



Appeal Decision

Inquiry Held on 12 May 2021

Site visit made on 13 May 2021

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Appeal Ref: APP/T5150/C/18/3208269

Kingsbury Printers, 236 Kingsbury Road, London NW9 0BH

- 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 Chetankumar Dilip Hirani against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 25 June 2018.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of the premises from a signwriter's workshop to a signwriter's workshop and a dwelling.
 - The requirements of the notice are:
 - STEP 1 Cease the use of the premises as a dwelling.
 - STEP 2 Remove all partitions, fixtures and fittings associated with or which enable residential use of the premises (for the avoidance of doubt, this includes but is not limited to, bath, oven, beds, bedding, clothes washing machines, wardrobes, children's toys and chests of drawers).
 - STEP 3 Reinstate internal access between the ground and upper floors of the building at the premises.
 - STEP 4 Permanently remove from the land all waste and debris, arising from compliance with the above steps.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Preliminary Matters

2. All oral evidence at the Inquiry was under oath or affirmation.
3. The appeal was originally made on grounds (a) and (d). Grounds (b) and (c) were introduced in evidence and this was clarified at the Inquiry. I will deal with the appeal on the basis it is made on grounds (a), (b), (c) and (d).

Background

4. An Enforcement Notice (EN) was issued on 20 June 2017 alleging 'Without planning permission, the material change of use of the premises from a signwriter's workshop to a mixed use as a signwriter's workshop and a

dwelling.’ I shall refer to this as EN1. An appeal against EN1 was made and in the decision the Inspector found:

‘During my site visit, I saw the internal sliding door from the printing works to the former staircase had not been permanently blocked up. However, it was difficult to move, inconvenient to use as it no longer aligned with the stairs, and was partly obstructed by workshop paraphernalia. It was clearly neither used nor realistically useable. To my mind, the flat, with its self-contained facilities and its separate entrance, was physically and functionally separate from the ground floor business use at the time the enforcement notice was issued in June 2017.’

5. In the light of this the Inspector concluded that the upper floor flat became a separate planning unit in March/April 2017. The Inspector found there was not a mixed use within one planning unit as alleged in EN1 but two planning units: the first was a signwriter’s workshop and the second was a dwelling. EN1 was quashed because it did not specify with sufficient clarity the alleged breach of planning control and could not be corrected without causing injustice.
6. The written evidence from the appellant states that it was not agreed that the residential unit became a sperate planning unit in March/April 2017 in relation to the EN1 appeal. However, that decision was not challenged. The allegation now relates to two separate uses, and thus separate planning units. The allegation in EN1 related to a mixed use.
7. In the appellant’s witness statement it is stated that the emergency exit was created in February/March 2017. Both the appellant and his brother were stated to have lived in the appeal building since 2002. In 2012 the residential unit was refurbished and the use interrupted for a period of time.

Time Line given in oral evidence

8. The appellant and his father provided oral evidence to the Inquiry which confirmed the following time line:

In 2001 there was a fire at the signwriter’s workshop which required works to the premises to bring it back into use.

In May 2002 following the fire the first floor of the premises was laid out as a one bedroom flat.

Between May 2002 and 2007 there was intermittent use of the one bedroom flat.

Between 2007 and 2012 there was intermittent use of the flat by the appellant and his brother. In particular, the appellant was out of the country between 2007 and 2009 and within that period only lived at the property between December 2007 and March 2008.

In 2012 the dwelling was refurbished and was empty for a period of 3-4 months around July. The refurbishment resulted in a new layout and a total of three bedrooms were created within the dwelling at this time.

In December 2012 the appellant’s brother and his family moved into the dwelling and occupied it through to the end of 2016/beginning of 2017. The appellant gave evidence it was the end of 2016 and his father gave evidence it was January 2017.

In 2017 the appellant moved in to the three bedroom dwelling with his wife and children.

In March/April 2017 a separate entrance was installed. The appellant and his father consider at this time there were three entrances which could enable access to the flat. The appellant did state it was not convenient for his wife and children to enter the flat through the other doors as they would have had to go through the workshop area. The new entrance created allowed access directly to the stairs that led to the flat with no requirement to go through the workshop.

In June 2020 the dwelling suffered fire damage as a result of a fire in the adjacent property. Since this time the dwelling has not been occupied. These facts will be discussed in my consideration of the ground (d) appeal.

Layout of the premises

9. Room measurements were taken at the site visit by the appellant's father and the Council officer and are as follows:.

	Width	Length	Floor Area	Floor to ceiling height
Living room/third bedroom ¹	4.15m	7.07m	29.34 sqm	2.25m to beam 2.15m estimate to where ceiling would have been
Kitchen	5.15m	4.23m	21.78 sq m	1.97m
Bathroom/Utility Room/Boiler location	2.03m	4.20m	8.76 sq m	
Bedroom 1	3.20m	4.32m	13.82 sq m	2.19m
Bedroom 2	2.07m	3.03m	6.27 sq m	2.25m

10. The frontage hardstanding was also measured. The building is stepped at the front and there are some stairs to the shop area intruding into the area which is 17m long by 6m at its widest and 5.6m at its narrowest.
11. While the plan provided by the appellant shows the ground floor of the workshop to comprise a shop area, WC, Printing Area and a single room to the right of the shop area the layout at the time of the site visit differed from the plan. The building has an additional room to the rear of the printing area and the single room to the right of the shop area is divided into two with one room to the left of the door going to the car park and an open area with a partial low level divider to the right of the door. The door to the car park has a sign

¹ At the time of the site visit the first room within the dwelling had the remains of a partition/door structure. Mr D Hirani was present at the site visit and confirmed that had been a bedroom prior to the fire damage in June 2020.

stating 'No 236A' on the door. The emergency exit door noted as having been created in March/April 2017, is towards the right hand boundary of the site, accessed via an access way which has a roof over it. While the plan shows a door to the car park at this point the door was not present at the time of my site visit.

12. At first floor level there is a door (lockable) from the kitchen to the flat roofed area of the building. There are no guard rails or safety structures at the edge of the flat roof. There was nothing to suggest the flat roofed area had been put to any use.

Appeal under ground (b)

13. This ground of appeal is that those matters alleged in the notice have not occurred. The allegation is that there has been a material change of use of the premises from a signwriter's workshop to a signwriter's workshop and a dwelling. The Inspector found in the EN1 appeal that the first floor flat, with its self-contained facilities and its separate entrance, was physically and functionally separate from the ground floor business use. As such, two planning units existed at that time. There has been no substantiated evidence to demonstrate that, at the time of the current appeal enforcement notice being issued, that the dwelling is materially different from that considered by the Inspector for EN1.
14. At the time of my site visit, the dwelling had been fire damaged. The evidence demonstrates that immediately prior to the fire, and since 2017, the dwelling has been occupied by the appellant, his wife and children. The flat was laid out as a three bedroom flat at the time of the fire, and I saw on my site visit the remains of the partition between one bedroom and the living space. The other rooms comprising two further bedrooms, a kitchen and bathroom/utility room were seen at the site visit. On the written and oral evidence before me I am satisfied that the dwelling had been occupied as a self contained dwelling and was physically and functionally separate to the signwriters workshop.
15. As such, as a matter of fact, what is alleged in the notice has occurred. The appeal on ground (b) therefore fails.

Appeal under ground (c)

16. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control.
17. I have concluded that the first floor dwelling is functionally and physical separate to the ground floor business. There has been a material change of use from a signwriter's workshop to two separate planning units with separate uses. The subdivision of the units does not benefit from permitted development rights granted under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. No planning permission has been granted for the material change of use and as such there has been a breach of planning control. The appeal on ground (c) fails.

Appeal under ground (d)

18. In appealing on ground (d) the burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that the development was lawful through the passage of time at the date when the enforcement notice was

- issued. That is, had there been a material change of use of the premises from a signwriter's workshop to a signwriter's workshop and a dwelling on or before 25 June 2013 and that the use had occurred continuously throughout that period, it would be lawful through the passage of time.
19. The evidence demonstrates a one bed unit was created in May 2002 following fire damage of the premises. The evidence only demonstrates, on the balance of probabilities, an intermittent residential use until 2012 when the unit was empty for about 3 to 4 months. It then seems that the appellant's brother moved into the three bed unit in December 2012 and stayed until late 2016, although he did not give oral evidence at the Inquiry. The appellant's brother vacated the unit in December 2016 and the appellant moved in, with his family in by January 2017. On the evidence of the appellant, the independent access referred to as an emergency exit, but utilised by his wife and children as the access so that they did not have to go through the signwriters workshop, was created in February/March 2017. The previous Inspector recorded that this access was created in March/April 2017. Whether it was February, March or April 2017 this access resulted in the separation of the unit to create a self contained independently accessed residential dwelling.
20. On the basis of the oral and written evidence, including the previous Inspector's conclusions in the appeal on EN1, I have found that the dwelling, comprising the first floor flat, became a separate planning unit in 2017. This began a new chapter in the planning history of the site. The enforcement notice the subject of this appeal was issued on 25 June 2018. As such, there has not been four years continuous use of the first floor as a self contained dwelling. In fact, the planning unit has not been in existence for four years.
21. I therefore conclude, on the evidence before me, and on the balance of probabilities, that the material change of use to create two planning units comprising a workshop and a dwelling did not take place four years prior to the issue of the enforcement notice. As such the appeal on ground (d) fails.

Appeal under ground (a)

Main issue

22. The main issue is whether the dwelling provides acceptable living conditions for the occupiers and future occupiers with particular reference to outdoor amenity space, access, bin and cycle storage, location and the size of the unit².

Reasons

23. The appeal site is set back from Kingsbury Road, behind a car wash and parking area, surrounded by other commercial units including a tyre shop and a car hire site. Nearby is what was once a public house but now appears to be a restaurant/shisha lounge. To the northwest is a row of domestic garages and there is a pedestrian access to Charlotte Place to the side of those garages. Behind the garages and to the north (beyond the tyre shop) are residential properties. Pedestrian and vehicle access is via the shared private road from Kingsbury Road, commercial premises behind and in front of the appeal site and those who use the residential garages utilise this access.

²The size of the unit was raised by a third party at the Inquiry on behalf of the owners of 232/234 Kingsbury Road (Marco Polo Properties Ltd).

24. At the Inquiry a third party raised issues relating to the size of the unit. At the site visit measurements were taken and are set out above.
25. Policy D6 of the London Plan 2021 (published March 2021) requires housing development to be of a high quality design and provide adequately sized rooms with a comfortable and functional layout. No evidence has been provided to demonstrate that the dwelling, which accommodated 3 bedrooms and four persons has a floor area of at 74 sq m, although the measurements taken at the site visit indicate it does meet this minimum size. However, the ceiling height is less than that required by the policy in all areas measured, and bedroom two is substandard in width and size. The policy requires a one bedspace single bedroom to have a minimum floor area of 7.5sqm and a width of at least 2.15m. I am unable to say whether or not the third bedroom meets the standards due to the fire damage or whether there is adequate built in storage on the evidence presented. The dwelling fails to meet the minimum requirements set out in Policy D6 and as such fails to provide housing which is of high quality.
26. Policy DM19 of the Brent Development Management Policies (adopted November 2016) (DMP) requires all new dwellings to have external private amenity space of a sufficient size and type to satisfy its proposed residents. It states that flats should have 20 sqm and for family housing 50sqm of external amenity space. The dwelling is a three bedroom unit which has no defined external amenity space to serve the occupiers or future occupiers. The appellant referred to space on the approach to the entrance which could be used by an occupier. In my view, this area is just unused space leading up to the entrance and does not provide adequate external amenity space of a sufficient size and type to meet the requirements of Policy DMP19. As such, the dwelling is contrary to this policy.
27. The appellant has not demonstrated that satisfactory provision for refuse and cycle storage can be provided or suitable outdoor amenity space for a three bed unit could be achieved. There is no designated space for the storage of residential refuse or cycle parking. Due to the limitations of the property, I am not satisfied on the evidence available that suitable provision could be achieved for either refuse storage or cycle parking. As such, the dwelling fails to achieve satisfactory provision for such facilities. The lack of demonstrated adequate and easily accessible storage space that supports the separate collection of refuse is contrary to Policy D6 of the London Plan 2021.
28. The location and access of the dwelling within a commercial setting also diminishes its amenity for occupiers and future occupiers.
29. In my view, the lack of external amenity space, low ceiling heights and below standard bedroom 2 and poor location results in a substandard quality dwelling which is contrary to both Policy DM 19 of the DMP and D6 of the London Plan 2021. Overall, it provides poor amenity for occupiers and future occupiers. The appeal on ground (a) fails and planning permission is refused.

Appeal under ground (f)

30. A ground (f) appeal is made on the basis that the requirements of the notice are excessive to remedy the breach of planning control³. In appealing on

³ The Council has confirmed that the purpose of the enforcement notice is to remedy the breach of planning control.

- ground (f) the appellant must specify lesser steps which, in their view, would remedy the breach of planning control. The purpose of the notice is to remedy the breach of planning control.
31. The appellant considers that the requirements should only relate to the creation of the separate access in 2017 and should allow for the re-establishment of a mixed residential and signwriter's use.
32. The allegation relates to the use of the property as two separate planning units. One is the signwriter's workshop and the other is a self contained dwelling. In my view, the requirements are the minimum necessary to remedy the breach of planning control as they require the use of the premises as a dwelling to cease, removal of the partitions, fixtures and fittings which enable that use, reinstating the internal access between the ground and first floor such that it would become a single planning unit again and finally removing debris arising from compliance with the other requirements.
33. The evidence of how the first floor was used prior to various reconfigurations/refurbishments includes use by the appellant's father for breaks and rest periods. The use of the first floor as a dwelling prior to its separation to a separate planning unit in March/April 2017, is disputed by the Council who consider that a mixed use as a signwriters workshop and dwelling or a use of the first floor as ancillary to the signwriters workshop to provide comfort facilities is not lawful. Between 2007 and 2012 oral evidence confirmed that the residential use was an intermittent use when the appellant stayed in the dwelling when he was working late and shared it with his brother. The appellant was out of the country between December 2007 and March 2008. There is an accepted break in occupation when it was refurbished in 2012 which results in the residential unit not being continuously occupied for residential purposes. A mixed use has to demonstrate 10 years beginning with the date on which the mixed use began and that the mixed use must have continued throughout the 10 year period before it can achieve lawfulness. (section 171B of the Act).
34. In my view the requirements would not prevent the appellant from doing something he is entitled to do without planning permission, relying on lawful use rights or rights of reverter under section 57(4) of the Act, those granted under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, or the Town and Country Planning (Use Classes) Order 1987 as amended.
35. For the reasons given above I conclude that the requirements are not excessive and the appeal under ground (f) fails.

Conclusion

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

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr J Patel	Of Counsel instructed by Mr D Hirani and Mr C Hirani
He called	
Mr Dilipkumar Hirani	Appellant's father
Mr Chetankumar Hirani	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Wicks	Director of Enforcement Services Limited,
MRTPI BA Hons MALM	instructed by Mr T Rolt Planning Enforcement Manager, London Borough of Brent
He called	
Mr S Davies MA (Urban and Regional Planning)	Deputy Planning Enforcement Manager, London Borough of Brent

INTERESTED PERSONS:

Mr Pidgeon MRTPI Dip TP	Lamont Planning instructed by Marco Polo Properties Ltd
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Emails containing documents submitted for the EN1 Appeal received from the appellant.
- 2 Policies SI 1 Improving Air Quality and D6 Housing Quality and Standards of the London Plan (March 2021) submitted by the Council.
- 3 Closings submitted by the Council