planning application

37. Although I have found no harm with regard to bin and cycle storage, this does

not alter or negate the fact that the change of use and extension are nonetheless harmful in respect of the other main issues.

38. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should not succeed.

Formal Decision

39. It is directed that the notice be corrected by:

- deletion of the word "flats" from the first part of the allegation in Schedule 2 and substitution therefor with the words "residential units"; and
- deletion of the whole content of STEP 1 of Schedule 4 and the substitution therefor of the following:
"Cease the use of the premises as more than one residential unit and restore the property to its condition before the breach took place."; and
- deletion of the word "flats" from STEP 2 of Schedule 4 and substitution therefor with the words "three residential units".

40. Subject to these corrections, the appeal is dismissed and the enforcement notice upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

KR Seward

INSPECTOR