



Appeal Decisions

Inquiry Held on 22 and 23 June 2021

Site visit made on 13 July 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2021

Appeal A: APP/T5150/C/20/3245162

Appeal B: APP/T5150/C/20/3245057

Appeal C: APP/T5150/C/20/3245338

Appeal D: APP/T5150/C/20/3245332

Appeal E: APP/T5150/C/20/3245340

666 North Circular Road, Neasden, London NW2 7QJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Syed Hasan (Appeal A), Alhamd 1 (Appeal B), Mrs Salma Fatima Hasan (Appeal C), Joy Annmarie Easton (Appeal D) and Magdalena Uram (Appeal E) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 11 December 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to flats AND Without planning permission, the erection of an extension to the rear of the premises.
 - The requirements of the notice are: 1. Cease the use of the premises as flats, and its occupation by more than ONE household. 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets. 3. Demolish the unauthorised rear extension and remove all items and debris arising from the demolition, and remove all materials associated with the unauthorised use and development from the premises. 4. Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen, dining room and lounge on the ground floor, bedrooms on the upper floors, a bathroom on the first floor, and a WC on the ground floor.
 - The period for compliance with the requirements is 6 months.
 - Appeals A, B and C are proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended and Appeals D and E are proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Summary of Decisions

1. The appeals are dismissed and the enforcement notice is upheld with variations.

Preliminary Matters

2. The parties were required to provide a hard copy of their appeal documents prior to the opening of the Inquiry. Mr Hasan, an appellant, and representing all of the appellants at the Inquiry, confirmed that the bundle before me represented the entirety of the appellant's case. My decision is therefore taken on the basis of this bundle and the live evidence I subsequently heard. A copy of this bundle was then emailed to the Council, for the avoidance of doubt, to ensure they had the entirety of the case, and which was paginated in order to assist the running of the Inquiry. The Council then confirmed they had already seen the majority of the appellants documents. They had also been provided with time to review the bundle, and, were able to cross-examine the appellant's witnesses on the contents. I therefore do not consider that injustice arises.
3. During the Inquiry the parties agreed how to identify the flats. Flat 1 is therefore the ground-floor front flat; Flat 2 is the ground-floor rear flat; Flat 3 is the first-floor rear flat; Flat 4 is first-floor front flat; and, Flat 5 is the flat located in the roof-space.
4. The parties were represented by Mr Hasan and Mr Wicks respectively, who had also submitted proofs of evidence and were giving live evidence. As a result, they agreed their evidence in chief would be facilitated by me asking them a series of relevant questions.
5. One of the intended witnesses, Ms Easton, who is also an appellant, was not available when it came to the two opportunities that were provided during the Inquiry. Whilst I accept the reasons for this, it means that I only have her written evidence before me, and accordingly the weight I shall attribute to this will be detailed later within my decision.

Applications for Costs

6. An application for costs was made by Mr Syed Hasan and Alhamd 1 against the Council of the London Borough of Brent. An application for costs was also made by the Council of the London Borough of Brent against Mr Syed Hasan, Alhamd 1 and Mrs Salma Fatima Hasan. These applications are the subject of a separate Decision.

The ground (c) appeal

7. For an appeal to succeed on ground (c) the onus is on the appellants to demonstrate, on the balance of probabilities, that there has not been a breach of planning control. This could be because the matters alleged do not constitute development, planning permission has already been granted for the matters alleged in the enforcement notice or they are permitted development.
8. This ground of appeal is brought solely in relation to the extension the subject of the enforcement notice as the appellants contend that it benefits from a form of planning consent known commonly as the prior approval process, which relates to a dwellinghouse.
9. Indeed, an application was made for a 6m rear extension, under reference 15/1771, and the Council issued its decision on 10 June 2015 that prior approval was not required. This is to say that the extension could be erected as

a form of permitted development pursuant to the Town and Country Planning (General Permitted Development) Order (as amended) (the GPDO).

10. The evidence of the appellants is that the property was occupied as a family home until the June or July of 2007. Following this, internal works were undertaken which resulted in the creation of flats and letting bedrooms. Further works were then undertaken in 2014 when the property was vacated to enable an extensive refurbishment that resulted in the creation of 5 flats.
11. The evidence demonstrates on the balance of probabilities that the property therefore ceased to be a dwellinghouse in 2007. This is crucial as the prior approval process is only available where an extension is sought to extend a dwellinghouse. The Council highlighted that Article 1 of the GPDO states "dwellinghouse" does not include a building containing one or more flats or a flat contained within such a building. This definition was not challenged by the appellants.
12. The evidence of Mr Hasan is that the extension was intended to provide more space for the ground floor rear flat (Flat 2), and this is indeed what has occurred as the majority of it is located in the extension.
13. Whilst Mr Hasan maintained throughout the Inquiry that he had consent from the Council arising from their June 2015 decision, he appeared unable to grasp that what he has built would only be lawful had the property been a dwellinghouse. It is not suggested that Mr Hasan deliberately misused the prior approval process, and his evidence was that the application was made on his behalf, which is corroborated by the application form that was submitted to the Council. However, it is unarguable on the facts of this case that the extension could have been lawfully erected as the form of permitted development the subject of Council's decision – and which the delegated report confirms was taken on the basis of the property being used as a single dwellinghouse (and therefore not flats).
14. Accordingly, the appellants have not demonstrated on the balance of probabilities that there has not been a breach of planning control in respect of the extension, as the property was not a dwellinghouse for the purposes of the permitted development right pursuant to the GPDO.
15. The appeal on ground (c) must therefore fail.

The ground (d) appeal

16. For the ground (d) appeal to succeed the onus is on the appellants to demonstrate, on the balance of probabilities, that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice.
17. It is contended that the extension was substantially complete and the material change of use to flats occurred more than 4 years prior to the issue of the enforcement notice, which would therefore be prior to 11 December 2015. For immunity from enforcement action to be demonstrated, there will also have to be sufficiently clear and unambiguous evidence of continuous residential occupation of each flat for a 4-year period.

18. The evidence is that the appeal site was purchased in 1992 by Mrs Salma Fatima Hasan, who is one of the appellants. Mr Hasan then moved into the property in 1995 and it was occupied as their family home until the June or July of 2007. The evidence is that it was therefore a single dwellinghouse. They then moved from the property and it was the subject of internal works that resulted in the creation of two flats and four letting bedrooms.
19. There are floor plans before me of this layout which show the flats and letting bedrooms as well as communal areas. The evidence before me therefore demonstrates on the balance of probabilities that this amounted to a mixed or composite use of the property and Mr Hasan confirmed that no planning permission had been sought or certificate of lawfulness obtained.
20. In August 2014 notice was issued to the tenants to vacate the property. The evidence is that the property was then extensively refurbished by a group of builders, which Mr Hasan then clarified as 4 people. There are no invoices or written agreement for the works and those 4 people then resided in the property as they undertook the works, starting with the top-floor and working down. This partly accounts for why the works took a considerable period of time. It was said by Mr Hasan that the works were completed by August 2015, although there were no carpets, curtains or furniture at this time.
21. The works were however more than merely a refurbishment, as they resulted in the creation of individual units of accommodation (flats) whereby the internal configuration and with it use of the property had changed from that which had existed since 2007. In my view this amounts to a conversion of the property as a whole and with it a new planning chapter created.
22. The dates given by Mr Hasan for the works undertaken to the property are not challenged by the Council. The evidence then demonstrates on the balance of probabilities that carpet was purchased for 4 of the flats (Flats 1, 3, 4 and 5) on 18 September 2015, with a clearly itemised invoice. This corroborates the evidence of Mr Hasan, who then stated that the carpet was laid in October. The evidence is therefore sufficiently precise and unambiguous to demonstrate on the balance of probabilities that these 4 flats were substantially complete during October 2015, at the latest. I will therefore consider the continuity of the use throughout the relevant immunity period, for each flat, subsequently.
23. The evidence of Mr Hasan is that three of the builders who had been living in the property moved out. Flat 2 was then the subject of works including the extension. The evidence of Mr Hasan is that the extension was carried out by different builders. This demonstrates on the balance of probabilities that it amounts to a different building operation.
24. In his Proof of Evidence Mr Hasan states that all the major building work for the extension was completed on 22 November, including plastering. The photographs dated 9, 10 and 14 November, which were taken by Mr Hasan on his mobile phone, provide precise and unambiguous evidence that the external walls of the extension were built, and the roof was in the process of being completed. Internally there is a steel lintel, where there was previously a sliding door. There are however no doors or windows and internally it is a bare shell under construction, with no apparent fixtures or fittings.

25. The appellant must demonstrate on the balance of probabilities that the extension was substantially complete more than 4 years prior to the issue of the enforcement notice, and so the critical date is for this by 11 December 2015. The photographs demonstrate on the balance of probabilities that the extension was not substantially complete on 14 November. There is then no photographic evidence before me for the period between 14 November and 11 December such as to demonstrate on the balance of probabilities substantial completion.
26. The evidence of Mr Hasan is however that the builders worked quickly as they had available materials and that the final building control inspection was undertaken in November. No actual date could however be given for this inspection and the final certificate was issued in January 2016. I accept there could have been some delay between the visit and issue of that certificate, but it does not assist the appellants in providing precise and unambiguous evidence of when that visit was or the condition of the extension, which forms a substantive part of Flat 2, in terms of its substantial completion.
27. In his evidence to the Inquiry, Mr Hasan stated in response to my questioning that the extension was completed, minus carpet, on 5 December. His evidence is that by this date there was a tenant in Flat 1, who approached him to rent Flat 2 for a period of 3 weeks for guests over the Christmas period. An agreement was reached whereby that tenant, a Mr Ahmed, would pay for the carpet and its installation and that Flat 2 would be used for sleeping purposes and that the kitchen could not be used for cooking. Mr Hasan then stated to the Inquiry that Flat 2 was fully carpeted by 11/12 December and that the guests moved out on 2/3 January 2016.
28. That evidence is not specifically challenged by the Council. Rather, they contend that the appellants evidence is a mass of documents which are unintelligible. However, the oral evidence of Mr Hasan, which was given on oath, was precise and unambiguous. I do not find it less than probable that the extension and wider works to create Flat 2 would not have been substantially complete by 5 December 2015 given the reasonably advanced stage of the building works as evidenced by the November photographs.
29. Whilst this is a finely balanced assessment, the appellant's evidence bundle and oral evidence when considered in the round demonstrates on the balance of probabilities the substantial completion of the extension that has been enforced against before the relevant date and so at the time the enforcement notice was issued it was too late to take enforcement action against the extension. I will therefore consider the continuity of the use of Flat 2, throughout the relevant immunity period, in addition to the other 4 flats.

Flat 1

30. The evidence concerning the continuity of the use amounts to a tenancy agreement that commenced on 26 November 2015 for a Mr Ahmed. The evidence of Mr Hasan is that Mr Ahmed paid his rent by cash and that he maintained the rent book. Mr Ahmed then moved out of the flat in September 2019, and it was not occupied again until 1 February 2020.
31. In order to accrue immunity from enforcement action, the actual use of the flat must be affirmatively established over a 4-year period. The evidence of the

appellants is that it was occupied between 26 November 2015 until an unknown date in September 2019 by Mr Ahmed. The evidence therefore falls short of a 4-year period by almost 2 months, at the very minimum.

32. Whilst a short suspension will not usually stop the period running, it is a matter of fact and degree in each case whether that suspension in activity on the ground has resulted in the cessation of the breach. The evidence is that the flat was simply not occupied as there was no tenant. Had the Council visited the property during that period it would have been devoid of personal effects and there would have been no tenancy or occupant or use in place. Accordingly, during that period the Council would have been unable to take enforcement action against the use – because no residential use was being made as it was not actually occupied as a dwelling.
33. A period of non-occupation or use of almost 2 months, at the very minimum, cannot therefore be regarded as a minor interruption or *de minimis*. It is therefore, as a matter of fact and degree, a significant break that results in the four-year clock starting again and so immunity from enforcement action cannot be attained.

Flat 2

34. The evidence demonstrates on the balance of probabilities that the initial use of the flat by guests for 3 weeks, principally in December 2015, was that akin to a hotel room; namely for sleeping and washing. It was therefore not used as a dwelling. It was then devoid of any residential use from 2/3 January 2016 until 1 February when a tenancy agreement commenced for a Mrs Krivda and Mr Zujus. On that basis, a 4-year period of immunity cannot be attained
35. Even if I am wrong about the use by the guests, it is said that Mrs Krivda and Mr Zujus moved out on an unspecified date in March 2017 and it wasn't until June 2017 that a Ms Uram's occupation commenced (and who is one of the appellants) and that she remained thereafter. On that basis, a period of non-occupation of at least 2 months at the very minimum, cannot be regarded as a minor interruption or *de minimis*. It is therefore, as a matter of fact and degree, a significant break that results in the four-year clock starting again.

Flat 3

36. The evidence concerning the continuity of the use starts with an invoice from Hoopers Estate Agents for the letting of the flat from 1 December 2015 to a Mr Graham. He moved out after 6-7 months. It is then said that a Syrian couple rented the flat between July 2016 and April 2017. The only oral evidence I heard relating to this period of occupation, and which is repeated in the appellant's closing submission, relates to two banking transactions on 9 June 2016, which Mr Hasan says was their deposit. The flat was then principally occupied by a Ms Nemes from 3 June 2017 until January/February of 2020, with two tenancy agreements brought to my attention.
37. There is only limited evidence concerning the occupation by the Syrian couple, but there is no contradictory evidence then brought before me. There is however the period of non-occupation between an unspecified date in April 2017 and 3 June 2017. On that basis, a period of at least 1 month, at the very minimum, cannot be regarded as a minor interruption or *de minimus*. It is

therefore, as a matter of fact and degree, a significant break that results in the four-year clock starting again.

Flat 4

38. The evidence concerning the continuity of the use amounts to a tenancy agreement that commenced on 28 November 2015 for Ms Easton, who is also an appellant, and Mr Hasan advised that she moved out of the flat on 29 May 2021.
39. Whilst the written evidence of Ms Easton could not be tested during the Inquiry, and therefore I afford it only moderate weight, it corroborates the evidence of Mr Hasan that she continuously occupied the flat for a relevant period of 4 years.
40. The evidence is therefore sufficiently precise and unambiguous to demonstrate on the balance of probabilities that at the time the enforcement notice was issued it was too late to take enforcement action against flat 4.

Flat 5

41. The evidence concerning the continuity of the use starts with Mr Hasan's evidence that a Mr Ali rented and occupied the flat from 1 December 2015 and there is evidence of cash payments being made in relation to his deposit and first rental payment. Mr Hasan stated that he did not have a copy of the tenancy agreement as Mr Ali had retained it in relation to another purpose. It is then said that he moved out of the flat on 28 April 2016 and a Mr and Mrs Qnbos rented the property from 29 April until January 2020, for which there is the initial tenancy agreement before me, and it is said that cash payments were made for the rent.
42. The Council does not offer contrary evidence. They do however query the validity of Mr Hasan's evidence, given his motives as an appellant are to defend against the enforcement notice. However, this is normally the case in such proceedings, and his evidence was taken on oath. I then found his oral evidence to provide a precise and unambiguous account of the matters relevant to my assessment, and greatly assisted with the written evidence that had been provided.
43. The evidence is therefore sufficiently precise and unambiguous to demonstrate on the balance of probabilities that at the time the enforcement notice was issued it was too late to take enforcement action against flat 5.

Other Matters

44. The Council has provided evidence to highlight the commencement of Council Tax payments and the dates of Energy Performance, Building Control and Electrical Certificates as means of contrary evidence. However, it does not follow that because Council Tax was not paid, or other certifications were not in place, that the events on the ground for which the appellant has provided precise and unambiguous evidence, were any less probable. In considering the evidence in the round, I therefore afford these matters only very limited weight.

45. During the first day of the Inquiry Mr Hasan called Ms Tasawar, a cleaner at the property, and Mr Ahmed, a gas engineer, to give evidence. Mr Ahmed was not a frequent visitor to the property and Ms Tasawar was only responsible for cleaning communal areas. They were therefore unable to assist the Inquiry to any particular extent and I afford their evidence very limited weight. They did however not provide evidence which directly contradicts or leaves me to question the validity of the evidence provided by Mr Hasan.
46. The appellants have requested that a certificate of lawfulness be issued, but as they have not applied to the Council for such a certificate, and there is accordingly no such appeal before me, no certificate can or should be issued.

Conclusion

47. For the reasons given above I conclude that there is partial success on the ground (d) appeal.

Overall Conclusion

48. For the reasons given above I conclude that although there is partial success on the ground (d) appeal, the appeals should not succeed overall. I shall therefore uphold the enforcement notice with variations.
49. Those variations will need to account for the partial success and therefore it would only be appropriate to require the cessation of the use of the premises as flats, with the exception of Flats 4 and 5. It would then only be appropriate to require the removal of the specified matters from Flats 1, 2 and 3 as the original configuration cannot be restored.

Formal Decisions – Appeals, A, B, C, D, E

50. It is directed that the enforcement notice be varied by:

- deleting the words from SCHEDULE 2:

'AND

Without planning permission, the erection of an extension to the rear of the premises

('the unauthorised development')'

- deleting the words from SCHEDULE 4:

'STEP 1. Cease the use of the premises as flats, and its occupation by more than ONE household.

STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets.

STEP 3. Demolish the unauthorised rear extension and remove all items and debris arising from the demolition, and remove all materials associated with the unauthorised use and development from the premises.

STEP 4. Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen, dining room and lounge on the ground

floor, bedrooms on the upper floors, a bathroom on the first floor, and a WC on the ground floor.'

and their replacement with the words:

'STEP 1. Cease the use of the premises as flats, with the exception of the flats identified as Flat 4 and Flat 5.

STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets from Flats 1, 2 and 3.

51. Subject to these variations the appeals are dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Syed Hasan, appellant, and representing all the appellants

He called	Mr Abrar Ahmed	Gas Engineer
	Ms Sumera Tasawar	Cleaner
	Himself	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks MRTPI, Planning Consultant, instructed by the Council of the London Borough of Brent

He called	Himself	Planning Consultant
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INTERESTED PERSONS:

Mr Asim Khan	Acting as interpreter for the appellants
Ms Joy Easton	Appellant

DOCUMENTS

1. Appellant's opening submission
2. Council's opening submission
3. Copy of the Appellant's bundle sent to the Council
4. Appendix 18 to the Appellant's bundle
5. Email concerning council tax and claim form for housing benefit provided by the Council
6. Council's closing submission and case law
7. Appellant's closing submission