



Appeal Decision

Site visit made on 19 October 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 18 January 2022

Appeal Ref: APP/T5150/C/20/3259066

Land at 122 and 122A Mount Pleasant, Wembley HA0 1UG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Samson Lawal against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/19/0593, was issued on 13 August 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the two-storey side extension into a separate dwelling.
 - The requirements of the notice are to:
 - STEP 1 Cease the use of two-storey side extension of the premises as a separate dwelling.
 - STEP 2 Remove the kitchen from the two-storey side extension of the premises.
 - STEP 3 Remove all items, materials and debris arising from that removal and remove all materials associated with the unauthorised change of use from the premises.
 - STEP 4 Restore the internal configuration to the original layout before the unauthorised change of use took place as shown on the plans (Ground and First Floor) attached to this notice¹.
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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.
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Summary Decision: The appeal succeeds in part on grounds (f) and (g), but is dismissed on ground (a) and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Ground (a) and the deemed planning application

Main Issues

1. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. I note the substantive reasons for issuing the enforcement notice and from these I have identified the main issue as being the effect of the development on the living conditions of the occupiers of the appeal site, with particular regard to the size of the dwellings, garden space provision, outlook, access, and bin and cycle storage.

¹ The plans referred to are those attached to the enforcement notice

Reasons

The Site and Surrounding Area

2. The land to which the notice relates is a detached two storey building with a two storey extension to the side and an extension to the rear. The front yard is enclosed and gates allow for separate pedestrian and vehicular access off Mount Pleasant. There is an access lane either side of the site; the lane to the right provides pedestrian access to an enclosed yard area at the rear, via a gate. Although within a predominantly residential area, there are commercial premises to the rear of the appeal site.
3. The breach of planning control alleged in this case is the use of the two storey side extension as a separate dwelling (the development). In this decision I will refer to this dwelling as No 122A, and the other dwelling on the appeal site as No 122.

Size of the dwellings and Outlook

4. Policy D6 (Housing quality and standards) of the London Plan dated March 2021 (LP) requires housing development to be of high quality design and provide adequately-sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures. The Policy and Table 3.1 of the LP set out the minimum that must be achieved for the floor area for private internal space within dwellings.
5. The accommodation within No 122A comprises a kitchen and living room at ground floor, with an internal staircase accommodated in the kitchen area. The stairs lead to a small landing at first floor, off which there is a bedroom and a bathroom.
6. For a one bedroom dwelling with 2 bed spaces, Table 3.1 of the LP informs that the minimum internal floor area should be 50 square metres for 1 storey and 58 square metres for 2 storey. For a one bedroom dwelling with one bed space, it informs that the minimum should be 39 square metres for 1 storey, reduced to 37 square metres where a studio or one single bedroom one person dwelling has a shower room instead of a bathroom. No minimum is stated for a 2 storey dwelling with only one bed space.
7. The appellant has confirmed that the internal floor area of No 122A amounts to 33.3 square metres, but suggests that this is marginally below the lowest of the minimum internal floor areas stated in Table 3.1 of the LP. I am not, however, persuaded that the lowest of the minimum floor areas stated in the Table should be applied in this case. The lowest figure is for accommodation over a single floor, whereas the accommodation in this case is provided over two. Parts of the internal floor area are taken up by, for example, the internal staircase, the void above this and the landing; these effect the layout of the accommodation and how it can be used. Such areas are not necessary in the case of a single storey dwelling, which might explain the 8 square metre difference in Table 3.1 between the minimum requirement for a 1 storey and 2 storey dwelling with 2 bed spaces.
8. It may be that the accommodation at No 122A is intended for only a single occupant, and I acknowledge that a minimum floor space is not provided in Table 3.1 for a 2 storey dwelling with one bed space. However, for the reasons given above the requirement should not default to the minimum for a one

storey dwelling. Accordingly, I cannot regard the internal floor area provided at No 122A as being only marginally below the minimum standards set out in Table 3.1.

9. Whilst I acknowledge that the accommodation at No 122A provides all internal facilities to be expected in a dwellinghouse, this is provided within a confined space that does not render it a comfortable place of retreat. The rooms within No 122A are particularly restricted and do not easily accommodate the furniture and circulation space necessary for the accommodation to function as a dwelling, whilst also providing sufficient and comfortable space for relaxation. That the accommodation complies with other minimum requirements set out in LP Policy D6 does not mitigate the harm caused to the living conditions of the occupier of No 122A by reason of the below standard internal floor space provision.
10. With regard to outlook, whilst from the kitchen of No 122A it is over the shared yard area to the rear, all other rooms have a fairly open aspect. Furthermore, the development has not affected the outlook from No 122. I do not, therefore, consider the living conditions of any occupier of the appeal site to be unacceptable with regard to their outlook.
11. The reasons for issuing the notice suggest that the development is contrary to Policy DMP16 (Resisting housing loss) of the London Borough of Brent Local Plan: Development Management Policies dated November 2016 (LBBLP). The Policy relates to development that would result in a net loss of residential units, and only supports this in particular circumstances. I cannot find conflict with this Policy as the development provides an additional residential unit at No 122A, whilst still retaining the 4 bedroom dwelling at No 122.
12. My attention has been drawn to Policy DMP17 (Conversion of family sized accommodation) of the LBBLP. There is no suggestion by either party that the development fails to comply with this policy, and I have no reason to find otherwise. The appellant has also referred to Policy 3.4, which I assume is a policy of the previous version of the London Plan. This Policy does not, therefore, form part of the relevant development plan in this case. Nevertheless, the appellant suggests that the density of the site complies with standards in the Policy. I have not been provided with a copy of the policy and so cannot see how the density of a site should be calculated and considered in accordance with the Policy.
13. It might well be the case that the development is acceptable in some regards and accords with a policy of the previous London Plan, as well as policies of the existing development plan. I also have no reason to conclude that the development has had an unacceptable effect on the living conditions of the occupiers of No 122 with regard to the size of that dwelling. This does not, however, alter my conclusion that, having regard to the size of the dwelling at No 122A, the effect of the development on the living conditions of its occupiers is unacceptable. For this reason the development does not accord with LP Policy D6. It also fails to comply with Policy DMP1 (Development management general policy) of the LBBLP as it does not provide a high level of internal amenity.
14. The Notice refers to Policy 3.5 of the 'London Plan 2016'. Although not mentioned in the notice, the Council also refer to Policy DMP18 (Dwelling size and residential outbuildings) of the LBBLP. The first part of Policy DMP18 refers

to Policy 3.5 and Table 3.3 of the London Plan dated March 2016, and requires the size of dwellings to be consistent with these. As noted above, this version of the London Plan is no longer part of the development plan relevant to the appeal site. Whilst the development would not comply with Policy 3.5 and the first part of Policy DMP18, such conflict is given little weight in this case. The second part of the policy relates to the provision of outbuildings and is not, therefore, relevant to this appeal.

Garden Space

15. Policy DMP19 (Residential amenity space) of the LBBLP requires all new development to have external private amenity space of a sufficient size and type to satisfy its proposed residents' needs. It states that this is normally expected to be 20 square metres per flat and 50 square metres for family housing.
16. No 122 is a four bedroom dwelling and is, therefore, family housing for the purposes of the Policy. The Policy expects this property to be provided with 50 square metres of external private amenity space. Although No 122A is not a flat, it is plainly not a family home. Nevertheless, a minimum of 20 square metres of external private amenity space for No 122A has not been achieved. The enclosed yard area to the rear is a shared external space and is, therefore, communal rather than private. Furthermore, the appellant confirms that it measures only 26 square metres, which does not even meet the area of external private amenity space expected for No 122, let alone the additional area expected for No 122A.
17. I acknowledge that paragraph 10.39 of the LBBLP advises that, where sufficient private amenity space cannot be achieved to meet the full requirement of the Policy, the remainder should be supplied in the form of communal amenity space. However, **all** of the amenity space provided at the appeal site is communal. Although the yard is a practical shape, it is particularly confined and does not, in my judgement, provide sufficient space for a family home in order for its occupiers to, for example, relax, allow children to play, grow plants and vegetables, dry clothes, and allow for outside storage. The rear yard is, therefore, wholly inadequate to also provide a sufficient outdoor space to meet the needs of the occupier of No 122A. This space is also not sufficiently private for the occupiers of either No 122A or No 122 as it is overlooked at close quarters from both dwellings.
18. I have noted the public open space referred to by the appellant that is a short walk from the appeal site. Whilst I acknowledge that this park is accessible and well equipped, it does not satisfy many of the needs of the occupiers of the appeal site, as set out above. It does not, therefore, mitigate the significant shortfall of external private amenity space at the appeal site.
19. Having regard to all of the above, I conclude that the garden space serving both dwellings at the appeal site is wholly inadequate to meet the needs of their occupiers, and results in an unacceptable effect on the living conditions of all occupiers of the appeal site. For these reasons the development fails to accord with LBBLP Policy DMP19. It also fails to comply with Policy DMP1 as it does not provide a high level of external amenity.

Access, and Bin and Cycle Storage

20. I note that LP Policy D6 informs that housing should be designed with adequate and easily accessible storage space that supports the separate collection of dry recyclables, food waste and residual waste. Although I note the storage provision in the rear yard area, I have concluded above that the rear yard is not of a sufficient size to meet the external private amenity space needs of the occupiers of the appeal site, including external storage. Notwithstanding this, I acknowledge that waste and recycling storage is provided in the enclosed front yard of the appeal site. I have no reason to conclude that there is not sufficient space available in this front yard to provide separate cycle, waste and recycling storage for each dwelling. However, access to the front yard from No 122A is only from Mount Pleasant itself, via the side gate and side lane. I cannot, therefore, regard the front yard as easily accessible from No 122A, particularly if the occupier were carrying heavy or bulky waste items.
21. With regard to access to No 122A, the appellant acknowledges that this is not a conventional front door access. The already confined rear yard area also provides the only means of access to the dwelling, further demonstrating the poor design of the development in terms of its level of internal and external amenity.
22. I have no reason to find the development unacceptable with regard to access, and bin and cycle storage for the occupiers of No 122. I cannot, however, conclude the same with regard to the occupiers of No 122A. With regard to access, and bin and cycle storage, the effect of the development on their living conditions is unacceptable and, in conflict with LBBLP Policy DMP1.

Other Matters and Planning Balance

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
24. I acknowledge the Government's aim of significantly boosting the supply of homes and that the development makes a contribution towards that aim. This benefit is, however, limited as it provides only a single home and I am not advised that the Council is failing to achieve its target for the supply of homes in this area.
25. My attention has been drawn to the ease of access from the site to everyday services and facilities in the area, including employment opportunities. In this regard the development may well achieve one of the aspects of sustainable development. However, this has a neutral effect in the planning balance.
26. I have considered whether conditions would overcome the harm caused in this case, but conclude that they would not. Accordingly, and having regard to the above, I have been unable to identify material considerations of sufficient weight to indicate determination of this ground (a) appeal and the deemed planning application should be made otherwise than in accordance with the development plan. As such, I conclude that planning permission ought not to be granted and that the ground (a) appeal should fail.

Ground (f)

27. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. Having regard to the requirements of the notice, the purpose of the notice must be to remedy the breach of planning control that has occurred.
28. Planning permission was granted in 2003² for alterations to the property, including a two-storey side extension. There is no suggestion that the approved scheme was not implemented in accordance with the planning permission. The appellant suggests that, prior to making the material change of use alleged in the notice, he made internal alterations to the layout of the extension, as shown on the pre-existing floor plans submitted with his appeal³. He asks that step 4 of the notice is varied so as to require the restoration of the internal configuration to this layout, rather than to that shown on the plans approved by reason of the 03/0970 planning permission
29. Section 173(4)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) confirms that where the purpose of the notice is to remedy the breach, it can achieve this by discontinuing any use of the land or by restoring the land to its condition before the breach took place. The alternative step proposed by the appellant will not alter steps 1 to 3. Crucially, if varied as suggested the notice will still require the cessation of the use of the two-storey side extension as a dwelling. It will, therefore, still achieve the purpose of remedying the breach of planning control in this regard.
30. Step 4 of the notice clearly seeks to restore the land to its condition before the breach took place. The appellant's evidence is that the condition of the land was as shown on the pre-existing floor plans. Although I acknowledge that there is limited evidence to corroborate this, neither is there any evidence to lead me to a conclusion that it is less than probable. On the basis of the evidence before me, I can only conclude that it is more likely than not that the layout of the extension prior to the breach of planning control taking place was as shown on the appellant's pre-existing layout plans.
31. In addition to this, there is nothing before me to suggest that the works to provide the layout shown on the pre-existing plans would have been carried out in breach of the conditions or limitations of the 03/0970 planning permission granted for the extension. I am also mindful that such works would not, ordinarily, constitute development for the purposes of section 55 of the 1990 Act. Accordingly, it is more likely than not that these works were lawful.
32. It must be the case that at some point further works were undertaken to facilitate the use of the two-storey extension as a dwelling⁴, and it is right to require that these works are removed or undone as these are part and parcel of the breach. However, as I do not have sufficient evidence to demonstrate, on the balance of probability, that the condition of the land (i.e. the layout of the extension) was as shown on the 03/0970 approved drawings before the breach took place, I find a requirement to return the extension to this layout

² By reason of planning application reference 03/0970.

³ Drawing Number SMA.PA.2020.PA102 revision P01.

exceeds what is necessary to remedy the breach in this case. For this reason the ground (f) appeal should succeed. I will vary step 4 of the notice to require the restoration of the internal configuration of the extension to that shown on the pre-existing floor plans.

Ground (g)

33. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of 6 months from the date it takes effect.
34. The appellant has requested an extension to the period for compliance in order to take possession of the dwelling from the tenant and to undertake the necessary works to comply with the notice. I have not, however, been provided with the details of the term of the tenancy or the likely timescale for securing the vacation of the dwelling, such that I could conclude that the time given in the notice would not be sufficient.
35. Notwithstanding the above, the appellant has pointed to the works required by the notice and suggests that the costs of these would not be insignificant. He asks for an extension of time in order to ensure that his family are not placed into financial hardship in order to remedy the breach within the 6 month period given. He has suggested a period of 9 months would be sufficient. I acknowledge that I have limited evidence to corroborate the appellant's case in this regard. It might well be the case that the appellant has gained an income from the rent paid by the tenant of No 122A. However, I do not have sufficient evidence for me to be satisfied that the appellant would not be in financial hardship were I to dismiss this ground (g) appeal.
36. Whilst I have concluded that the development in this case causes harm, that harm is at present confined to the living conditions of the occupiers of the appeal site, which include the appellant and his family. As dismissing the ground (g) appeal is more likely than not to cause harm to the appellant in some other way, in my judgement the balance is tipped in favour of allowing the 9 month period requested for compliance with the notice.
37. Accordingly, I conclude that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeals should succeed and I shall vary the notice to extend the period for compliance to 9 months.

Overall Conclusions

38. For the reasons given above, I conclude that the appeal on ground (a) should not succeed, but that the appeal on grounds (f) and (g) should 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

39. It is directed that the enforcement notice is varied by:

- The substitution of the entirety of step 4 of schedule 4 with the words 'STEP 4 Restore the internal configuration of the ground and first floor to the layout before the unauthorised change of use took place as shown on the drawing

numbered SAM.PA.2020.PA102 revision P01 (entitled 'pre-existing floor plans') attached to this notice'.

- The substitution of the number '6' in schedule 5 with the number '9'.
- The substitution of the plans attached to the enforcement notice and labelled 'ground floor' and 'first floor' with the plan attached to this decision and numbered SAM.PA.2020.PA102 revision P01 (entitled 'pre-existing floor plans').

40. Subject to the variations pursuant to grounds (f) and (g), 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.

J Moss

INSPECTOR

by J Moss BSc (Hons) DipTP MRTPI

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Plan not to scale

