



Appeal Decision

Site visit made on 19 October 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

Appeal Ref: APP/T5150/C/20/3245603 39 Coppermead Close, London NW2 6NP

- 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 Chaim E Josefovitz against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice ref. E/16/0258, was issued on 18 December 2019.
- The breach of planning control as alleged in the notice is the material change of use of the premises to a House in Multiple Occupation (HMO) and flats.
- The requirements of the notice are to:
 1. Cease the use of the premises as flats and/or a House in Multiple Occupation (HMO), 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 that 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 floor, a bathroom on the first floor, and a WC on the ground floor.
- 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) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).

Decision

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:
DELETION of *6 months*; and,
SUBSTITUTION of *9 months* as the period for compliance.
Subject to this variation the enforcement notice is upheld.

Background matters

2. The appeal property is a two-storey dwelling within a staggered terrace of similar properties - part of a larger development of similar terraces probably during the latter half of the 20th century. To the west the building faces onto a communal garden, to the east is a small yard with access from a garage court. The principal entrance is through the yard, although this is referred to as the rear of the property. I have adopted this description of front and rear for the purposes of my determination.

3. On my visit I saw there is a flat roofed extension at the rear of the property, occupying much of the yard. This gives access to an entrance hall. There is a habitable room within the extension (Unit 1), and two others to the front of that looking out onto the communal garden (Units 2 and 3). On the first floor are a habitable room to the front, looking over the extension flat roof (Unit 4). To the rear is another habitable room (Unit 5), and adjacent to that is a communal kitchen equipped with sink, a worktop, cupboards, a microwave, 4-ring hob, oven and a washing machine. There is a narrow shelf around one end of the kitchen, which I take to be where occupants are expected to sit and eat. The kitchen occupies the space that was the bathroom in the original house.
4. I saw that each of the five habitable units is equipped with a kitchen type sink inset in a base unit with a small worktop with a fridge below and a wall cupboard above. Each also has a shower/wc/wash-hand basin cubicle. All rooms have a bed and a small wardrobe. Other furnishing varies, but most have a small table, a chair and a television, probably introduced by the occupants.
5. In September 2020 planning permission was granted subject to conditions for the change of use of the premises to a 4-room House in Multiple Occupation (HMO) with the provision of a communal kitchen and lounge areas, the retention of a ground floor rear extension together with the installation of a window to the first floor, and external alterations. This scheme proposed there should be a single large communal kitchen/dining and living room the full width of the building, taking in Unit 5 and adjacent kitchen. The two adjacent habitable rooms on the ground floor would be altered so that the separating partition would be positioned on the centre-line of the house, thereby increasing the width of what is at present Unit 2.
6. Various external alterations were proposed, including removing the flank parapets of the extension, and cladding the extension so that the facing materials would match those of the original house as far as possible. None of the proposed works have been carried out.
7. S.180(1) of the Act provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

The appeal on ground (b)

8. This ground is that the alleged material change of use has not taken place as a matter of fact. In a case such as this, raising one of the 'legal' grounds of appeal the burden of proof is on the appellant to show that this is the case on the balance of probabilities.
9. Furthermore, it is longstanding law in cases of this type that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse an application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

10. The appellant argues that the property is used solely as a HMO. It is not a HMO and flats as alleged in the notice, so the identified material change of use has not actually occurred. However, the Council say that when they inspected the property in December 2019 they found that the three accommodation units inspected were self-contained, with cooking facilities including ovens and hobs.
11. The Council have put forward photographs taken at the time showing there was indeed cooking taking place in some of the units, where microwave cookers and at least one portable electric hob can be seen, as well what appear to be clear signs of food in preparation, and several pots and pans in use. It is by no means clear to me which units have been photographed, and on my visit there were no signs of microwave cookers or other cooking devices being present. However, that does not mean that has always been the case.
12. The appellant says that even if there were such cooking facilities in some of the units, these were of a plug-in variety that could be brought in or taken out at will, and that this would not mean that a unit changed back and forth from HMO to flat or *vice versa*. However, the photographs show quite elaborate food preparation on the equipment then installed as well as the pots and pans that can be seen. This indicates to me that as a matter of fact and degree some of the units were in self-contained use quite continuously, and in that context should be regarded as flats.
13. It appears that at that time at least three of the units were self-contained, provided the facilities required for day-to-day private domestic existence, and should be regarded as flats. I appreciate the landlord expects each occupant to undertake that no cooking to occur in the rooms, and there is a notice to that effect in the entrance hall. However, the Council's evidence indicates there has at times been little compliance with this restriction.
14. Furthermore, the appellant has registered the units as 5 flats with the Valuation Office, thereby enabling there to be housing benefits available for self-contained accommodation.
15. It appears to me that the units have been used in a somewhat fluid way, with cooking facilities brought in or removed at different times. The fact that they may not have been flats at times, with the whole house being in Multiple Occupation does not alter the situation that there has been a mixed use as both flats and a HMO. It matters not how many units have been in use as flats, the use of just one unit would result in a mixed use.
16. Overall, it appears to me from the Council's evidence, and indeed from the appellant's registration activities that at least some of the units have been in use as flats, while others may have been used as units with shared facilities and been regarded as in Multiple Occupation. On the balance of probabilities the alleged use has occurred as a matter of fact. The appeal on ground (b) therefore fails.

The appeal on ground (c)

17. This ground is that there has not been a breach of planning control. As for the ground (b) appeal the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.
18. It is argued that the extension is permitted development under the provisions of Class A of Part 1 to Schedule 2 of The Town and Country Planning (General

- Permitted Development) (England) Order 2015 as amended (the GPDO). This permits the enlargement, improvement or other alteration of a dwellinghouse. Furthermore, the change from a Use Class C3 dwellinghouse to a Use Class C4 HMO was permitted under Class L(b) of Part 3 to Schedule 2 of the GPDO.
19. It is also argued that even if there had been flats as part of the development at some time, at the time the extension was built, and the material change of use occurred there was no use as self-contained units. Indeed, the appellant maintains that there have never been self-contained flats in the building.
 20. It is accepted that permitted development rights under Class A for extension of a dwellinghouse may apply to both Use Class C3 and C4 premises. However, such rights do not exist for a building used as flats or in a mixed use.
 21. However, the evidence put in by the Council shows that there has on the balance of probabilities been use of some units as self-contained flats at some periods. The appellant does not provide any substantial evidence as to when the material change of use and unauthorised works took place. In that context I cannot know whether there was a lawful material change of use from Use Class C3 to Use Class C4, or whether the building was in the alleged mixed use at the time. Furthermore, it is clear that the extension was built in order to increase the occupancy of the building to provide at least one additional unit of accommodation.
 22. It matters not that the Council were unable to inspect more than three of the units in December 2019. If the other two units were self-contained, then the entire building would have comprised 5 separate dwellings, and the development unlawful. If the other two units were in HMO use, then there would have been an unlawful mixed use.
 23. Article 3(5) of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) states that the permission granted by Schedule 2 does not apply if—
 - (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.
 - (b) in the case of permission granted in connection with an existing use, that use is unlawful.
 24. In this case I have concluded that on the balance of probabilities the development was unlawful. The allowances of the GPDO cannot therefore be applied.
 25. Overall, I find the appellant's evidence to be far from being precise and unambiguous in attempting to show the material change of use and works were lawful. On the balance of probabilities I consider there has been a breach of planning control. The appeal on ground (c) therefore fails.

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

26. This ground is that planning permission should be granted for all or part of the development alleged in the notice. From all that I have seen and read I consider the main issues to be:

- i. The effect of the development on living conditions for occupants of the appeal property in terms of provision of floorspace and of access to outdoor amenity space.
 - ii. The effect of the development on residential amenity for occupants of nearby property in terms of refuse and general external storage provision for the appeal premises, and in terms of noise and general disturbance.
 - iii. The effect of the rear extension on the character and appearance of the appeal property and the surrounding area in terms of its size, design and materials.
27. On the first main issue, the principal question concerns the size of the units. The plans submitted show the following areas for the 5 units including the shower/wc/washbasin cubicles, and the kitchen. These are as follows:
- | | |
|-----------|--------------------|
| Unit 1 – | 11.1 square metres |
| Unit 2 – | 13.8 square metres |
| Unit 3 – | 11.9 square metres |
| Unit 4 – | 14.4 square metres |
| Unit 5 – | 12.8 square metres |
| Kitchen – | 6.2 square metres |
28. The government document 'Technical Housing Standards – Nationally Described Space Standard' sets out gross internal floor areas for different types of dwelling. The London Plan sets out much the same standards in Table 3.3 to Policy 3.5, as does Policy DMP 18 of the London Borough of Brent Local Plan Development Management Policies of 2016 (DMP). The Brent Borough Council Supplementary Planning Document SPD1 endorses these.
29. The standard for a 1-bedroom one person flat, with a shower rather than a bathroom, is an area of 37 square metres. In this case all five units are very significantly below that standard. I saw that each unit is extremely cramped with just enough space for a bed, a wardrobe, a small table and a small chair. There is no space available for an easy chair in any of the units, and a visitor could not realistically be entertained - there would be no space for another chair. All rooms have limited space for storage, apart from the wardrobes, and food storage in the refrigerators and wall cupboards. Although not the smallest in area, Unit 2 is particularly inadequate – being so narrow there is barely enough room to move around the bed.
30. The National Space Standard does not set anything out for sizes of rooms in HMOs. However, the units in this case are so palpably cramped that everyday existence for a single individual would in my opinion be very difficult indeed. This is particularly so since the only communal area – the kitchen – is of a size such that it would be difficult for two people to cook in there at the same time, and there is limited space to sit down and eat.
31. As regards external amenity space, I accept that there are communal gardens available in the development. However, the only unit with direct access to the garden is no. 2, which has an external door. However, none of the other units have any such access, and must take a circuitous route out through the garage court and around the end of the terrace. I do not consider this can reasonably be described as available private outdoor amenity space.

32. While the Borough may have a pressing need for additional residential accommodation, I do not accept that this can be of such very poor quality as the appeal development. Furthermore, I understand the principal need is for family accommodation, which this does not provide.
33. I conclude on the first main issue that living conditions for occupants of the units in the appeal property are very significantly harmed in terms of provision of floorspace and of access to outdoor amenity space. The development does not accord with development plan policy, notably with respect to London Plan Policy 3.5, and DMP Policy DMP 1, which includes aims to ensure high levels of internal and external amenity, Policy DMP 18 which seeks to ensure dwelling size should be consistent with London Plan Policy 3.5, and Policy DMP 19 which seeks to control the size of external private amenity space.
34. Turning to the second main issue, the property is occupied by at least 5 individuals. They clearly live separate lives, each producing refuse, and each possibly needing car parking or cycle storage space.
35. It was apparent on my visit that the small yard – reduced in size by the presence of the extension – is largely taken up with untidy piles of rubbish, giving a run-down appearance to the otherwise well-maintained properties in the terrace. There is little or no space for cycle storage, and little available for refuse bins.
36. As to possible noise and disturbance, I have little evidence to go on. However, I would expect a dwelling occupied by at least 5 individuals to generate more comings and goings than for instance a family house. These may well include increased vehicle movements. Although not determinative, this adds weight to my conclusions about the effect of the development on the immediate external environment.
37. I conclude on the second main issue that the development causes significant harm to residential amenity for occupants of nearby property in terms of refuse and general external storage provision for the appeal premises, and in terms of noise and general disturbance. The development does not accord with the development plan, particularly with reference to DPD Policy DMP 1, insofar as it refers to control of noise and general disturbance.
38. Looking at the third main issue, the extension is a particularly prominent feature on the building and within the area. I consider this is principally as a result of the height of the flank parapets, which give it a more conspicuous and bulky presence than need be. As a result I consider the extension is a particularly incongruous, bulky addition. Although the Council object to the external finishing materials, I do not find the white painted render of the extension to be out of character with the white weatherboarding of the upper storey or the plain white panels of the ground floor.
39. I consider the rear extension causes significant harm to the character and appearance of the appeal property and the surrounding area in terms of its size and design, although I consider the external materials have a neutral effect. The development does not accord with the development plan, particularly with reference to DPD Policy DMP 1, which includes aims for development to be of such scale and design that complements its locality.

The appeal on ground (f)

40. This ground is that the steps required by the notice are excessive and that lesser steps would overcome the Council's objections. The appellant again claims that the extension is permitted development, not built to facilitate unlawful development, and its demolition cannot be required. However, I have found the extension has facilitated the material change of use. The argument is effectively a re-run of his argument under ground (c) and is not accepted for the same reasons.
41. Furthermore, he claims it is excessive to require reversion of the property to a single dwellinghouse when it should be seen as a lawful HMO. However, again, he has not shown that on the balance of probabilities it was ever a lawful HMO. In that light the requirement is not excessive. As to the requirement to remove fixtures, that is kitchens, en-suite bathrooms/shower rooms and toilets, these are integral to the unlawful use as well as a hinder to returning the building to its previous lawful use.
42. I consider the requirements of the notice are necessary to restore the land to its condition before the breach took place. The appeal on ground (f) therefore fails.

The appeal on ground (g)

43. The appellant claims that the 6 month compliance period is too short to secure the eviction of the tenants. He now acknowledges his reference to 6 tenants was a typographical mistake. I accept that it may be frequently necessary to obtain a court order for eviction, and this could well take at least 8 months in all.
44. I am also aware that the planning permission ref. 20/1477 was obtained soon after issue of the notice. It appears to me implementation of this permission would have achieved a form of development that would provide an acceptable standard of living accommodation for four HMO occupants in terms of the size of units, and the standard of communal facilities, while retaining the extension in a modified form. It is not strictly for a development carried out before grant of the permission and does not therefore nullify any of the effects of the notice.
45. This permission clearly presented a way in which the appellant could avoid compliance with the requirements of the notice. However, in my opinion it is now void, since the appellant has not complied with the condition requiring the development to be completed within 6 months of the permission date. While this would not be a valid condition in circumstances of a truly retrospective permission, in these circumstances the appellant had the opportunity to avoid compliance before the notice bit, and the condition was both necessary and reasonable.
46. I can see no reason why a new application on the same lines would not be approved if there has been no significant change in development plan policy. If I extended the compliance period to 9 months the appellant would have the opportunity to put in a new application, for the Council to consider this, and for the appellant possibly to make a start on the works.
47. I intend to extend the compliance period accordingly. The appeal on ground (g) therefore succeeds.

Conclusions

48. For the reasons given above I conclude that the appeal should succeed to the limited extent under ground (g), and that a reasonable period for compliance would be 9 months. I shall vary the enforcement notice accordingly, prior to upholding it.

Stephen Brown

INSPECTOR