



Appeal Decision

Inquiry Held on 10 March 2021

Site visit made on 23 July 2021

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Ref: APP/G5180/C/19/3219739

Paxton Arms, 52 Anerley Hill, Anerley, London SE19 2AE

- 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 AMM Developments Ltd against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice was issued on 30 November 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of basement from use as a retail unit (use class A1) and a single self contained flatted dwellinghouse (Use Class A3), to use as a retail unit (Use Class A1) and two x one bedroom self-contained flatted dwellinghouses (Use class C3).
- The requirements of the notice are:
 1. Cease the use of part of the basement as two separate self contained flatted dwellinghouses
 2. Remove from the basement all fixtures, fittings and alterations that have been installed that directly support its use as two separate self contained flatted dwellinghouses.
 3. Restore the Land to its permitted use in accordance with Planning Permission DC/13/01742/FULL1.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

1. The initial appeal submission included a ground (c) appeal. An appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the enforcement notice (the "Notice") do not constitute a breach of planning control.
2. The appellant's evidence in support of their ground (c) appeal was that the development alleged in the Notice took place more than 4 years prior to the date of its service and therefore was not a breach of planning control. However, this is in fact the basis of the ground (d) appeal. There is no dispute that the matters alleged in the Notice do not benefit from planning permission or that it is not permitted development. Consequently, the breach of planning control as alleged has occurred and therefore a ground (c) appeal cannot be

- successful. This was put to the appellant during the inquiry and, consequently, they withdrew the ground (c) appeal.
3. Two days prior to the inquiry, the appellant sought to introduce a ground (e) appeal. The basis of this was discussed during the inquiry. The appellant's argument on this ground is that copies of the Notice were served on the incorrect addresses. The Council confirmed that they were content for the ground (e) appeal to be considered providing it was only made on this basis. Having regard to the principles established in the 'Wheatcroft' judgment¹, I find that interested parties would not be prejudiced by the introduction of the ground (e) appeal. Accordingly, I have determined the ground (e) appeal.
 4. The breach of planning control as alleged in the Notice refers to "the material change of use of basement from...a single self contained flatted dwellinghouse (Use Class A3)." However, the reference to "(Use Class A3)" is clearly incorrect and should read "(Use Class C3)." I do not find that any injustice would be caused to any interested party if I correct the Notice as such.
 5. Following the closure of the inquiry, I sought further comments from the parties regarding the 'Landlord/Homeowner Gas Safety Records', 'Emergency Lighting Periodic Inspection and Testing Certificates' and the 'Fire Detection and Alarm System Inspection and Servicing Report'. These matters were dealt with via written representations and I am satisfied that neither party was prejudiced in proceeding on this basis.
 6. Since the inquiry was held, a revised version of the National Planning Policy Framework (the Framework) has been published. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced by my consideration of it as a material consideration in the ground (a) appeal.

Application for costs

7. At the inquiry an application for costs was made by the Council of the London Borough of Bromley against AMM Developments Ltd. This application is the subject of a separate Decision.

The ground (e) appeal

8. An appeal on ground (e) is whether copies of the enforcement notice were served as required by section 172 of the Act. Section 172(2) states "*A copy of an enforcement notice shall be served— (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice*".
9. Copies of the Notice were served on persons at four properties. Two of these properties were addressed as "Basement/Mezzanine Flat 1" and "Basement/Mezzanine Flat 2." The appellant contends that these are the incorrect addresses for the flats that are the subject of the Notice as they are in fact Flats 8 and 9, which they are clearly numbered as such on their respective front doors.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982]

10. The Council provides photographic evidence dated 3 December 2018 indicating the service of copies of the Notice. These photographs include images of the Notice, the accompanying covering letter and doors numbered 8 and 9. These door numbers correspond with the numbering of the subject flats and the addresses held on the Council Tax records for the properties.
11. The covering letters are addressed to "Basement/Mezzanine Flat 1" and "Basement/Mezzanine Flat 2." The image of the open front door of Flat 8 indicates that the occupant of the flat was present at the time of the copy of the Notice being served and therefore would likely have received it in person.
12. With regard to Flat 9, the photographic evidence indicates that a copy of the Notice was left on the floor in the corridor serving Flats 8 and 9. There is also an image of a copy appearing to be with other mail for the occupants of Flat 9. It is not clear whether this image was taken inside the flat or elsewhere within the building.
13. The wording of the address on each of the two copies of the Notice intended for Flats 8 and 9 clearly does not correspond with the numbering of the flats. However, as it appears that a copy was at the very least left in the corridor serving both basement flats, it is likely that the occupants of Flat 9 would have realised that it was for them.
14. Furthermore, there is no evidence from the occupants of the flats that they were not served copies of the Notice. It was open to the appellant, as the landlord, to seek confirmation from the occupants confirming as such, but no such evidence has been submitted.
15. Therefore, despite the incorrect addresses appearing in the list of the parties on which copies of the Notice were served and on the accompanying letters, I am satisfied that on the balance of probabilities, the copies of the Notices were properly served.
16. In any event, for a ground (e) appeal to be successful, it must be demonstrated that interested parties have been prejudiced as a result of copies of the Notice not being served correctly. The appellant made the appeal within the requisite time period and has had sufficient time to make their case. There has been no argument made that any specific interested parties have been prejudiced. Consequently, it has not been demonstrated that any interested parties have been prejudiced as a result of the incorrect addresses appearing on the list of the parties on which the Notice was served.
17. The ground (e) appeal therefore fails.

The ground (d) appeal

18. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the Notice was issued on 30 November 2018, it was too late to take enforcement action against the alleged breach of planning control. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
19. As the matters alleged in the Notice refer to a material change of use to flats, the requisite period to acquire immunity from enforcement action is four years.

In this instance the change of use to two self-contained flats must have occurred no later than 30 November 2014.

20. Planning permission was granted in August 2013² for the "*Construction of mansard roof, roof terrace, elevational alterations and conversion into part class A1 retail in basement and ground floor, 3 one bedroom and 4 two bedroom flats with associated parking, access, cycle and refuse storage.*" This development included a two-bedroom, three person flat and retail storage in the basement.
21. In September 2013 a subsequent non-material amendment application was submitted to the Council³ seeking to create two basement flats instead of the one approved flat, which would result in a reduction in the size of the retail storage area. This application was refused permission.
22. The appellant's written evidence states that the basement flat was subdivided in February 2014 and these two flats were then let out to tenants in July 2014 and have continued to be since.
23. Whilst giving evidence under solemn affirmation during the inquiry, the appellant's director took a different position, stating that the two basement flats existed when they bought the property in May 2013. The appellant's director stated that when purchasing the property, they were unaware that there were two flats in the basement. When the application for pre-planning advice was submitted in March 2013 the architect did not have access to the basement and therefore the drawings submitted with it and the following planning application did not accurately reflect what was in situ. They also confirmed that the toilet block had already been demolished when they purchased the property.
24. This evidence given under solemn affirmation directly contradicts the appellant's written evidence, which states that the two flats were created in February 2014. In addition, notwithstanding the fact that the "Existing Plans and Elevations" drawing, dated May 2013, submitted with planning application 13/01742/FULL1 makes no reference to two flats in the basement, it includes numerous detailed measurements, including floor levels and ceiling heights. It seems highly unlikely that such detailed measurements could have been estimated by the architect without having first surveyed the basement.
25. The appellant contends that once it was realised that there were in fact two flats in the basement, which was after planning permission was granted, the non-material amendment application was submitted. I acknowledge that prospective property purchasers may not view a property to its full extent prior to purchasing it. However, it seems highly unlikely that between the period of May 2013 and September 2013 that the appellant, architect or letting agent (acting on behalf of the appellant) did not enter the basement of the building and recognise that there were in fact two flats and not one.
26. Had the architect entered the basement, which the detailed drawings suggest they did, then they would have recognised that the existence of two flats would likely have weighed in the appellant's favour and this would likely have been reflected in the planning application. Furthermore, if the recognition of the two flats was not made until September 2013 then this would likely have been

² Council ref: 13/01742/FULL1

³ Council ref: 13/01742/AMD

advanced in the non-material amendment application as justification for why the application was submitted. There is no evidence before me that it was. Indeed, the first indication that there were two flats in the basement at the time the appellant purchased the property was only made during the appellant's director's witness testimony at the inquiry. Whether it was remiss of the appellant, their architect or their letting agent at the time, it seems improbable that it would have taken approximately five months to realise that there were indeed two flats in the basement and not one. That is particularly so when a planning application had been submitted by AMM Developments Ltd and determined by the Council during this time.

27. During the inquiry the appellant's director also stated that the single-storey toilet block attached to the building was already demolished and the existing lightwell serving the two basement flats was there when they bought the property in May 2013. However, the drawing submitted with the planning application also includes the toilet block, which itself has numerous detailed measurements annotated on it, which raises further doubt over the appellant's directors' claim that the toilet block was already demolished when they bought the property. The photographic evidence⁴ submitted by the Council suggests that in June 2014 the toilet block had only recently been removed as it shows an opening in the external wall of the building where the toilet block previously was, exposing what appears to be the internal pink wall of the ground floor. I consider it implausible that this opening was created at least one year previously and left exposed during this time, especially if there was a flat directly beneath it.
28. There are obvious inconsistencies between the evidence given under solemn affirmation by the appellant's director during the inquiry and that provided in written form. These inconsistencies diminish the reliability of the evidence, with particular regard to when the two basement flats were created. However, this conflicting evidence relates to what took place between May 2013 and June 2014. It does not demonstrate a breach of planning control having occurred for a continuous period of at least 4 years prior to the date of the issue of the enforcement notice on 30 November 2018.
29. Mr Saimbi is an electrical engineer who was previously contracted by Oliver Gold Ltd, the previous letting agent for the appeal property, to carry out works on the flats. His witness testimony confirmed that he visited the site numerous times during the period of May 2014 and November 2014 to carry out inspections and certification of the electrical and fire safety certificates on the two basement flats. He recalled that the two flats were occupied at the time and had been refurbished whereas the upper flats had not. He also specifically remembered carrying out work on the property as he is familiar with the locality and remembers the long journey travelling to the site as he had to do it numerous times. He also recalls arranging access to Flat 8 via its tenant at the time for a visit on 14 July 2014 as he wrote the appointment down in his diary.
30. In support of his evidence, a number of 'Emergency Lighting Periodic Inspection and Testing Certificates' and 'Fire Detection and Alarm System Inspection and Servicing Report' have been provided for the two flats, covering the years 2014 to 2018. Mr Saimbi is the signatory on all of these certificates.

⁴ Photograph No.5, Appendix 1 of Catherine Leadbeater's Proof of Evidence

31. The certificates for the years 2014, 2015 and 2016 have 'Copyright Tysoft 2017' on the bottom of the page indicating that these certificates were completed sometime during or after 2017 and not in the years claimed. In response to this, Mr Saimbi has confirmed in writing that the original test certificates for these years were provided to Oliver Gold, who are no longer trading. Therefore, he had to reprint the certificates, hence the copyright date of 2017, which he claims is to prevent fraud.
32. However, whilst Oliver Gold were the letting agents at the time the appellant purchased the property, which may account for the missing original 2014 certificates, they were not the agents in 2015 and subsequent years, as confirmed in the tenancy agreements submitted. These indicate the agent to be Acorn Property Management. It is unclear why the original certificates for these years could not have been obtained from Acorn Property Management.
33. Moreover, it is likely that copies of the original certificates would have been created at the time the inspections and testing took place. As Paaji Ltd was the approved electrical contractor, a copy would likely have been retained with them. There is no evidence why the certificates for these years could not have been obtained from Paaji Ltd.
34. Similarly, there are also inconsistencies in the dates of the 'Landlord/Homeowner Gas Safety Records' for both flats, dated 1 July 2014, and the copyright date on them, which is July 2015. The appellant confirms that they have not been able to contact the gas engineer to enquire about them but that duplicates were requested from the engineer and that they were re-written on the latest stationary. However, the concerns I have with regard to the authenticity of the 'Emergency Lighting Periodic Inspection and Testing Certificates' and 'Fire Detection and Alarm System Inspection and Servicing Reports' equally applies to the 'Landlord/Homeowner Gas Safety Records'. No explanation has been given as to why additional copies were not kept by the gas engineer or why copies were not given to Acorn Property Management/the appellant in the years that they took over from Oliver Gold.
35. Based on the evidence submitted, there is insufficient evidence to demonstrate that, on the balance of probabilities, the inspections and tests indicated by these certificates actually took place. The clear conflict in evidence, particularly regarding when it is claimed Oliver Gold were the letting agents and why original copies of these certificates could not be obtained raises significant doubt as to the veracity of the witnesses' evidence, both orally and written.
36. Mr Bhukhureea confirmed that he worked on the site installing windows from February 2014. He remembers fitting the basement windows first and that the two flats had been refurbished. From April 2014 onwards he fitted the remaining windows in the building and during this time he remembers seeing people coming in and out of the basement flats. However, his assertion that they were tenants of the flats is made only on the basis of the clothes that they wore, i.e. they were not dressed in attire suitable for a building site. Nevertheless, he does recall entering the flats to carry out snagging works and seeing that they were clearly lived in. He also confirmed that the basement flats were occupied from around July 2014. However, this conflicts with the appellant's own evidence given under solemn affirmation that both flats had been there since before May 2013.

37. Electricity bills for both flats covering the period of 18 February 2014 to 16 April 2015 are for exactly the same amount, £735.91. Both bills clearly state that they are 'based on estimated readings'. As they are based on estimated readings, they provide no evidence to support that the flats were occupied during this period, or indeed whether any electricity was in fact used. They merely indicate that each flat has its own electricity supply.
38. Similarly, the water bills for the flats covering the period of 20 May 2014 and 31 March 2015 are for exactly the same amount, £254.96. As the appellant's director confirmed that the two flats have separate meters for their water supply, it would be a remarkable coincidence that the occupants of the two flats used exactly the same amount of water during this period. Therefore, it is reasonable to conclude that these bills were all based on estimated usage rather than actual usage.
39. A gas bill has been submitted for Flat 9. This bill only covers the period of 11 December 2014 to 19 April 2015, and therefore does not extend far enough back to cover the requisite period for immunity, albeit only marginally outside of it. In any event, the bill only indicates that gas was used in Flat 9 over this short period of time. It does not indicate whether or not the flat was in residential occupation or, more importantly, that the two flats were in residential occupation.
40. I note that the Council Tax records indicate that the flats were only registered in late April/early May 2015. However, this does not indicate that they were not in residential occupation prior to this. Similarly, the fact that tenants of the flats were not registered on the electoral roll until 2017 does not mean that they were not occupants of the flats prior to then.
41. There are a number of tenancy agreements submitted covering the period of 1 July 2014 to 30 October 2019 for Flat 8 and 1 July 2014 to 31 March 2019 for Flat 9. The agreements are all signed by the tenants and there is only one gap of approximately one month between 30 April 2016 and 31 May 2016 for Flat 8, otherwise the agreements cover an excess of 4 continuous years for both flats. The agreements only indicate the start of each tenancy. There is no other evidence, such as rental receipts, to further support the occupation of the flats. Whilst tenancy agreements might typically be indicative of the likelihood of the occupation of the flats, I must consider the evidence as a whole. The significant inconsistencies in the appellant's overall evidence causes me to have concerns over the quality of these agreements to such an extent that I am not satisfied they can be relied upon as good evidence.
42. Overall, the evidence in support of the ground (d) appeal is limited and is not precise or unambiguous. There is significant ambiguity over when the basement flats were first occupied and whether they have been in residential occupancy for a continuous period of four years. Therefore, I am not satisfied that, on the balance of probabilities, the material change of use of the basement to two one bedroom self-contained flatlet dwellinghouses occurred continuously for a four-year period prior to the date of the notice being served.
43. The ground (d) appeal therefore fails.

The ground (a) appeal

Main Issues

44. The main issues are as follows:

- Whether the development provides adequate living conditions for existing and future occupants, with regard to amenity space, outlook, daylight and ceiling height;
- The effect of the development on the character of the area, with regard to density;
- Whether the development provides adequate cycle and refuse/recycling storage facilities; and
- The effect of the development on highway safety.

Living Conditions

45. Both of the flats are accessed via a gated entrance off Palace Road. This leads to a rear yard that is used for sheltered cycle storage and bin storage. At the time of my site visit there was also a car parked in the yard, which the appellant confirmed could belong to the tenant of the retail unit on the ground floor. From this yard there are steps down to a narrow lightwell serving both the basement flats and the front door leading to their communal hallway.
46. Whilst the rear yard provides space for bike storage and bin storage, this is clearly for use by all of the occupants in the building, not just those of the basement flats. There is no private outdoor amenity space for the occupants of the basement flats. Although the lightwell provides some privacy, due to it being so narrow and its position below ground level limits the amount of sunlight serving it, its usability as private amenity space is severely limited.
47. Overall, the lack of suitable private amenity space would have a significantly harmful effect on the living conditions of the occupants of the basement flats.
48. With regards to the internal accommodation within the flats, both of them have single aspects with all of the windows overlooking the lightwell. As a result of the lightwell's narrow width, the outlook from these windows is dominated by its retaining wall with the rear yard. Although glimpses of the sky above are possible from the windows, these are very limited.
49. Flat 8 is served by two small windows; one serving the lounge and the other serving the bedroom. As a result of their relatively small size and deep reveals, these windows only provide a very limited amount of light to these rooms. This is compounded by the narrow width and depth of the lightwell, thus further limiting the amount of light serving these windows. The kitchen/dining area and bathroom have no source of natural light. Consequently, Flat 8 appears excessively gloomy and would likely require the use of artificial light sources throughout the day.
50. With regard to Flat 9, this has a single, small window serving the bedroom and French doors serving the lounge. As with Flat 8, due to the bedroom window having deep reveals and served by the narrow lightwell, only a limited amount of light serves the room. In addition, the kitchen/dining area has no natural light source. Although the lounge area is served by the French doors and therefore is well lit with natural light, when considered as a whole, the overall

flat is also excessively gloomy and would likely require the use of artificial lighting throughout much of the day.

51. The kitchen/dining room for each flat is on a higher floor level than the rest of the flat, requiring a step up into them. As a result, the ceiling height in these rooms is much lower than the other rooms. This height is approximately 2.28m from floor to ceiling. Policy D6 of the London Plan 2021 (the London Plan) states that ceiling heights should be 2.5m for 75% of floor space to ensure adequate space and ventilation. Whilst the floor area measurements for each of the kitchen/dining rooms and the overall flats is not before me, based on the plans and the observations I made on site, it is reasonable to conclude that these rooms account for more than 25% of the floor area of their respective flats. Consequently, they fall far short of the requirements of Policy D6.
52. I acknowledge that the flats have been lived in for some time with no apparent complaints from their occupants about the living conditions. However, a lack of complaint does not equate with a lack of harm. My consideration of the effect of the development on the living conditions has been based on both existing and future occupants.
53. The appellant also argues that as the flats were occupied in 2014 the relevant policies at the time should be applicable. However, under a ground (a) appeal, I must have regard to the relevant local and national policies and guidance applicable at the time of making my decision.
54. The appellant states that the Council's Crime Prevention Officer requested that the approved amenity space for the 2013 planning permission should be fully paved. However, this does not account for the existing lack of private amenity space.
55. Overall, the lack of private outdoor amenity space, outlook, daylight and ceiling height for both flats creates an oppressively confined form of residential accommodation that would be significantly harmful to the living conditions of their occupants. As such, the development is contrary to Policy 4 of the London Borough of Bromley Local Plan 2019 (the LP), which seeks to ensure that all new housing achieves a high standard of design, with particular regard to private amenity space. The development is also contrary to Policy 9 of the LP, which seeks to ensure that residential conversions provide a high quality living environment.

Character

56. The appeal site is a four-storey with basement building located within a well-established mixed-used area comprising residential, commercial and retail uses. Residential properties range from semi-detached, two-storey dwellings to four-storey flatted accommodation and make a positive contribution to this vibrant, high density urban setting.
57. When considered in isolation, the use of the building for 9 flats results in high density residential accommodation. There is a dispute regarding the actual density of the site. The Council claim that the 9 flats amount to a density of 283 units per hectare whereas the appellant claims it is 251 units per hectare. However, even taking the higher of these two figures, I do not consider that it would be excessively high, particularly given the site's proximity to other

flatted accommodation in the vicinity, notably to the rear of the site and on the opposite side of Palace Road, and the excellent access to public transport, shops, facilities and services.

58. Nevertheless, when read in the wider context of the site and the constraints I have identified above, in particular the lack of private amenity space and the inadequate internal living accommodation of the two basement flats, the development represents an overdeveloped and cramped form of accommodation that detracts from the character of the area.
59. I find therefore that the development significantly harms the character of the area, contrary to Policy 4 of the LP, which seeks to ensure that new housing development respects local character, with regard to density.

Cycle and Refuse/Recycling Storage

60. The rear yard of the appeal site contains sheltered cycle storage for approximately 14 bicycles. At the time of my site visit, there were also a number of refuse/recycling bins, including two large bins.
61. Whilst the bin storage area appeared to be rather informal, with no specific area designated, there nevertheless is sufficient space to accommodate adequate bin storage to meet the needs of the occupants of the appeal building. I am satisfied that such provision could be secured by way of an appropriately worded condition, were I minded to allow the appeal.
62. Furthermore, the cycle storage currently provided within the yard is sufficient to meet the needs of the occupants of the subject development and the flats on the upper floors. Policy T5 and Table 10.2 of the London Plan states that dwellings should provide a minimum of 1 space per 1 person 1 bedroom dwelling and 1.5 spaces per 2 person 1 bedroom dwelling. The existing on-site cycle storage provision would satisfy these standards. Were I minded to allow the appeal, I am satisfied that an appropriately worded condition could be imposed that ensures the retention and maintenance of the cycle storage.
63. I find therefore that the development provides adequate cycle and bin storage facilities and therefore, in this regard, complies with Policy H4 of the LP which seeks to ensure new housing achieves a high standard of design and layout, in particular giving priority to pedestrians and cyclists. It would also comply with the minimum cycle parking standards set out in Policy T5 and Table 10.2 of the London Plan.

Highway Safety

64. The Council confirms that when planning permission was granted for 7 flats in 2013 this included two on site parking spaces in the yard area. At the time, it was considered that there was sufficient on street parking within the vicinity to off set the lack of on-site parking. Although there was a car parked in the rear yard at the time of my site visit, this was in an informal manner. There are no demarcated parking spaces within the yard.
65. Although there is some restricted on-street parking in the vicinity of the site, there are a number of roads which have unrestricted parking, including much of Palace Road. My site visit took place in the middle of the day on a weekday. Whilst I accept that this was a snapshot in time, there was no evidence of any undue pressure on on-street parking in the area, indeed there were numerous

vacant spaces to park. Moreover, even though the two flats appear to have been in occupation for some time, there is no evidence before me that this has directly resulted in, or contributed towards, any highway safety incidents.

66. The appeal site is well served by public transport by way of its proximity to Crystal Palace station and various bus routes, hence it being PTAL level 6a. Furthermore, there are various shops, services and facilities within reasonable walking distance of the site. Therefore, there would be little reliance on the use of a private car. The provision of on-site sheltered cycle storage would also encourage occupants of the flats to use a bicycle instead of the private car.
67. I have also had regard to the Council's concerns that the reduction in the basement retail storage area would likely result in more frequent on-street servicing at the front of the property. Whilst this may well be the case, more frequent deliveries does not necessarily mean that it would be inherently harmful to highway safety. Anerley Hill is particularly wide along this stretch of the road and would likely accommodate delivery vehicles without detriment to the free flow of traffic or highway safety, even if the frequency of these deliveries increased.
68. Therefore, whilst there is not any on-site parking provision for the occupants of the basement flats, or indeed any of the flats within the appeal building, I am satisfied that there is sufficient on-street parking provision to meet the limited need for car parking spaces that the development likely generates. As such, the development would not significantly harm highway safety and therefore complies with, in this regard, Policy 9 of the LP, which seeks to ensure that on and off street parking resulting from the development will not cause unsafe or inconvenient highway conditions.

Other Matters

69. The appellant argues that the number of occupants in the two basement flats would be the same as the number of occupants in the approved one basement flat, as part of the 2013 planning permission. However, the approved layout is entirely different to the existing layout, in particular the kitchens of the two flats have encroached into the retail area, which may explain the difference in floor to ceiling height. Furthermore, the approved fenestration would have had two windows serving Bedroom 1, thus allowing more daylight to serve the room. Moreover, the approved development included communal amenity space, which the existing development does not. Therefore, I do not consider that the living conditions of the approved single basement flat and the existing two flats are comparable.
70. The appellant argues that the existing retail business has been operating for 7 years and therefore has not been impacted by the development. Be that as it may, it does not influence my findings of the harm arising with regard to the two self-contained flats in respect of the inadequate living conditions and the harm to the character of the area.

Balance and Conclusion on the Ground (a) appeal

71. I have found no harm with regard to the provision of cycle and refuse/recycling facilities and highway safety. However, these are neutral factors and do not outweigh the significant harm I find regarding the effect of the development on

the character and appearance of the area and the inadequacy of the living conditions of the occupants of the basement flats.

72. For the reasons given above, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

The ground (f) appeal

73. For the appeal to succeed on this ground, I need to be satisfied that that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
74. The Council request a variation of requirement 3 of the Notice to substitute "Land" to "basement." The appellant raised no objection to this and I agree that the requested revision would bring greater clarity and accuracy to the requirement. I find that no injustice would be caused to any interested party in making such a variation and shall do so accordingly.
75. The requirements of the Notice would likely require structural works to the building, through the removal of existing walls, in particular the kitchen walls. However, based on the plans before me, these walls were likely installed when the two flats were created. Therefore, it seems unlikely that their removal would pose an unacceptable risk to the stability of the entire building. In any event, even if they were so structurally important, there is no evidence to indicate as such or that they could not be removed regardless subject to the necessary safety precautions.
76. The appellant also argues that some of the development could be considered as permitted development, notably the change of use of the A1 to C3. However, this would be subject to prior approval. As there is no evidence before me that such prior approval has been sought, I cannot be certain that it would be granted. This option would be open to the appellant to pursue once the lawful A1 use in the basement has been reinstated.
77. The works identified in the requirements of the notice clearly facilitate the use of the basement as two separate flats. Therefore, I do not consider that their removal would be excessive in order to remedy the breach of planning control, i.e. the use of the basement as two self-contained flats.
78. Whilst the required works may be expensive, this has had no bearing on my consideration of whether the actual works themselves would be excessive.
79. I therefore conclude that the ground (f) appeal must fail.

The Ground (g) appeal

80. This ground of appeal is that the period for compliance is unreasonably short.
81. The time for compliance with the requirements of the enforcement notice is four months. The appellant argues that this is not sufficient time to get a court decision to evict the tenants. However, the appellant has presented no evidence that the tenants would not willingly evict the premises when served with a notice of eviction or that legal proceedings to evict them would be necessary.

82. The appellant has suggested a period of 4 years, claiming that the eviction of a commercial tenant takes much longer. However, there is no evidence before me indicating why it would take such a long time. Moreover, there is no evidence to indicate why the commercial tenant would need to be evicted.
83. I note the Council's argument that the appellant has not made attempts to prepare for the eviction of the tenants. However, it is not unreasonable of the appellant to expect a favourable outcome from the appeal and therefore this does not weigh against them.
84. From the available evidence I consider that the four month period of compliance specified in the notice is not unreasonably short, and I do not find justification for extending it. I am also mindful that the Council have the power to vary the period of compliance under section 173A (1)(b) of the Town and Country Planning Act 1990 should they see fit to do so, although this is not to be prejudiced by my decision.
85. I therefore conclude that the ground (g) appeal must fail.

Formal Decision

86. It is directed that the enforcement notice is corrected and varied by: the deletion of "A3" in the subtext of paragraph 3 and its substitution for "C3"; and, the deletion of "Land" in requirement 2. of paragraph 5 and its substitution for "basement". Subject to this correction and variation, the appeal is dismissed, 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.

Alexander Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Salim Mussa	Instructed by the appellant
He called:	

Mr Mohammed Malida	Director of AMM Developments Ltd
Mr Jasbir Singh Saimbi	Witness
Mr Sousesh Bhukhureea	Witness

FOR COUNCIL OF THE LONDON BOROUGH OF BROMLEY:

Mr Ian Rees Phillips	of Counsel, instructed by the Solicitor to the Council
He called:	

Miss Catherine Leadbeater	Principal Planning Officer
Bsc (Hons) TP, Dip Tp (UWIST),	
MRTPI	

DOCUMENTS SUBMITTED AT THE INQUIRY:

1. Land Registry documents for the appeal property submitted by the Council
2. Drawing M2917
3. Drawing 6283 – P04
4. Confirmation via email dated 11 March 2021 from the Council that Policy T5 of the London Plan 2021 and Table 10.2 concerns the provision of cycle parking
5. Copy of Policy T5 and Table 10.2 of the London Plan 2021