
Appeal Decision

Site visit made on 20 February 2017

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 06 March 2017

Appeal Ref: APP/T5150/C/16/3154846
115A and B Chapter Road, London NW2 5LH

- 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 Khalid Al-Thafeiry against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 13 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to two self-contained flats.
 - The requirements of the notice are:
 - i) Completely and permanently cease the use of the premises as two self-contained flats.
 - ii) Remove all kitchens except ONE, and all bathrooms except TWO, from the premises.
 - iii) Remove all partitions, doors, facilities, fixtures and equipment that facilitate the unauthorised use of the property as self-contained flats.
 - iv) Remove all items, waste materials and debris associated with the unauthorised use and revert the property back into a single family dwellinghouse.
 - 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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at 115A and B Chapter Road, London NW2 5LH, as shown on the plan attached to the notice, for the material change of use of the premises to two self-contained flats.

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

Background and Main Issues

2. A retrospective planning application for the development that is the subject of the notice was dismissed on appeal¹ in March 2016. The notice was issued some months later. The reasons for issuing the notice are identical to those for refusing the planning application save for the reference to the later version of

¹ Ref: APP/T5150/W/15/3137550

The London Plan. The main issues therefore remain the same as those considered by my colleague. They are:

- (a) The effect of the development on the housing stock in the borough; and
 - (b) Whether the development carried out leads to an increased demand for on-street parking in the area and, if so, the effect this has on highway safety.
3. Where an application for the self-same development has been previously considered and dismissed on appeal and the main issues for the determination of the current appeal remain the same there is no good reason for coming to a different conclusion unless there has been a material change in circumstances that would justify doing so. In this case there are two such changes to be taken into account.
 4. First, the appellant has sought to address the reasons for the earlier appeal being dismissed. To deal with the housing stock policy conflict, the appellant proposes to reconfigure the accommodation to provide a three bedroom flat with direct access to the private amenity space at the rear of the property. This appears to also have been the subject of a planning application to the Council². The outcome of that application is said by the Council to be "technically deleted record"; no explanation for that term has been given. The parking policy conflict is proposed to be addressed by the provision of a Unilateral Undertaking pursuant to s106 of the principal Act, the essence of which is to secure a car-free development.
 5. Second, the Council confirms that the Unitary Development Plan policies cited in the reasons for issuing the notice and relevant at the date of the previous appeal decision are no longer in effect. In relation to the housing stock issue the relevant policies for the determination of this appeal are now policy CP 21 of the London Borough of Brent Core Strategy (CS) adopted in July 2010 and policy DMP 17 of the London Borough of Brent Local Plan Development Management Policies (DMP) adopted in November 2016. That relevant with respect to the parking issue is DMP policy DMP 12.

The effect on housing stock

6. CS policy CP 21 is primarily concerned with providing a balanced housing stock in Brent by ensuring that new housing contributes towards the identified household needs. However, it also aims to maintain a balanced housing stock by protecting existing accommodation that meets known needs. This strategic policy aim is delivered through DMP policy DMP 17. The conversion of a family-sized home (defined in policy as 3 bedrooms or more) to two or more other dwellings will only be allowed where both the existing home is 130sqm or more and it results in at least a 3-bedroom dwelling, preferably with direct access to a garden/amenity space (emphasis added). Exceptions are listed but they do not apply in this case.
7. The building has been extended in accordance with approved planning applications and submissions. On the uncontested evidence of the appellant these extensions were added before the conversion of the property to two self-contained flats and have resulted in some 163sqm of residential

² Ref: 16/3243

accommodation. This is currently arranged as a two-bedroom flat on the ground floor and a three-bedroom flat on the first and loft floors.

8. There is nothing in DMP policy DMP 17 itself or the supporting text to suggest that 'existing' should be interpreted as the 'original' dwelling. As currently arranged the accommodation does not give rise to a conflict in this regard with DMP policy DMP 17 (a).
9. The building has a three-bedroom flat now as required by DMP policy DMP 17 (b). However, this has no direct access to the very small private amenity space at the rear and side. That appears to be for the exclusive use of the occupants of the ground floor flat. Nevertheless, such access from a three-bedroom dwelling is not required by DMP policy DMP 17 (b); it is only preferable. In my view, the accommodation as now arranged does not conflict with DMP policy DMP 17 (b).
10. The appellant does, nevertheless, propose to reconfigure the accommodation in order to fully comply with DMP policy DMP 17 (b). This would entail creating a second stairway to the first floor from within the ground floor flat, installing a bathroom into what is now the living room on the first floor to create a third, en-suite, bedroom for the ground floor flat and segregating this room from the rest of the accommodation on the first and loft floors. That accommodation would then become a two-bedroom flat.
11. The bathroom had already been installed in the first floor room at the time of my site visit. It would be preferable for that work to be completed and the accommodation laid out in accordance with the policy objective. However, it is not a requirement of the policy as explained above and a condition to that effect on any planning permission would not be justified.

The effect on highway safety

12. Chapter Road and the surrounding streets are subject to controlled parking. At the time of my mid Monday morning site inspection there were plenty of on-street parking spaces available. However, that was not the experience of the previous appeal Inspector which demonstrates that parking stress is variable.
13. The Council's transport statement and justification has not been reviewed and updated since the adoption of the DMP and still comments in terms of the replaced Unitary Development Plan policies. These are different in several significant respects from DMP policy DMP 12. For example, Unitary Development Plan policy TRN 23 says this:

Exceptionally 'car-free' housing developments may be permitted in areas with good and very good public transport accessibility where occupation is restricted by condition to those who have signed binding agreements not to be car owners (other than for pooled communal vehicles). Such persons will not be granted residents parking permits.

whereas DMP policy DMP 12 says this:

In areas with Controlled Parking Zones access to on-street parking permits for future development occupiers other than for disabled blue badge holders will be removed or limited.

14. There is no dispute that the appeal property lies within an area with a PTAL rating of 3 which is neither 'good' nor 'very good'. While the Council's

transport statement that '...the location is not considered appropriate for a 'car-free' development' would have been justified by the Unitary Development Plan policy it is not an accurate interpretation of DMP policy DMP 12. I therefore give little weight to the Council's transport evidence.

15. The appellant does not propose to provide any off-street parking to serve the development carried out. However, the residential parking standards set out in DMP Appendix 1 are maximum standards. The provision of no spaces at all is not therefore inconsistent with DMP policy DMP 12 in this regard.
16. The Unilateral Undertaking referred to above would secure the removal of access to on-street parking permits for the residents of the two flats. In that regard, there would be compliance with DMP policy DMP 12. The policy also states that contributions to car clubs and pool car schemes through a planning obligation will be 'strongly encouraged' in place of private parking in developments. The Unilateral Undertaking does not make provision for that. However, 'strongly encouraged' is the expression of an aspiration rather than a requirement. Failure to secure such contributions cannot be held to be in conflict with DMP policy DMP 12 in that regard.
17. The obligation therefore resolves what would otherwise be a conflict with development plan policy which could lead to the appeal being dismissed. The obligation is completed, signed and dated and enforceable. There is what I believe to be a minor drafting error in paragraphs 5.1.2 and 5.1.4. I consider the references therein to clause 5.1 should actually be to clause 5.1.1 but, in my judgement, this is perfectly clear from the context. The obligation therefore meets the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 as amended and the guidance in paragraph 204 of the National Planning Policy Framework. I have therefore taken it into account in reaching my decision.
18. For all these reasons the development carried out would not add to on-street parking demand or otherwise harm existing on-street parking conditions. It would therefore have no adverse impact on highway safety and would not conflict with DMP policy DMP 12 on this issue.

Conditions

19. The Council has not suggested any conditions that might be imposed in the event of planning permission being granted. The Planning Practice Guidance says that conditions should only be used to mitigate the adverse effects of development where it would otherwise have been necessary to refuse planning permission. Under the first main issue I have found that reconfiguring the accommodation as shown on the appeal drawing would be desirable. However, a failure to do so would not cause a conflict with the development plan policy. A condition requiring reconfiguration would not meet the tests set out in the Planning Practice Guidance. No conditions are therefore necessary.

Conclusion

20. For the reasons given above I conclude that the development carried out accords with the development plan and that the appeal should succeed on ground (a) and planning permission will be granted.

Brian Cook

Inspector