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## Appeal Decision

Site visit made on 20 October 2021

**by Roy Merrett Bsc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 November 2021**

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**Appeal Ref: APP/T5150/C/20/3248134**

**74 Gresham Road, London, NW10 9BY**

- 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 Ms Grace Kamdoun against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 23 January 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats.
- The requirements of the notice are STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO), and its occupation by more than ONE household; STEP 2 Cease the use of the premises as flats; STEP 3 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 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.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.**

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### The appeal on ground (c)

1. The ground of appeal is that there has not been a breach of planning control. The appellant states that except for the flat in the roof, permitted development rights for a change of use to an HMO would have remained intact. Even if this was correct, I have not been provided with any evidence to persuade me that the change of use of the property, undisputed to have previously been in use as a single dwellinghouse, to the mixed use as alleged would not have required planning permission. The ground (c) appeal therefore fails.

### The appeal on ground (a)

2. The ground (a) appeal is that planning permission should be granted. Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.

3. The appellant has set out that she does not seek planning permission for the development that is the subject of the alleged breach, that is to say the mixed use of HMO and flats. Instead an alternative scheme has been advanced which would consist of a 4-bedroom HMO. This would involve removing kitchen facilities that were installed in the loft flat. This scheme is neither for the retention of what is built nor does it benefit from planning permission.
4. Accordingly, I need to deal with this alternative under ground (a) and amongst other things consider whether this outcome could be achieved by granting planning permission "in relation to the whole or any part" of the matters alleged in the notice, either with or without conditions in accordance with s.177(1)(a) of the Act.
5. The notice alleges a mixed use of self-contained flats and an HMO. It was apparent from my site visit that the accommodation included five rooms, for occupation by tenants, and a communal kitchen / dining space. It therefore seems to me that the proposal to create an HMO for four persons would fall within the definition of part of the matters alleged in the notice, such that I may go on to consider whether it would be appropriate to grant planning permission for this use.

### **Main Issues**

6. In view of the above, the main issues are (i) the need for HMO accommodation; (ii) the effect of the development on the provision of family sized dwellings in the Borough and (iii) the effect of the development on the living conditions of neighbouring residents and the occupiers of the property with particular regard to noise disturbance, waste storage and garden maintenance and of the occupiers of the property in terms of internal space standards, the availability of outdoor amenity space and cycle storage provision.

### **Reasons**

#### *HMO accommodation*

7. Policy DMP 20 of the London Borough of Brent Development Management Policies Document 2016 (DMPD) sets out that non-self-contained or self-contained residential accommodation with shared facilities will be supported subject to a range of criteria. This policy seeks a planning agreement to be secured to ensure that developments of shared accommodation meet a specific Brent, or, in the case of education, a London need.
8. Aside from the appellant's statement that the accommodation needs of single users is often ignored, I have not been provided with any compelling information as to the need for the development or why the planning agreement requirement should be set aside in this case. Based on the information before me I therefore conclude that the proposed development is at odds with Policy DMP 20 and with Policy CP 21 of the Brent Core Strategy 2010 (CS) which seeks to maintain a balanced housing stock.
9. I acknowledge that part of the appellant's case is that with the exception of the loft room the property would have benefitted from permitted development rights for conversion to a small HMO. Therefore they suggest that under these circumstances the availability of permitted development rights gives rise to a fallback position that should attract significant weight.

10. However, under Article 3(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), the planning permission granted under permitted development rights 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.
11. In this regard the Council, within its statement, has expressed doubt as to whether previous extensions at the property have followed approved plans and are therefore lawful. The appellant has not disputed this challenge and having regard to the provisions of Article 3(5), whether permitted development rights would be available, assuming that the property was first returned to a single dwelling, is unclear. This point does not therefore weigh in favour of the development. In any event I am not persuaded, from the information before me, that a change from the undisputed alleged use directly to the proposed HMO use could be claimed under permitted development rights.

#### *Family Sized dwellings*

12. Policy CP 21 of the CS sets out that the Plan seeks to maintain a balanced housing stock in Brent, including by protecting existing accommodation that meets known needs. The supporting text to this Policy identifies that overcrowding is a significant issue for the Borough and explains why the provision of family sized housing (containing three bedrooms or more) is an important policy objective. In the absence of a demonstrable need for the proposed HMO accommodation, the loss of the family sized dwelling in this case would conflict with the objective of protecting existing accommodation that meets a known need. On the basis of the information before me I therefore conclude that the development would be in conflict with Policy CP 21.
13. The supporting text to Policy DMP 17 of the DMPD states that the conversion of existing housing into smaller dwellings provides many additional homes, but family housing to meet local needs is also a Brent priority. This strategy is reflected in the objective of maintaining family sized housing when property is converted to form additional dwellings.
14. Given that the appellant proposes an HMO and does not therefore seek to divide the property to form additional dwellings, and also because a family dwelling in its previous form could be easily reinstated in the future from the proposed use, I do not consider the proposed HMO to be at odds with this specific policy. However this does not overcome the policy conflict that I have identified above in terms of protecting the availability of family sized dwellings in the Borough.

#### *Living Conditions of Neighbours and Occupiers of the property*

15. The occupation of the property by residents independently of one another, is likely to give rise to a wider variation in movement patterns compared with occupation as a single dwelling. Furthermore it is likely that there could be a greater number of visitors, associated with the unrelated identities of the occupiers. The pattern of occupation could potentially give rise to a larger number of comings and goings to and from the property.

16. However I am mindful that the number of occupiers would be limited to just four persons. In addition I have not been informed of any complaints in recent years specifically with regard to noise disturbance arising from general comings and goings. Neither do I have any evidence to persuade me that the construction of the building in itself would make it unsuitable for HMO use.
17. The appellant proposes to introduce a management plan for the HMO. I agree that the wording of such a plan could be effective in terms of deterring disorderly behaviour and ensuring the maintenance of the property, including the storage of waste.
18. The Council does not provide evidence to persuade me that the size of rooms in the property, or the rear amenity space, would be inadequate for a 4 person HMO, or that it would be in conflict with any established standards for such development. Furthermore, whilst provision for the safe storage of cycles may not be practical due to the need to pass through the house to access the rear of the property, I am not persuaded that this would amount to a strong enough reason, in itself, to resist the development.
19. Drawing these considerations together, on balance, I do not find conflict with Policies DMP 1, DMP 16, DMP 19 or DMP 20 of the DMPD, with national space standards<sup>1</sup>, with the National Planning Policy Framework or with the Brent Design Guide Supplementary Planning Document 2018 insofar as they collectively seek to avoid development having unacceptable impacts in terms of noise disturbance and seek to ensure high levels of internal and external amenity. I conclude that the proposal for a four-bedroom HMO would not result in harm to the living conditions of neighbours or occupiers of the property.

### **Ground (a) conclusion**

20. I have not found harm in terms of the living conditions of occupiers and neighbours. However this does not overcome the above conclusions that I have reached regarding the need for the HMO not being satisfactorily demonstrated, in the context of the objective to safeguard family sized dwellings. The ground (a) appeal therefore fails.
21. I note that the Council indicates that it would have no objection in principle to a four person HMO, but at present an explanation is lacking as to the need for such accommodation. It leads me to the conclusion that, although the enforcement notice will be upheld and despite the absence of an appeal under ground (g), it would be appropriate to lengthen the time for compliance with the enforcement notice to 9 months. I consider that this would provide a reasonable opportunity for the appellant to make a planning (or lawful development certificate) application to the Council for the proposed HMO use, should it be possible to make a reasonable case. In the alternative, I consider it would allow reasonable time for the appellant to comply with the notice.
22. I recognise that the requirements of the notice would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998. However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country

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<sup>1</sup> Technical housing standards – nationally described space standard March 2015

which has been held to include the protection of the environment and upholding planning policies. In this case I have found the proposed development to be in conflict with planning policies and would not outweigh the wider public interest. Accordingly, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 and would not be disproportionate.

### **The appeal on ground (f)**

23. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control. With regard to the unauthorised change of use the objectives of the notice are to discontinue the use of the land.
24. The appellant's case is that the removal of the kitchen from the loft should be sufficient for compliance. I have considered this above as part of the ground (a) appeal. However this would not go so far as to remedy the breach as set out above.
25. Given that the purpose of the notice is to remedy the breach of planning control, this can be achieved by ceasing the unauthorised use and removing any kitchens associated with the unauthorised use. To require that does not, in my view, exceed what is necessary.
26. However to require the removal of en-suite bathrooms and toilets and the restoration of the original layout of the property, would to my mind be overly prescriptive in this case, and would exceed what is necessary to remedy the breach. The ground (f) appeal therefore succeeds to this limited extent, and the notice will be varied accordingly.

### **Conclusion**

27. For the reasons given above I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice, with variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Formal Decision**

28. It is directed that the enforcement notice be varied by: -
  - deleting the following words at the end of STEP 3 of Schedule 4 " , en-suite bathrooms / shower rooms and toilets." and substituting the following wording instead "associated with the unauthorised change of use"; and
  - the deletion of the wording in STEP 4 of Schedule 4 in its entirety; and
  - the deletion of the words "6 months" in Schedule 5 and the substitution of the words "9 months" instead.
29. Subject to these variations, 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.

*Roy Merrett*

INSPECTOR