



Appeal Decision

Site visit made on 19 October 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 December 2021

Appeal Ref: APP/T5150/C/20/3245604

39 Broadfield Close, London NW2 6NR

- 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 by Yoshua Mozes against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice ref. E/17/0037, was issued on 18 December 2019.
 - The breach of planning control 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) 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. Restore the internal configurations 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), (b) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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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.

Application for costs

2. Applications for costs has been made by the Council against the appellant and by the appellant against the Council. These applications are the subject of separate Decisions.

Background

3. The appeal property is a two-storey dwelling within a staggered terrace of similar properties - part of a larger development of terraces in the same style probably built in 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/access court. The principal entrance is through the yard, although this is referred to as the rear of the property. While there is access to the communal space from Room 2 on the ground floor, it appears that this is little used. I have adopted the description of front and rear of the property for the purposes of my determination.

4. Although the appellant states that the council had issued a prior approval for construction of single-storey rear extension, which had been implemented, no such extension exists. It is further argued that this allowed for creation of a larger communal kitchen, but that has not happened either.
5. In August 2020 the appellant was granted planning permission for a proposed change of use to a 3-room HMO for occupation by 4 individuals¹
6. A planning application for a proposed change of use of the premises to a 4-room HMO (Use Class C4) for 4 individuals with provision of a communal kitchen and communal lounge area, including various alterations has been lodged². The decision is pending.

The ground (b) appeal

7. This ground is that the alleged breach has not occurred as a matter of fact. In a ground (b) appeal – known as a legal ground – it is long-standing law that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify allowing it on the balance of probability.
8. It is argued that the property has only been used as a 4-room HMO, and not as a mixed use for HMO and flats as the Council allege. In support of this contention the appellant puts forward 2 statutory declarations, one is from a tenant, who says he has lived in Room 4 since September 2017. The other is from a tenant who first occupied Room 3 in October 2016, but it is unclear for how long he remained there. I note the Declaration by the tenant of Room 3 was sworn some time before issue of the enforcement notice.
9. Both say they never cooked in their rooms or had cookers, and that as far as they were aware no other tenants had done so, and all of them had cooked in the communal kitchen. The current tenant says he had a microwave, but although stored in his room for safety, it was only for use in the communal kitchen, and never used there.
10. Images submitted by the Council from December 2019 show a microwave cooker on the worktop adjacent to the sink in Room 4 plugged in to a nearby electrical socket outlet. Furthermore, there is what appears to be a small deep-fat fryer and a toaster on a low table below the window next to the substantial refrigerator, as well as a number of pieces of cooking equipment
11. On the same date and at essentially the same time, a photograph of the communal kitchen shows no microwave cooker there.

It appears to me that at that time the occupant of Room 4 would have been able to cook a wide range of meals on the equipment within the room, without

¹ Decision notice ref. 20/1378, dated 6 August 2020.

² Application ref. 20/3039.

recourse to the communal kitchen. I accept that storage of food on its own would not enable self-contained use, but the room would effectively have all the facilities necessary for day-to-day living quite independent of other facilities in the property. This unit at least should be considered a self-contained flat.

12. There is also evidence submitted by the Council that the appellant registered the property as 4 flats with the valuation office. I understand such registration is required to claim housing and Council Tax benefits for self-contained accommodation. Indeed the Council have put forward tenancy agreements for three of the units, each described as a 'Flat', as well as letters authorising the managing landlord to have access to housing and Council Tax benefit information. While these instances do not necessarily demonstrate actual use, it gives some weight to my view that there has been use of units as self-contained flats.
13. The two sworn statements give a remarkably thin picture of activity in the premises, and to my mind are far from being precise and unambiguous. On the other hand, photographs indicate there has been use of at least one unit as a flat, and it appears the appellant had the intention to let as flats. I consider that on the balance of probabilities the premises have been in a mixed use a HMO and at least one self-contained flat. It follows that the alleged breach has occurred as a matter of fact, and the appeal on ground (b) therefore fails.

The ground (c) appeal

14. This ground is that there has been no breach of planning control. This too is a legal ground to which the same legal framework applies.
15. The appellant argues that change of use from Class C3 residential to a Class C4 HMO is permitted under the provisions of Class L of Part 3 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).
16. He goes on to say that once the change of use to a HMO had taken place that became the lawful use of the property even if some units later became flats. However, as I find above evidence of actual use is remarkably thin. I am by no means satisfied that there was an original use as a 4-room HMO.
17. I accept that a C3 to C4 change would be permitted development. However, I have come to the view that this was a change from Class C3 residential to a *sui generis* mixed use as a HMO and at least one self-contained flat. Again, on the balance of probabilities I do not consider this was a change permitted under the GPDO. There has been a breach of planning control, and the ground (c) appeal must fail.

The ground (a) appeal and deemed planning application

18. This ground is that planning permission should be granted for all or part of what is alleged in the notice.
19. From all I have seen and read I consider the main issues in this determination to be:
 - The effect of the development on living conditions for occupants of the units in terms of available floorspace, access to private outdoor amenity space, facilities for personal storage both external and internal, and for refuse disposal.

- The effect of the development on residential amenity for occupants of the appeal premises and of nearby dwellings in terms of noise and general disturbance.
- The effect of the development on provision of purpose-built family housing in the Borough.

The first main issue – floorspace, amenity space, storage and refuse disposal

20. The plans put in by the appellant at appeal stage indicate the room areas to be as follows:
- Communal kitchen – 6.2 square metres.
 - Room 1 – ground floor adjacent to the entrance – 10.8 square metres plus a 1.5 square metre shower/wc.
 - Room 2 – ground floor adjacent to the communal kitchen – 9.9 square metres plus a 1.6 square metre shower/wc.
 - Room 3 – first floor adjacent to the stairway – 11.9 square metres plus a 2.1 square metre shower/wc.
 - Room 4 – first floor, facing the communal garden – 14.3 square metres plus a shower, separate wc, and a built-in storage cupboard.
21. I note that on the plan submitted with the Planning Contravention Notice³ response of 20 February 2017 the layout of the shower rooms of the ground floor rooms differs from the current layout, and that the current Room 4 has an additional partition, as well as an alcove in the partition separating it from Room 3.
22. I saw that each room is equipped with a kitchen type sink and drainer set in a base unit with a worktop, and a wall cupboard above. Room 3 was vacant at the time of my visit, Rooms 1 and 2 have double beds, and Room 4 had a single mattress on the floor. The communal kitchen is equipped with an oven and hob, a microwave cooker, a sink with a drainer, storage cupboards and a washing machine. The occupied rooms were generally overfilled with tenants' possessions, in the case of Room 4 to a degree that made it difficult to move about.
23. The yard on the entrance side of the building has much in the way of rubbish such as a discarded shopping trolley, a pallet, a Zimmer frame and other items, as well as dustbins.
24. The government document 'Technical Housing Standards – Nationally Described Space Standard' sets out minimum 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.
25. 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 four units are very significantly below that standard. I saw that each unit is extremely cramped with just enough space for the bed, a wardrobe, a small table and a small chair. Also refrigerators and/or freezers took up much space.

³ Planning Contravention Notice ref. E/17/0037, issued 1 February 2017.

26. I consider all these rooms provide extremely cramped spaces. 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, and little space for eating. All rooms have limited space for storage, apart from the wardrobes and in the case of Room 4 the built-in cupboard, as well as food storage in the refrigerators and wall cupboards.
27. 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 must 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 no room for furniture such as a table and chairs, or any other items for communal use.
28. Considering outdoor amenity space, the only unit that has access to the garden is Room 2, which has an external door. The route to the garden for occupants of other rooms is through that yard, into Broadfield Close - which is principally a vehicle manoeuvring and parking area – around one or other end of the terrace, along the connecting path and into the garden. This can hardly be described as any convenient or attractive way of access. Furthermore, the garden can by no means be regarded as private. Also, given the state, size and use of the yard this cannot reasonably be regarded as amenity space. I consider that occupants of three of the units do not have satisfactory provision of private outdoor amenity space.
29. As to storage, I have already given my view that the rooms themselves are inadequate for storage of personal possessions. The yard is the only external space available for bicycle storage and for refuse bins. If organised properly there could be enough space for these to be accommodated. However, it is at present used principally as a dump for unwanted articles, and in my opinion is quite unsuited for personal storage of items such as bicycles and provides inadequate refuse disposal facilities.
30. I conclude on the first main issue that the development causes significant harm to living conditions for occupants of the units in terms of available floorspace, access to outdoor amenity space, facilities for personal storage both external and internal, and for refuse disposal. The development does not accord with development plan policy, notably with respect to London Plan Policy 3.5, and DMP Policy DMP 1, which include 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 and provision of external private amenity space.

The second main issue – residential amenity for occupants of the appeal premises and of nearby dwellings

31. Turning to the second main issue, the use of the premises as a HMO and/or as flats results in there being at least four adult occupants, each of whom carry on separate lives in terms of journeys to work or services, entertaining friends and other activities, and each of whom may have a car, motorcycle, or bicycle. Almost inevitably this results in there being a greater level of activity both in terms of journeys to and fro, and use of the building. The houses in a terrace are by definition close together and the likelihood of disturbance for neighbours is greater as compared with that for a family dwelling.

32. Within the building itself, partitions between rooms are relatively insubstantial, and the first floor is of traditional construction – floorboards on timber joists with plasterboard ceilings below. The partition introduced to form the communal kitchen is notably flimsy. Overall, the level of sound insulation is relatively low. I saw that each tenanted room has a television, and it is likely that all occupants will have these switched on, particularly in the evenings. Overall there is likely to be a significant increase in internal noise disturbance due to comings and goings, activity within the building and the poor level of acoustic insulation.
33. Furthermore, little attention is paid to maintenance of the yard, and this has resulted in its present unsightly state. This compares unfavourably with the generally well-kept condition of nearby houses in the terrace, and adds weight to my conclusions about loss of amenity in terms of noise and disturbance.
34. While I might be able to allow an appeal on ground (a) and grant planning permission for a part of the matters enforced against, I concur with the Council's view that I cannot do so with regard to what I have found is a mixed use, and grant planning permission solely for a Class C4 HMO which is a use of a different nature.
35. I conclude on the second main issue that this development causes significant harm to residential amenity for occupants of the appeal premises and of nearby dwellings in terms of noise and general disturbance. The development does not accord with the development plan, particularly with reference to DMP Policy DMP1 which includes aims to limit nuisance arising from noise and general disturbance.

The third main issue – Family housing provision in the Borough

36. In their Core Strategy and DMP the Council have clear policy regarding retention of purpose-built family-size accommodation in the Borough. This development goes very much against that aim. Although it may add residential units to the housing stock, these are of such a very poor standard - particularly in terms of internal space and residential amenity - that they make virtually no contribution as regards promoting social sustainability – one of the main planks of the National Planning Policy Framework.
37. I conclude on this main issue that this development makes no contribution to the retention purpose-built family housing in the Borough. The development does not accord with the development plan, particularly with respect to Core Strategy Policy CP21, which seeks to maintain and provide a balanced housing stock by protecting existing accommodation that meets known needs, including family size accommodation, and DMP Policy DMP17, which aims to maintain the stock of family size homes with 3 bedrooms or more.

Overall conclusions on the main issues

38. I find that the development causes significant harm in terms of residential amenity for occupants of both the appeal premises and of nearby dwellings, and in terms of the retention of family size homes in the Borough. The appeal on ground (a) therefore fails, and I shall refuse planning permission on the deemed planning application.

The ground (f) appeal

39. This ground is that the requirements of the notice are excessive and that lesser steps would overcome the Council's objections. The appellant claims the lawful use of the property is as a HMO and it is excessive to require it to return to use by one household.
40. However this is essentially a repetition of the claims in the grounds (b) and (c) appeals. I have found there is inadequate evidence to show the appeal premises were at any time in use as a Class C4 HMO, and that this requirement is necessary to remedy the breach of planning control.
41. It is also claimed that removal of partitions cannot be required unless the operational aspects of the development are integral to, or part and parcel of making the material change of use. The appellant denies this is the case here.
42. However, it is very apparent that the introduction of the partition between the kitchen and Room 2, the partitions of the shower rooms and the extended partition in Room 4 were built, and sanitary fixtures installed for all four rooms in order to facilitate the change of use. I consider that as a matter of fact and degree these alterations were very much integral to and part and parcel of the change. Again, the requirements to remove them and restore the original layout as a 3-bedroom dwelling are the minimum necessary to remedy the breach of planning control. Therefore the ground (f) appeal must fail.

The ground (g) appeal

43. The appellant says incorrectly that the property has 6 rooms with 6 tenants, but I shall treat it as I saw it – that is, 4 units of accommodation with 3 tenants.
44. Nevertheless, in my experience, depending on the form of tenancy agreement(s) and whether deposits have been paid and registered, it may well take more than 6 months to ensure vacancy. I consider a period of 9 months would be reasonable to allow tenants to vacate and carry out the required works.
45. The appeal therefore succeeds to the limited extent on ground (g), and I shall vary the enforcement notice accordingly.

Conclusions

46. For the reasons given above I conclude that the appeal should succeed to the limited extent on 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