



Appeal Decision

Inquiry opened on 10 February 2021

Site visit made on 27 April 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 30 June 2021

Appeal Ref: APP/T5150/C/19/3226686

199 High Road, London NW10 2SB

- 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 by Khalid Osman Khalaf Al-Thefeiry against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, ref. E/18/0571, was issued on 6 March 2019.
 - The breach of planning control alleged in the notice is:
 - The material change of use from a shop and two flats to a shop and five flats, and the erection of a two-storey rear extension.
 - AND
 - The erection of a rear dormer window roof extension to the premises.
 - The requirements of the notice are to:
 - STEP 1 Demolish the two-storey rear extension.
 - STEP 2 Demolish the rear dormer window and roof extension and restore the roof back to its original condition before the unauthorised development took place.
 - STEP 3 Cease the use of the premises as more than two flats and one shop and remove all fixtures and facilities installed to facilitate the unauthorised use, so that there are no more than two kitchens, three bathrooms in the premises.
 - STEP 4 Restore the layout of the premises to a shop on the ground floor and two flats on the upper floors, which was the internal configuration before the unauthorised change of use took place.
 - STEP 5 Remove all items, materials and debris arising from the above works from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an application has been made on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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This decision is issued in accordance with section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended, and supersedes that issued on 7 June 2021.

Decision

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:

DELETION of '*3 months*'; and,

SUBSTITUTION of '*9 months*' as the period for compliance.

I further direct that:

The allegation and requirements of the notice be varied by:

DELETION of the words '*a shop and two flats*' from the alleged breach; and,
SUBSTITUTION with the words '*a shop and three flats*'.

DELETION of the second allegation from the notice, that is '*The erection of a rear dormer window roof extension to the premises*'.

DELETION of Step 2 from the requirements of notice, that is to '*Demolish the rear dormer window and roof extension and restore the roof back to its original condition before the unauthorised development took place*'.

DELETION of Step 3 from the requirements of the notice; and,
SUBSTITUTION with the words:

'Cease the use of the premises as more than three flats and one shop and remove all fixtures and facilities installed to facilitate the unauthorised use, so that there are no more than three kitchens and three bathrooms in the premises.'

DELETION of Step 4 from the requirements of the notice; and,
SUBSTITUTION with the words:

'Restore the layout of the premises to a shop on the ground floor and three flats.'

Subject to these variations 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.

Preliminary matters

2. The Inquiry was held as a virtual event. It was attended by a German-English interpreter for two of the appellant's witnesses.
3. All witnesses and the interpreter made a solemn affirmation.
4. The appellant has been referred to variously as 'Mr Osman' and 'Mr Al-Thefeiry'. For the purposes of this determination I have adopted the latter form.
5. The Council originally issued an enforcement notice on 29 March 2017, including the allegation that the change of use was in part to six flats. However, it was recognised this did not properly reflect the actuality of the development and it was withdrawn. This current notice under appeal was issued on 6 March 2019 under the 'second bite' provisions of s.171B(4)(b) of the Act. The relevant date for the purposes of determining immunity from enforcement action is that of issue of the first notice.
6. The allegation of six flats had arisen because a Council planning officer inspecting works to the neighbouring building no. 201 on 4 November 2013 had seen what he took to be a self-contained accommodation on the ground floor of the outbuilding that became the two-storey rear extension now enforced against.
7. The Council want to vary step 4 of the requirements so as not to prescribe the layout of flats to be on the upper floors. I consider this could be done without causing significant prejudice to either party, and will vary the notice accordingly.

Background

8. The appeal property stands on the southern side of High Road, which is mainly a street of shops fronting directly onto the pavement and with residential accommodation above. It probably dates from the late 19th or early 20th century and is part of a terrace of similar buildings. The original building had a shop on the ground floor with two floors of residential accommodation above and in a two-storey outrigger. As now altered it comprises a shop on the ground floor, with a separate access to Flats 1 and 2 in the outrigger, and flats 3, 4 and 5 on the first and second floors and in the relatively recently built attic dormer. There is now a two-storey extension beyond the outrigger that houses the bedrooms of Flats 1 and 2. The Council maintain that the outrigger itself has been extended by some 2 metres.
9. In the area now occupied by the two-storey extension beyond the outrigger there was formerly a single-storey timber shed, which the appellant says was incrementally replaced with the flat-roofed blockwork and timber structure that now exists.
10. The appellant does not plead either ground (a) or (d) in respect of the first floor of the former shed - forming the bedroom of Flat 2 - for which he says the works were done in 2014. Whatever the outcome of this appeal he will remove that floor and its link to the outrigger.

The appeal on ground (d)

11. This ground is that the alleged development is immune from enforcement action as a result of the passage of time. This is a 'legal' ground on which the burden of proof is on the appellant to show this is the case on the balance of probabilities. Further, the Court has held in *Gabbitas*¹ that in a case of this sort the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council have no evidence of their own or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify his claim on the balance of probabilities.
12. In this case the appellant must demonstrate that the operational development was substantially complete four years or more before the date of issue of the enforcement notice, and that the material change of use has subsisted continuously for four or more years before that date. The critical date is therefore at least four years before 29 March 2017.

Building history and operational development

13. The Council concede that the rear dormer window roof extension has gained immunity from enforcement action, and I take no further action on ground (d) in relation to that element of the operational development.
14. Included in their arguments the Council claim there has been an extension to the outrigger. I should make clear that this is not a matter enforced against - as is the 'two-storey rear extension' - which refers to the flat-roofed part of the building at the back of the site, which is linked to the outrigger.

¹ *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630.

15. There are a number of aerial photographs of the area. One, that I understand is from 2008, shows the outrigger with what is most probably a white satellite dish attached to its back wall. This wall is set some distance back from the back of the large back extension to the adjoining property no. 197. In a later picture, which I understand is from April 2013 it is readily apparent that the back wall of the appeal property outrigger aligns more or less with the back wall of the no. 197 extension. Furthermore, looking at earlier photographs, including one of the adjacent building - no. 201 before that was extended - it appears likely that the appeal property originally had an outrigger of the depth suggested by the Council, with a single storey lean-to attached at the back.
16. The appellant said that the outrigger had not been extended, as could be seen when looking at the continuous external cement-based render in which there no apparent join. The Council say it can be seen from the thickness of the present back wall of the outrigger and of the internal back wall of the principal rooms in Flats 1 and 2 that the now internal walls formed the original back wall of the outrigger.
17. I saw that the external cement render is indeed continuous and there is no obvious join – as might be expected, since the render is relatively recent. However, at the base of the building, below the level of the render, there are two courses of exposed brickwork that look like engineering bricks. These appear to be relatively new, and on the visit were confirmed to extend about 1.75 metres back from the present main back wall of the outrigger. This closely corresponds with the depth of extension the Council argue has been added to the original outrigger. Given the evidence of the aerial images, the wall thicknesses and the apparently relatively new brickwork I consider that, on balance, this is probably an extension built at some time before 2008 after demolition of the lean-to.
18. Regarding the replacement of the shed, the appellant says that he built the blockwork of the four external walls in stages, building up one wall and supporting the roof on that, before moving on to the next wall and so on. The original roof was left intact. He claims that this was done, and the interior finished before 30 March 2012. He says the walls were built up from the concrete base which had supported the shed but did not know what form of foundation this was. A upper storey was built at a later date, and the roof over the original shed re-built as a timber floor structure. As already noted, it is agreed that this part of the development is unlawful.
19. I was told the single storey re-built shed which became the bedroom of Flat 1, was at first linked by a narrow porch-like structure, somewhat more than door width, and with a ceiling/roof just above door height. At more or less the same time the doorway from the Flat 1 kitchen into the porch was formed. The appellant told me that this entailed removal of the masonry below the existing kitchen window at the back of the outrigger, and that it was the sort of job that could be done 'in about half-an-hour'.
20. It is apparent from photographs taken at the time when inspections for Energy Performance Certificates (EPCs) were done – 26 March 2013 – that the kitchen in Flat 1 was complete. Across the window in the back wall was a sink set within an L-shaped work surface and with cupboards below. Judging from the photograph, the right-hand² jamb of the window itself is no more than about

² Looking from inside the room.

100mm from the side wall of the outrigger. At that time there was no link between the outrigger and the former shed – as is seen in an external EPC photograph, which shows the narrow open space between the building and shed with rendered back wall of the outrigger, the two windows, and the fair-faced brickwork of the extension to no. 197.

21. As now built, and as shown on all the appellant's floor plans from 2014 onwards – some of which purport to show the original layout - I saw that the doorway is not in the position of the window but is set some 520mm away from the side wall. This was not merely a matter of taking down the masonry below the window and putting in a door and frame but entailed constructing a new opening in a new position and construction of two steps up to the ground floor level of the link and former shed. In making the new opening it would have been necessary to remove the window, break out a section of brickwork, build up the remaining part of the window opening, insert a new lintel, form the new steps and make good the new opening on sides, top and the floor. Furthermore, the opening has been plastered, the floor below carried through to the link and properly finished, and a door and frame installed. Internally, the sink, worktop and cupboards as they were on 26 March 2013 were removed before reinstallation and re-plumbing in a new layout. It would also have been necessary to construct the linking porch with its roof walls and finished floor.
22. I have extensive experience of building alterations like this, both professionally and practically. This was not a job completed in 'about half an hour'. It would have needed attendance by several different trades, and time would be needed to allow new mortar and concrete to cure, and plaster to dry out before continuing to the next stages. I find it highly unlikely that these works, as well as the porch link construction and new doorways were completed within the few days between 26 March and 30 March 2013.
23. As regards the replacement of the shed, I give little credulity to the claim that block walls were built up from whatever concrete base had supported the original timber structure. This is likely to have been no more than a concrete slab, perhaps thickened around the edges. It is highly improbable this would support what was to become a two-storey building. It is also claimed the original shed roof was initially retained, later to be replaced by a first-floor structure – without any apparent interruption to occupation of the flat bedroom below. I have little belief in that claim. I also note that in an EPC photograph of the exterior, the white entrance door to the shed can readily be seen at the end of the narrow passage alongside the outrigger. Although some witnesses claim this door was merely one that was leaning against the wall of the rebuilt shed, the wall itself looks to be made of timber rather than faced in cement render.
24. In a letter of 4 December 2014 to the Council, Mr Aiad – the draughtsman who prepared the various drawings of the building and advised on addition of the dormer – says that Flat 1 extended to back boundary at time of purchase. However it is evident from EPC photographs of 26 March 2013 that this was not the case. Mr Aiad also refers to 'reconstruction of the ground floor rear extension to take the loads coming from the first floor'. From what I have seen that process would realistically have been necessary before the lower floor room was constructed and finished, rather than after.

25. If the linking porch existed, it is no longer there, and the connection between Flat 1 and the former shed now comprises a two-storey masonry-built structure with side walls on the eastern site boundary, using the neighbour's wall, and in line with the side wall of the outrigger. These spaces now provide a hallway with cupboards between the kitchens of Flats 1 and 2 and the bedrooms.
26. No evidence has been put forward as to when this more substantial construction replaced the claimed linking porch structure. Mr Alosman claims that he was not aware this new two-storey link was being built, and that the doorway from the kitchen was kept locked in that period. This seems improbable since at some point the door itself was removed, and it would be difficult to be unaware of quite major building works occurring immediately outside the flat.
27. It is argued in the grounds of appeal that the works to connect the ground floor of the shed to the main body started in February 2013 and completed with the linking porch in April 2013. This conflicts with Mr Al-Thefeiry's proof which says the entire works to Flat 1 including the link were completed during the latter part of March. However, there is virtually no evidence of the construction or existence of the porch structure apart from oral descriptions, but considerable evidence can be inferred of the scope of works needed to make the connection – which did not exist only four days before the critical date, and April 2013 is already beyond that date.
28. It is notable that the rent for Flat 1 was increased from £945 per month to £1300 per month at the start of the tenancy dated 1 January 2015. This casts some doubt on Mr Alosman's evidence that he moved out of Flat 1 in August 2013 as a result of the rent increase. The rent for Flat 2 also increased – from £950 per month to £1300 per month – on 1 February 2015. These two events were so close together, that a likely explanation is that the increases reflect significant changes to those two flats, likely to be the addition of separate bedrooms. The appellant puts forward a rather vague date, merely suggesting the likely time for the further works to the rear extension and building the second storey was in 2014. From the evidence of the rent increases I consider it likely that the works were not completed and in use until the end of 2014 at the earliest.
29. Overall, there is no significant evidence as to when the shed became a rendered blockwork structure. Further, it appears to me highly unlikely that the former shed became a substantially complete single-storey part of the main building before the critical date, when such significant elements of the works remained incomplete on 26 March 2013.

The material change of use

30. The Council argue that before the present development the property consisted of two flats and a ground floor shop, rather than three flats and a shop as maintained by the appellant. This is essentially on the basis that what had probably been Flat 1 had been unoccupied for a period of about three months before sale to Mr Al-Thefeiry in late 2012, and the use had been abandoned.
31. However, it is apparent the previous tenant had lost his tenancy as a result of non-payment of rent, following an accident when he was not living in the flat. It had clearly been in use for several years, and in my view the lawful use as a flat still obtained. It is my duty to put the enforcement notice in order if

- possible, and I intend to vary the allegation in order to do this. I do not consider either party would suffer significant prejudice as a result of this action.
32. The appellant has put in a remarkable number of documents – particularly tenancy agreements, Council Tax statements, statutory declarations, Council Tax bills and electricity bills. These together show the claimed tenants and tenancy periods, and the rent payable.
33. The appellant took possession of the property on or very soon after 29 November 2012. This was the day on which he says he came to an arrangement whereby the tenants could take possession of the flats rent free until such time as alterations were complete.
34. Mr Alosman says when he moved into Flat 1 it had a separate shower room, a small open-plan kitchen and a living/bedroom, and that the new installation was carried out between 4 and 24 December, apart from the linking door. He says was required to move out for various short times in that period - for no more than two or three days. He says the link was completed in the last two weeks of March 2013, making the separate bedroom available for use, even though he did not use it. It was proposed the rent should be increased to reflect this, and Mr Alosman decided he wanted to move out to a cheaper flat, which he did on 30 July 2013. Mr Munir then moved in, followed by Mr Alfrouh and family.
35. However, it appears from subsequent tenancy agreements that there was no rent increase until the start of Mr Munir's third tenancy period on 1 January 2015. Mr Alosman had been liable for Council Tax, which he had paid monthly, but I note the first record of payment was not until 27 August 2013 – after he says he moved out. He had paid no utility bills.
36. I have a drawing – no. HR-1 revision O, entitled 'Original Plans' and dated May 2017 - purporting to show the property as it was on purchase. This does not show Flat 1 kitchen as it existed at the time of the EPC photograph – or indeed as it is now. The kitchen is in a single line arrangement rather than an L-shape, and the window is in the position of the present opening to the link rather than close to the outside flank of the outrigger. I give little credence to this drawing. I also note that other drawings - nos. 1263-01 and 1263-02 entitled 'Survey Drawings' and 'Planning Drawings' dated December 2012 - rather unhelpfully omit the layouts of Flats 1 and 2, so there is no reliable record of the layout of Flats 1 and 2 before redevelopment.
37. The EPC photographs of Flat 1 show that there are signs of possible occupation on that date – there is equipment in the kitchen, and toiletries in the shower room. In the living room are bunk beds, heaps of bedding on the floor, and a small table with a glass and other items. It appears more akin to a storage area for bedding rather than an occupied flat.
38. When the appellant took possession of the property Mr Ali already occupied Flat 2, he entered in to a new tenancy on 29 November 2012. In his proof of evidence he said he stayed there until 22 March 2013, although in cross-examination he said he had left in February or 2 March 2013. He claims he remained in the flat during most of the period of refurbishment except for 'a couple of days' when he moved in to Flat 3 with Mr Alzifairi. He also said there was no operable WC in the flat for a period of 6 months, and that he and other tenants had shared the WC on the first-floor half landing. According to his

- statutory declaration there was a bedroom and separate living room in Flat 2, which was clearly not the case during his occupancy.
39. In cross-examination he said he had seen the shed, which had been ruinous with a collapsed roof, and that there had been works carried out, but he did not specify what or when.
 40. According to the tenancy agreements Mr Elsayed moved in to Flat 2 on 23 March 2013 and stayed until 31 December 2016. He was immediately followed by Mr Bakdaliea and Ms Ousama, who remain there to this day. Apart from a statutory declaration and a series of tenancy agreements, I have no other evidence from or about Mr Elsayed.
 41. The EPC photographs of Flat 2 show equipment on the kitchen surfaces, and items on the soap rack in the shower, but there are no furnishings at all in the area of the living room that is visible. It does not appear to be an occupied flat.
 42. From the evidence of the sequence of building operations it appears highly unlikely that Mr Ali had only needed to move out for such a short period. Although the original layout is not recorded in any documents before me, it is known that the flat roof over Flat 2 was being replaced, the bathroom and kitchen replaced, and electrical and plumbing systems replaced. I find it improbable this was completed within the claimed period of starting on 29 November and completing before Christmas day 2012, with Mr Ali in occupation for the majority of that time.
 43. Flat 3 had been occupied by Mr Alzifairi until 29 November 2012, when he had entered into a new 12-month tenancy agreement at a new rent of £1200 per month, when it had previously been £1083 per month. He had been told of the intention to convert the flat to 2 units and was happy to stay there rent free until the works were done. He says he left the flat in early April 2013, and it was then let for £1250 per month to Ms Romanowska, followed by Mr Elhawary, and until the present by Mr Baqdalieh and Ms Alhatahta at similar rents.
 44. The EPC photographs of Flat 3 show a complete kitchen and shower room, but no evidence at all of occupation in terms of equipment or furnishing. Mr Alzifairi said that the kitchen was bare of any signs of occupation since he did not cook at all, and his only furniture was a single chair in the kitchen.
 45. I find it highly unlikely that Mr Alzifairi was able to occupy Flat 3 for any significant period between 29 November 2012 and early April 2013 – even if rent-free, given that Flat 3 as it is now did not exist at the earlier date. During much of the period through to April 2013 the bathroom and kitchen were both removed, new partitions were erected on both floors, new kitchens and shower rooms installed, as well as new plumbing and electrical systems. Furthermore, the attic extension was being built and the staircase ceased being for his sole use.
 46. A tenancy agreement for Flat 4 was taken up by Mr Seirje on 29 November 2012. He says he did not move in until the works were complete and the flat habitable towards the end of January 2013. He says that Flat 5 was not ready for occupation until about three weeks later. He was vague about the nature of works to the shed and when they were done. He said no more than he thought there had been an old building at the beginning of his occupancy, then

something was built there – possibly in the course of the first year. Nor had he noticed the felling of a large tree on the adjacent site that overhung the common boundary.

47. In cross-examination he said he had slept on a mattress on the floor, which had remained there during his occupation and was left there when he vacated in 2015. This conflicts with evidence of photographs taken in November 2014 which show bunk beds in the Flat 4 bedroom. Apart from images of the pressurised hot water tank, there are no other EPC photographs of Flat 4, or other evidence to show occupation. As for Flat 3, given the extent of works being done to create the two flats, and the fact that the attic works were not complete when he claims to have moved in indicate it is unlikely he took up occupation of the previously non-existent flat towards the end of January.
48. Flat 5 in the attic with the box dormer, was first taken on by Mr Shamout. The flat did not then exist. He says he moved in on 1 March 2013 when the flat was ready and stayed until 30 June 2015. The quoted rent was £950 per month. From 1 July 2015, Mr Munir - who had moved from Flat 1 - took on the tenancy. In cross-examination Mr Shamout was also vague about other works to the property, and claimed he was not aware of any changes to the building after moving in and had seen nothing from his bedroom window. He also said he had seen something new built and that 'something had been done to an old building'. It appears that no-one noticed a substantial tree standing on the no. 201 site and which overhung the common boundary, but photographs show was felled at some time between March 2013 and July 2013.
49. The appellant says he has a close business relationship with Mr Seirje and Mr Shamout, both of whom live in Switzerland. Indeed, on 29 November 2012 they entered into an agreement with the appellant to invest a considerable sum in the appeal property – an amount that I understand has now been repaid. In return it was agreed they could take on Flats 4 and 5 for two years, with a discount on the market rent of 40%
50. It is notable that the sworn declarations of virtually all the purported tenants are identical in nearly all respects. There is no declaration from, or any other evidence about Ms Romanowska. There are minor differences in terms of their work occupations, and dates of occupancy but all describe their flats as having 'a kitchen, bedroom, bathroom and separate living area'. This is not the case, since Flats 1 and 2 had no separate bedroom at the claimed time of first occupation, and the kitchens of Flats 3 and 4 are within the living areas. The declarations do not vary, even between tenants of Flats 1 and 2 before and after rebuilding of the shed.
51. There are several differences between the descriptions provided by tenants in statutory declarations and what now exists or was purported to exist at the time of first occupation. For instance, Mr Shamout says he recalls that when he moved to Flat 5 – in March 2013 - there was a door to Flat 2 at the top of the first stairway opposite which was the access to Flat 3. This was probably the case for the original Flat 3 layout before conversion, and for the proposed layout shown on drawing no. 1263-02 dated December 2012, but is not the layout that now exists, or what Mr Al-Thefeiry claimed to exist in his Statutory Declaration of August 2017.
52. The conversion works as a whole included constructing a new roof over the outrigger, construction of the dormer installation of new uPVC windows, and

rendering the external walls. All electrical, plumbing and drainage services were renewed. A new staircase from second floor to attic was inserted, a previously existing WC on the half-landing, which originally served Flat 2, became the entrance lobby to Flat 2. There were new entrance doors to the flats. There were also the works of effectively replacing the former storage shed and building the link to Flat 1.

53. In his description Mr Al-Thefeiry describes the works overall as comprising installation of new bathrooms and kitchens, new partitions, decorations, and carpets, and building the new dormer. He also describes the original state of the building as being poor. He is a builder, was general foreman of the works, and paid for all materials and labour. As such he is in a position to give a detailed account of the delivery and handling of materials, the sequence of works and forms of construction. In this context his descriptions were vague and partial. I consider his characterisation tries to minimise the extent of what occurred.
54. Furthermore, several of the tenants said they carried out parts of the works as well as occupying the flats. It is unlikely that in the period between 29 November 2012 and the end of March 2013, and when the shed was reconstructed and extended, they claim to have been generally unaware that all this activity was in progress.
55. As the Council pointed out none of the tenants provides any more than limited supporting evidence, other than very generalised recollections of what must have been occurring in terms of construction activity and what furniture they introduced. Again, I find it barely believable that so much construction work – on both the appeal property and the next-door property, no. 201 – could go virtually unnoticed by the claimed occupants, and that they had so little to say about their occupation generally.
56. Messrs Shamout and Seirje are based in Switzerland, and say they made occasional short visits back there. There is nothing to explain how they operated their joint business over their claimed periods of continuous occupation, or how they could be absent from their home base for such long periods.
57. The appellant claims the works were essentially complete apart from the first floor over the former shed by the end of February 2013 – an overall period of about 13 weeks although there would probably have been a break over the Christmas period. In my view this is operationally feasible, but this was a thoroughgoing refurbishment and conversion of almost the entire building including the quite major works. In order to achieve such a programme it must have been done as a single intensive operation rather than phased flat by flat for instance as is suggested. There would have been disruption throughout the premises over the period resulting from movement of materials through the building and removal of debris, constructing the dormer and partitions, installation of new services and fixtures, making good, decorations and carpeting. It would not have been reasonably possible for tenants to remain in occupation, leaving occasionally for two or three days.
58. While this does not entirely preclude occupation of at least some parts by 30 March 2012, serious doubt is cast on the credibility of sworn evidence put to the Inquiry by the appellant and the lay witnesses. Furthermore, I do not consider there is a satisfactory explanation for the fact that all the original

tenants undertook tenancies at the stated rents on 29 November 2012, when none of the flats was in its eventual state, and Flat 3 in its present form, and Flats 4 and 5 did not even exist.

59. The agreements present a remarkably continuous view of claimed occupation with very few days unaccounted for over a period of more than five years. Even though they are largely consistent in terms of dates, and with the tenants' sworn declarations, a copy of a tenancy agreement does not confirm actual occupation. There is no significant evidence before me to show when and how much rent was paid, such as payments out of tenants' accounts or into the appellant's account, there are no rent books or receipts put forward.
60. Council Tax records indicate that tax was levied for 3 flats from at least 2009. There are Council Tax bills for Flat 1, addressed to the appellant from 29 November 2012 and to subsequent tenants from April 2013 to March 2018. For Flat 2 there is a bill for April 2013/14 addressed to the appellant, and then for April 2014/15 and 2016/17 to Mr Ali. There is one bill for 'Flat – 1st floor front' – which I assume refers to Flat 3 – for 2017/18, for Flat 4 for April 2016/17, and for Flat 5 for 2016/17 and 2017/18. There is little doubt that Flats 1, 2 and 3 existed in some form from the time of the appellant's purchase, but the bills for Flats 4, and 5 do not provide significant support for the appellant's case.
61. Somewhat similarly there are electricity supply bills, all are addressed to the appellant at his home address, and the earliest are clearly for the building as a whole. The first ascribed specifically to Flat 1 appears to be from 15 February 2014 – although earlier bills from June 2013 are probably also for Flat 1. There is a similar picture for Flats 2 and 3. For Flat 4 there are bills covering the period from June 2013 to November 2013 and then from February 2014, with a roughly similar picture for Flat 5. Since Flat 1, 2 and 3 were in existence in some form from the date of the property purchase neither the Council Tax or electricity bills assist the appellant's case, nor do bills for Flats 4 and 5, which do not go back to the critical date of 30 March 2013.
62. Several invoices for purchase of building materials dated between 5 and 30 December 2012 show that about 1250 lightweight concrete blocks, sand, cement, lintels, 3 windows, 12 sheets of plywood, concrete copings and sundry other items were delivered to the appeal property. Although the appellant said he bought all materials for the works, these were to an order from 'Haitham' at a nearby address in High Road, and there is no proof of payment. These materials could well have been used in construction of the new outrigger roof, and possibly the shed reconstruction. However, they represent a relatively small proportion of what must have been needed for the attic extension and general conversion as a whole. None of the witnesses recalled seeing these materials stored on site or being brought into use.
63. There are accounts from a building company – Kingwood Construction dated 26 February 2013 for construction of the attic dormer, and from Yahia Al Wadi dated 27 February 2013 for first and second fixing of bathrooms and kitchens and mains supplies in Flats 4 and 5. These are cast in very general terms, broken down into lump sums for – for instance 'construction of a new dormer at the top floor of the appeal property'. There are no quotations addressed to the appellant prior to construction, evidence of payments, or receipt of payments. This is despite several of the witnesses working in the building trade with the appellant and carrying out parts of the conversion works.

64. Although the appellant has submitted a great deal of documentary material, much of this does not assist his case in demonstrating when works were completed. There are areas of information that are lacking – notably any firm proof of when the various flats were substantially complete, or when continuous occupation of any of the flats first occurred, or of any payments made by the appellant or his tenants. Much of the sworn evidence I found to be far short of what might be expected from people who claimed to have lived in the flats for long periods, who had knowledge of building trades and some of whom had carried out parts of the works.
65. Overall, I do not consider the evidence put forward is adequately precise and unambiguous as to when the works were substantially complete, and when first continuous occupation of the flats started. Drawings of the building put forward do not appear to show the exact layout of the building as it previously existed, and indeed show no layouts for Flats 1 and 2. Even a drawing purporting to show the layout in March 2021 – put in at my request - varies from what exists in various detailed matters including a window that is not actually there, and representation of wall thicknesses.
66. Regarding the Council's opportunity for serving an enforcement notice, they did so initially on the basis of the planning officer's visit to the adjacent site on 4 November 2013. At that time he saw what he described as self-contained accommodation in the ground floor outbuilding of no. 199. On that basis the Council issued the first enforcement notice. Although the appellant disputes how the officer can have reached this view, it seems almost self-evident that he had been able to look through the outbuilding window on the boundary between the premises and would easily have been able to see any link between the outbuilding and the main building. It is also significant that architects' drawings of existing plans of no. 201 include the no. 199 outbuilding but do not show any form of link. It is unlikely that such a feature would have been omitted from what otherwise appears to be an accurate representation.
67. I am also aware that the Council's building control officer visited the site on 14 December 2012. He found that refurbishment of the first-floor rear extension was in progress. The appellant then made a Building Regulations application for renovation of the existing building including new wall plaster wiring and a new flat roof, new partitions and decorations. He was asked to re-submit and made a new application for removal of an illegal studio flat at ground floor and first floor, and to re-construct studio flats at ground and first floors, with a new roof over.
68. While the Council do not pursue any argument on grounds of the appellant's deceit, but it is apparent that at best the appellant was somewhat partial in the evidence he presented and less than forthcoming to the Council about his overall proposals for the building. Particularly so since he has stated that it was always his intention to build 'multiple flats', including a fifth flat in the attic. It is also notable that at that time he made no reference to other works in progress – such as installation of new bathrooms and kitchens and construction of the dormer – all of which would require Building Regulations approval. He is a builder and should be well aware this is the case.
69. Looking at the overall picture presented I consider there must have been some confusion for the Council in identifying the state of the building, since the appellant did not divulge his intentions in his Building Regulations applications,

or elsewhere, and the situation became quite different from what the planning officer had seen. Although it is claimed Mr Al-Thefeiry was not personally responsible for submitting the second Building Regulations application, which referred to a change of use, he must have been aware of the outcome, and would probably have been sent a copy of the application itself – although there is no documentary evidence for this.

70. In such a situation I do not consider the Council would have been in a position to issue an accurate and valid enforcement notice until the development was substantially complete as a whole – that is, at the undefined point when the two-storey link and extension were finished, and it became clear how many flats there were and what their configuration was. Photographs indicate this was probably by November 2014. Despite the fact that works within other flats may have been complete by 30 March, it is unlikely that a correct enforcement notice could reasonably have been issued until the later date. This is illustrated by the fact that when the March 2017 notice was issued it was found not to reflect the actual situation. It follows that the Council would not have been able to issue an enforcement notice in the period up to about November 2014, and that this time would not count towards the relevant 4-year period necessary for immunity from enforcement action. This matter carries considerable weight in my assessment of the lawfulness of the use of the building.
71. Overall, I find the appellant's evidence far from precise, with numerous ambiguities and lacunae. On the balance of probabilities I do not consider the appellant has discharged his burden of proof to demonstrate that the development is immune from enforcement action. The appeal on ground (d) therefore fails.

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

72. This ground is that planning permission should be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice. Under s.177(1)(a) of the Act planning permission may be granted whether in relation to the whole or any part of those matters.
73. The appellant accepts that the very recently adopted London Plan of 2021 is the relevant plan, as well as the London Borough of Brent Local Plan 2016 Development Management Policies (DMP).
74. In this case I consider the main issues before me are:
- (i) The effect of the development on the character and appearance of the appeal site and area in the vicinity in terms of bulk, massing and visual obtrusiveness.
 - (ii) The effect of the alleged development on living conditions for occupants of the appeal property in terms of the size of units, their physical relationship to one another; outlook and availability of natural light; availability of private amenity space; provision of personal storage space; provisions for refuse disposal, and for cycle parking.
 - (iii) The effect of the alleged development on highway conditions in terms of parking provision.
75. The original building was clearly a more or less standard terrace type of the early 20th century and standing on a commercial street – with a three storey main body, a shop on the front ground floor, with accommodation above, and a

two-storey outrigger and lean-to at the back with a relatively narrow external passageway along the side leading, in this case, to a roughly square piece of garden land. This is readily seen to be the case for many of the buildings on High Road, including no. 201 before the large back extension was built – as shown in photographs from July 2013.

76. The rendered blockwork building and link at the back of the property more or less entirely fills the space behind the outrigger. I appreciate there was a timber shed there for many years. However, this was not connected to the outrigger, and would not have had the appearance of permanence and solidity presented by the extension. While it would not be as prominent after removal of the upper storey, it would still appear as a bulky flat-roofed extension, by no means sympathetic in scale or form to the original building type. I appreciate there is a single-story extension to the adjacent building, no. 201, but that is not built-up to both site boundaries.
77. Furthermore it appears quite out of keeping with what appear to me to be the recent, quite sensitively designed development of Tudor Mews behind the appeal site. It is not at present screened from Tudor Mews by greenery as the appellant suggests, nor is there any prospect of this happening. Although the single storey building would not be particularly prominent from the Mews, it is readily visible and affects the character of the area.
78. I appreciate that construction of the attic dormer itself has become lawful, but together with the back extension, the general impression is of a cramped over-developed site.
79. The approximate gross areas of the flats are understood to be as follows:
 - Flats 1 and 2 – 40 square metres each (about 21 square metres each prior to the bedroom/link additions)
 - Flat 3 – 26 square metres.
 - Flat 4 – 26 square metres.
 - Flat 5 – 17 square metres.
80. The government document *Technical Housing Standards – Nationally Described Space Standard* sets out minimum gross areas for various dwelling types. The minimum standard for a 1 bedspace 1-person unit with a shower room and on one floor is 37 square metres, and for 2 bedspaces in 1 bedroom is 50 square metres. This standard is closely reflected in Table 3.1 of the recently adopted London Plan 2021, referred to in Policy D6, which seeks to promote housing development of the highest quality. This Policy also states that the space standard should be incorporated into Local Development Frameworks. The Principle 5.4 of the Brent Design guide SPD1 says that new development should adhere to the relevant space standards and should comply with the National Technical Housing Standards and the London Plan.
81. Including the additional bedrooms, Flats 1 and 2 would meet the national standard for a 1-person dwelling, although not for a 1-bedroom 2-person dwelling. However, it is agreed that the first floor of the back extension and link will be removed, and I conclude below that the remaining single-storey should also be removed, leaving an area of 26 square metres for each of the flats, which is significantly below the recommended standard.

82. The living rooms of the resulting units would be inordinately cramped when furnished with a bed, space for a dining table, chairs, and possibly a sofa as well as incorporating a wardrobe/chest of drawers for clothes storage or any storage of possessions. This is particularly so when born in mind that the kitchen area is effectively part of the same space. Furthermore, the outlook from these rooms is onto the narrow and somewhat gloomy side passageway and the two-storey back extension to no. 201, which significantly limits daylighting to Flat 1. It is also likely that sound transmission between the flats would cause disturbance to occupants.
83. Flats 3 and 4 are also significantly below the space standard for both 1 and 2 person dwellings. I saw that the bedrooms were cramped spaces with little room to circulate around a double bed and to include adequate clothes storage space. The living rooms are again cramped spaces largely dominated by the kitchen areas, with inadequate remaining space available for the usual necessities of everyday life, as outlined for Flats 1 and 2.
84. The outlook for flats 3 and 4 is from front and back windows and is varied and acceptable. None of the windows are overshadowed to any extent.
85. Flat 5 is very much below the national standard. The so-called living/dining room with the kitchen is so small in size that it is difficult to imagine any activity other than food preparation taking place. Much of the area is necessary to accommodate the door swings of the entrance doors, and headroom is limited under the roof slope. There is virtually no space available for dining or for any furniture, and there is little view out from the roof window.
86. The bedroom is again of limited size with barely enough space for the bed, and effectively none for storage. Outlook to the back is tolerable, but the high level of the windowsill would restrict views out for children.
87. All three flats within the main building have timber floors probably without any acoustic insulation, and again, it is likely that sound transmission would cause disturbance for occupants of flats below.
88. As to amenity space, the existing side passage has an area of about 8 square metres. When the back extension is removed there would be a total of about 30 square metres of external space available. This is accessible *via* the single external door adjacent the Flat 1 entrance. Although one of the plans inspected at the Inquiry shows the back of the site to be north-facing at the back it is now clear that the back faces south as the appellant said. The roughly square open area will have a good level of sun and daylight. However, this is limited to a short part of the day in the side passageway, which would remain gloomy for much of the time. That – as well as narrowness of this passageway – render it effectively unrealistic as amenity space.
89. London Plan Policy D6 sets out a minimum area of outdoor space required – that at least 5 square metres should be allowed for each 1-2 person dwelling, and there should be a minimum width of 1.5 metres. It is also explained that this should apply where there are no higher standards set out in individual borough Development Plan Documents. Policy DMP19 of the DPD says there should be 20 square metres per dwelling accessible from main living rooms. This is reflected in principle 5.2 of the Brent Design Guide 2018 (SPD1).

90. The available open amenity space in this case would be well below the Brent standard. I consider only the square area at the back of the site can reasonably be regarded as usable space – an area in the region of 22 square metres – which is slightly below the London Plan minimum. The space would in any event be relatively inaccessible for most of the building's occupants, and hardly seen from the flats in the main body of the building. I note also that some of the available space would need to be given over to secure cycle parking, which would further reduce the utility of the space.
91. Regarding refuse storage and disposal, the appellant argues that refuse is stored in kitchen cupboards pending re-cycling, and that Flat 1 benefits from a daily refuse collection service provided by a local supermarket. However, this does not deal with safe disposal or collection from the other four flats. Any place for proper storage and eventual collection would need to be within the external space, placing further restriction on the available amenity space. Similarly, any practical cycle storage provision would most probably encroach still further on that space. These factors weigh further against the development.
92. Overall I conclude that the development provides poor living conditions for occupants of the appeal property in terms of the size of units, their physical relationship to one another; the provision of personal storage space, outlook and availability of natural light. The provision of private amenity space would be very much sub-standard and unacceptable; provisions for refuse disposal, and for cycle parking would also be poor. The development does not accord with national advice or with development plan policy. This is notable with respect to London Plan Policy D6 which promotes high quality housing design, and Brent DMP Policies DMP18 and DMP19, which seek to ensure adequate dwelling size and provision of residential private amenity space.
93. The appellant argued that if the gross areas of Flats 3, 4 and 5 plus what would become a private stair were aggregated into a single dwelling – about 78 square metres – this would still fail to meet the relevant national and local standards for a 3-storey unit. The minimum figures for a 3-bedroom dwelling for 4 persons up to a 3-bedroom dwelling for 6 persons would be 90-102 square metres. Realistically, I consider that a 4-bedroom flat in this space would be impractical. At the lower occupancy the resulting single flat would be about 13% below the required standard, whereas Flats 1 and 2 are about 30% below, and Flat 5 about 53% below. This is a very significant difference, such that I consider a single flat could provide acceptable occupancy standards, where the existing flats do not.
94. It was suggested that the provision of relatively low-cost small flats might outweigh any unsatisfactory aspects of living conditions. However, the minimum standards are not merely abstract concepts that can be set aside on such grounds. They have been assessed as the minimum spaces needed to be able to conduct satisfactory day-to-day lives. Low-cost housing should not be of such low quality that occupants barely have space to eat a meal, store their clothes, or enjoy fresh air outside. In this case, as a single unit, the upper floors would be reasonably close to the minimum standard size – unlike the existing situation with such cramped accommodation. As a matter of fact and degree I do not accept that providing 3 flats that provide such poor living conditions and so significantly below national and local standards, can be

justified by the fact that a single flat would be a relatively small amount below, and in my opinion could provide a flat of a reasonably good standard.

95. Overall, I do not consider planning permission should be granted in respect of the whole or any part of the matters alleged in the enforcement notice. The appeal on ground (a) therefore fails.

The appeal on ground (g)

96. This ground is that the compliance period is too short, and a longer period should be allowed.
97. The appellant argues that at least two months' notice to vacate must be given to tenants before works could be carried out, and there then needs to be time to execute the requirements. In the event that he is only required to remove the upper storey of the former shed – as is already agreed – both flats 1 and 2 would need to be empty, and a longer period should be allowed. In the event that he does not obtain planning permission for all or any part of the alleged matters the time needed for the extensive works should be increased to 9 months.
98. The Council's view is that 6 months would be adequate for the entirety of the requirements if the appeal is dismissed.
99. I concur with the appellant that compliance with reversion of the property to three flats and a shop would entail quite complex building operations – and that these could not reasonably take place until the flats were empty. I consider that a more reasonable compliance period would be 9 months. The appeal on ground (g) therefore succeeds and will vary the enforcement notice accordingly.

Conclusions

100. For the reasons given above I conclude that a reasonable period for compliance would be 9 months. I will vary the enforcement notice accordingly, in addition to other variations noted above, prior to upholding it. The appeal therefore succeeds to the limited extent on ground (g). Otherwise, I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Leanne Buckley- Thompson	of Counsel.
She called:	
Khaled Osman Al-Thefeiry.	Appellant.
Ahmed Mohamad Ali	Former occupant.
Alla Edin Seirje	Former occupant.
Ahmed Alosman	Former occupant.
Mohamed Shamout	Former occupant.
Salim Ali Alzifairi	Former occupant.
Stuart Cunliffe	Planning Consultant.

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks BTP Dip Law MRTPI	Chartered Town Planner acting as advocate and witness.
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DOCUMENTS

- 1 Attendance lists.
- 2 Statement of Common Ground.
- 3 The Council's costs application.
- 4 The appellant's response to the costs application.
- 5 Unilateral undertaking.

PLAN

- A Drawing no. 1991HR-007 rev. O - plans of the appeal premises entitled 'as-built drawings'.