



Appeal Decision

by **Debbie Moore BSc (HONS), MCD, MRTPI, PGDip**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2020

Appeal Ref: APP/M5450/C/19/3233962

28 Bacon Lane, Edgware HA8 5AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr E Nahari against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 27 June 2019.
- The breach of planning control as alleged in the notice is without planning permission:
 - 1. The material change of use of the Land to use as five flats;
 - 2. The construction of a single storey rear extension.
- The requirements of the notice are:
 - 1. Cease the unauthorised use of the Land as five flats;
 - 2. Remove all kitchens from the Land except (1) one;
 - 3. Remove all bathrooms from the Land except (1) one;
 - 4. Remove all internal partitions from the Land that enable the Unauthorised Flats;
 - 5. Demolish the Unauthorised Development shown hatched on Plan 2;
 - 6. Remove all materials associated with the above step [sic] from the land.
- 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 (d) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Planning Inspectorate initially made arrangements for this appeal to be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined without a site visit without causing prejudice to any party. This is because the parties have submitted sufficient plans and photographs to understand the nature of the site given the points in dispute. The parties were contacted on 26 May 2020 and it was agreed that, as the appointed Inspector, I could proceed to a decision on this basis.
2. It is clear from the notice as a whole that its purpose is to remedy the breach of planning control. This can only be achieved by the cessation of the unauthorised use and the removal of works that facilitated that use. As such, the first requirement is to cease the unauthorised use of the Land as five flats. While the intent is correct, this wording presents problems, since it could allow use as four or six flats. The appropriate wording is to cease the use as flats. I am satisfied I can correct the notice without injustice as the statutory purpose behind the notice and the intent of the requirement would be unaffected.

3. The remainder of the requirements go further and, together, they seek to reinstate the property to its condition before the breach took place. The Courts have ruled that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place.
4. The appellant has submitted floorplans (Ref 1935 P-01) which indicate the rear extension provides living accommodation for the "*ground floor side flat*" and the "*ground floor rear flat*". The plans show this extension was linked by a canopy to an outbuilding which, according to other evidence, comprises the "*extreme rear flat*". Therefore, the totality of the extensions are part and parcel of the material change of use. The requirements are seeking the removal of all these structures to prevent the unauthorised use re-occurring. In addition, the notice cites the rear extension (which includes the linked outbuilding) as operational development, which constitutes a breach of planning control in its own right.
5. The question of what is necessary to prevent the unauthorised use depends on the facts of the case. There is no information before me to suggest that the works targeted by requirements 2 to 6 had been undertaken for a different and lawful use and could be used for that other lawful use if the unauthorised use ceased. Therefore, I have not sought to correct or vary the requirements, other than as set out for requirement 1, above.

The appeal on ground (d)

Background and Main Issue

6. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on 'legal' grounds of appeal is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
7. The appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The notice details two breaches of planning control; the first concerns a material change of use to five flats and the second concerns operational development. Section 171B(2) of the 1990 Act as amended says that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. A self-contained flat is a dwellinghouse for the purposes of s171B(2). Section 171B(1) relates to operational development and, in those cases, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
8. Therefore, in order to succeed on ground (d) in respect of the first allegation, the appellant must show that there was a material change of use of the

property to five self-contained flats on or before 27 June 2015 and that this use then continued for four years after the date of change without any significant interruption. It is important to establish whether there was any period during the four years when the units were not physically occupied, even though available, when the Council could not have taken enforcement action against the use. It is also necessary to make a finding as to whether any periods of non-occupation were *de minimis*.

9. In relation to the second allegation, the appellant must show that the matters alleged were substantially completed four years prior to the issue of the notice. The test of the evidence in both matters is the balance of probability.

The evidence

10. In relation to both allegations, an affidavit has been submitted¹ by the occupant of the *ground floor rear flat*. This states that the property has been used as four flats since 2012 and the rear extension has been there since June 2015. A further affidavit² from the occupant of 26 Bacon Lane states the same.
11. In respect of the material change of use, the appellant has provided Tenancy Agreements, as follows:
- The “*ground floor left*” flat for the continuous period 2 July 2013 to 30 January 2017, under the same tenant’s name. Then, there is a new agreement for the unit, under a new tenant, from 20 February 2017 to 19 February 2018. Another tenancy agreement for “*Flat 1*”, which I take to be the same unit, runs from 12 March 2018 for one year.
 - The “*ground floor rear*” flat for the period 15 November 2016 to 15 June 2017.
 - The “*ground floor right*” flat for the continuous period 11 August 2013 to 11 August 2014.
 - “*Flat 4*” from 7 August 2017 for eight months.
12. There is also a lease agreement for the whole property at No 28 between the landlord and a letting agency from 11 November 2013 to 10 November 2014.
13. Various documents relating to Council Tax have been submitted. These indicate that the appellant was responsible for the Council Tax at the “*ground floor left*” flat from 1 March 2012 to 31 March 2014, from 1 February 2017 to 31 March 2019 and various times in 2016/17. However, some of these are duplicated by other statements covering the same dates, addressed to the various tenants named on the Tenancy Agreements. The dates largely correspond with their residence as indicated by the Tenancy Agreements.
14. In terms of the “*ground floor side rear*” flat, it appears that the appellant was responsible for Council Tax from April 2013 to March 2020.
15. The appellant was responsible for Council Tax for the “*ground floor rear*” flat from 1 March 2012 to 31 March 2014, and from 31 March 2018 to 31 March 2019. There is also a statement in the name of the relevant tenant from

¹ Dated 8 July 2019.

² Dated 15 July 2019.

15 November 2016 to 31 March 2018. However, there is a duplicate statement in the name of another tenant from 01 July 2018 to 31 March 2020.

16. The Council Tax for the "*ground floor right*" flat relates to the period 11 June 2015 to 31 March 2020. There is no corresponding tenancy agreement.
17. In relation to the single storey rear extension, I have been referred by the appellant to 'Google Earth' aerial images dated 2010 and 2015. I have also had regard to the following images supplied by the Council; aerial views 2015 and 2016 and 'google earth' images 2015 and 2019.

Analysis

18. The evidence supplied by the appellant relates to four flats, as set out above, not five as alleged. The Council notes the existence of a "*ground floor extreme rear*" flat, which is not referenced in any of the appellant's evidence. In addition, there are significant gaps either in terms of the periods covered by the Tenancy Agreements or the Council Tax records for the other four flats. As set out above, it is necessary to show that the flats were all occupied during the relevant period without significant interruption. From the evidence, it seems that several of the flats were vacant for relatively long periods of time. In addition, the evidence is ambiguous as there is some duplication in the records and it is unclear who was responsible for paying the Council Tax.
19. The Council Tax records and the Tenancy Agreements are incomplete and do not show how each of the units was used and occupied. Crucially, while the sworn evidence carries moderate weight, it refers to four flats and not five. Therefore, the appellant has not shown on the balance of probability that there was a material change of use of the property to five self-contained flats on or before 27 June 2015 and that this use then continued for four years after the date of change without any significant interruption.
20. The aerial images supplied by the appellant are unclear and it is not possible to establish what has been built and when. The sworn evidence is limited and ambiguous in terms of when the extension was substantially complete. Furthermore, the Council has supplied its own evidence by way of images and aerial views that appears to contradict that of the appellant, although this is not entirely conclusive due to the quality of the images. In any event, I am not satisfied that the appellant has shown on the balance of probability that the matters alleged were substantially completed four years prior to the issue of the notice.
21. Therefore, the appeal on ground (d) must fail in respect of both allegations.

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

Main Issues

22. The appeal on ground (a) is that planning permission should be granted for the matters alleged. The terms of the application are derived from the allegation, hence, planning permission is sought for the material change of use of the premises to five flats and the construction of a single storey rear extension.
23. The main issue are: (i) whether the development provides adequate living conditions for the occupants of the five units, with regard to size, layout and amenity space; (ii) the effect of the development on the living conditions of

neighbouring occupiers, with regard to parking demand and bin storage and; (iii) the effect of the rear extension on (a) the living conditions of adjoining occupiers, with regard to outlook, and (b) the character and appearance of the host property.

Living conditions of the occupants of the units

24. The appeal relates to the ground floor of the premises, which is described by the Council as formerly a ground floor flat. It has been extended and sub-divided into five separate units of accommodation. The approximate floor areas are given by the Council as follows: *ground floor left* 18.18sqm; *ground floor rear* 16.94sqm; *ground floor right* 22.02sqm; *ground floor side rear* 22.08sqm; *ground floor extreme rear* 46.52sqm. The Council's photographs (June 2019) indicate that each flat contains all the facilities required for day-to-day private domestic existence. The flats are one bedroom single person units, aside from the extreme rear which is a two person flat. The appellant has not disputed this evidence.
25. Policy 3.5 of the London Plan seeks to ensure all housing development is of the highest quality. New homes should have adequately sized rooms and convenient and efficient room layouts, which are functional and fit for purpose, as well as meeting the needs of residents over their lifetimes. In particular, the policy requires that dwellings should be of a size consistent with the National Space Standards³, in order to reduce potential for overcrowding.
26. The Council contends that the five flats within the premises are under-sized, as they do not achieve the minimum space standard of 37sqm for a 1 person, 1 bedroom flat with a shower room; or 50sqm for a 2 person, 1 bedroom flat. The consequence is that the occupants would have limited space for day-to-day residential use, which would negatively impact on their living conditions. There is no internal communal space to mitigate this impact, and limited private outdoor space. There is a reasonably sized front garden, which the residents can access, but this alone does not make up for the lack of appropriately sized and private outdoor space.
27. In addition, there is no evidence before me to show how the development would meet the Council's strategic aims of promoting equality of opportunity through providing a range of quality accommodation that meets the diverse needs of the community. While there may be local demand for rented accommodation for small households, it is not apparent how community needs are met in this instance or how 'Lifetime Homes standards' are achieved.
28. I conclude on this issue, that the development does not provide adequate living conditions for the occupants of the five units in terms of the unit size, amenity space and the layout and adaptability of the rooms. It is therefore contrary to Policies DM1 and DM26 of the Development Management Policies⁴, Policies 3.1, 3.5, 3.8, 7.2 and 7.6 of the London Plan (2016), the Council's Residential Design Guide: Supplementary Planning Document (SPD) (2010) and its Accessible Homes: SPD (2010) which, among other things, seek to ensure the provision of well-located, high quality and adaptable residential accommodation that meets local need.

³ Technical housing standard – nationally described space standard, DCLG (2015).

⁴ Harrow Council: Development Management Policies Local Plan (2013).

Living conditions of neighbouring occupiers

29. The property is located within an area of relatively dense, residential development. The Council argues that there is insufficient off-street parking to serve the flats. Photographs show that there is a driveway, but it is unclear whether this serves the property solely and, if it does, how many vehicles could be accommodated. In addition, the Council considers that there is a lack of suitable space to accommodate the required number of bins without detriment to the visual appearance of the property and the wider area.
30. While I acknowledge that not all of the occupants would own or have access to cars, there is likely to be a greater demand for parking associated with five flats than a single dwellinghouse. The lack of parking would have consequences in terms of inconvenience to neighbouring residents. It is also likely that the unauthorised use would lead to more activity in and around the property, which would adversely affect other people living nearby due to noise and disturbance. The local plan policy also encourages the provision of appropriate waste management facilities. It is not apparent how such a facility could be accommodated on the site without detriment to the street scene. There is no information to show how these issues could be addressed. However, it is unlikely that the parking and waste management issues could be resolved easily due to constraints of the site and the number of units.
31. I find, therefore, that the use is not compatible with its surroundings and is likely to have an adverse effect on neighbouring occupiers due to increased parking demand and additional activity, and a lack of provision for waste management. The development would not accord with Policies DM1 and DM26 of the Development Management Policies, which seek to ensure development complements its surroundings and preserves residential amenity.

Rear extension

32. The appellant's plans and elevational drawings show a relatively large outbuilding, which was connected to a rear flat-roofed extension by a canopy. This corresponds with photographs from the Council (June 2019), which also show the outbuilding is clad in white synthetic material, possibly uPVC. It appears that the canopy has now been removed. In any event, for the purposes of the ground (a) appeal, I must consider the development at the date the notice was issued.
33. The extension and linked outbuilding cover an extensive area of the rear garden and extend along the length of the boundary with the adjoining property. The scale of the development is excessive and it is likely that the extensions create an unacceptable sense of enclosure to the adjoining property and its rear garden, which would adversely affect the outlook of neighbouring occupiers.
34. Moreover, the white cladding to the outbuilding is a stark contrast to the brick and tile materials of the original property. This accentuates its alien and obtrusive appearance, to the detriment of the character and appearance of the host property.
35. To conclude on this issue, I find that the totality of the rear extensions have an adverse effect on the outlook of adjoining occupiers, to the detriment of their living conditions, and have an adverse effect on the character and appearance

of the host property due to their scale and materials. The rear extension is contrary to Policy 7.6 of the London Plan, Policy DM1 of the Development Management Policies and the Council's Residential Design Guide: SPD which, among other things, seek to promote quality development that complements its surrounds and preserves residential amenity.

Conclusion

36. I have found that the development does not comply with the relevant policies of the development plan. Therefore, the appeal on ground (a) and the deemed planning application cannot succeed.

Conclusion

37. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Formal Decision

38. It is directed that the enforcement notice be corrected by the deletion of the word "five" in 5. 1 of the notice. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Debbie Moore

Inspector