



Appeal Decision

Site visit made on 16 March 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2022

Appeal Ref: APP/T5150/C/20/3265521

20 Farm Avenue, Wembley HA0 4UU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Carmen Perez against an enforcement notice issued by London Borough of Brent.
 - The notice was issued on 10 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to two flats ("the unauthorised change of use" and without planning permission, the erection of a single storey rear extension to the premises ("the unauthorised development").
 - The requirements of the notice are: 1. Cease the use of the premises as flats. 2. Remove all kitchens from the premises, except for one (to be located on the ground floor). 3. Remove all bathrooms from the premises, except two. 4. Remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised development from the premises. 5. Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include bedrooms on the first floor and loft, and a kitchen, dining room and lounge on the ground floor. 6. Demolish the unauthorised development to the rear of the premises. 7. Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by at the end of Schedule 4 after step 7 inserting the following requirement:

"Alternatively, make the development comply with the terms (including the conditions and limitations) of the planning permission granted on 1 December 2021 for the change of use of single family dwellinghouse into two self-contained flats and proposed works to add a single storey rear extension plus the provision of two car-parking spaces (Application Ref 21/3719)".

Subject to the above variation 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.

Preliminary Matters

2. The London Plan 2021 (LP) was published in March of that year. The LP comprises the spatial development strategy for London and is now part of the Development Plan. LP Policy D6 has replaced Policy 3.5 in the previous version

of the London Plan, referred to in the Council's reasons for issuing the enforcement notice. I have determined this appeal in accordance with the LP.

3. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal. The main parties have been given an opportunity to comment on the implications of the revised Framework in respect of the appeal and I have taken it into account in my decision.
4. The Brent Local Plan 2019-2041 (BLP) was adopted by the Council on 24 February 2022, replacing the Brent Core Strategy 2010 and the Development Management Policies Plan 2016. The Council provided details of the equivalent BLP policies to those referenced in the reasons for issuing the enforcement notice. The appellant has been afforded an opportunity to comment on the effect of those policies in respect of the appeal. I have determined the appeal in accordance with the BLP.

Ground (a) appeal

Main Issues

5. I understand that the Council no longer objects to the single storey rear extension attacked by the notice, following the recent granting of planning approval in respect of an alternative scheme for two self-contained flats including a similar extension¹. Therefore, the main issues in this ground of appeal are:
 - Whether suitable living conditions are provided for the existing and future occupiers of the unauthorised flats, having regard to outdoor amenity space, internal floorspace, outlook and privacy.
 - The effect on the living conditions of occupiers of adjoining residential property, having regard to noise and disturbance and on-street parking demand.
 - The effect on the provision of housing suitable for families.

Reasons

Living conditions-existing and future occupiers of the flats

6. The appeal property contains a mid-terraced dwelling subdivided into two self-contained units of living accommodation, arranged over three floor levels. There is a ground floor flat with a living room at the front, a kitchen/diner and bathroom at either side and two bedrooms facing towards the rear boundary in a recently constructed single storey rear extension. There is also a maisonette, with a lounge/diner, kitchen, bedroom and bathroom on the first floor, with two further bedrooms and a bathroom in the enlarged roof space.
7. An outdoor amenity space is provided at the rear of each unit. The ground floor flat has direct, level access to an amenity space, whilst the maisonette has an amenity space located further towards the rear boundary and reached via a communal access at the side of the property. In my estimation, the size of each amenity space is no less than the 50 m² amenity space provision per home for family housing (three bedrooms or more) and 20 m² for all other housing required by BLP Policy BH13. The LP does not require additional

¹ Council Ref: 21/3719.

amenity space. Therefore, the unauthorised flats have sufficient outdoor private amenity space to meet the everyday requirements of their occupiers.

8. Although the ground floor unit currently has two bedrooms, a third bedroom is proposed. This would be at the side and would be formed by subdividing the kitchen/diner. The gross internal floor area (GIA) of the unit is around 77 m², comparing favourably with the minimum standard of 74 m² for a three bedroom, four-person dwelling on one floor in LP Policy D6 and Table 3.1. During my visit, I observed that the living room accommodated two sofas and other domestic items leaving ample space for circulation, whilst the kitchen/diner accommodated a table and chairs together with a range of household appliances, also with good circulation space. Similarly, the two existing bedrooms accommodated beds, other items of furniture and domestic paraphernalia, whilst making good provision for storage and leaving sufficient circulation space.
9. Nevertheless, the proposed third bedroom would be awkwardly shaped due to the double staggered wall arrangement, constraining its width. As a result, although this room would meet the minimum standard of 7.5 m² floor area in LP Policy D6, it would not meet the minimum required width of 2.15 m, a good part of the room being much narrower. The third bedroom would also have a proposed external door opening inwards, further reducing the useable space available. In my view, after accommodating a single bed, little space would be left to provide other furniture or for storing items without impeding circulation and passage to the external door. Therefore, to my mind the third bedroom would have a cramped and restrictive feel.
10. Furthermore, the third bedroom would be lit by a small window facing directly onto the flank wall of a neighbouring building, around 1 m away. The absence of any meaningful outlook and lack of access to sufficient daylight and sunlight would create a strong sense of oppressiveness, reinforced by the restricted dimensions of the room. In addition, this window is directly adjacent to the communal access leading to the amenity space for both units. The potential for direct overlooking at close quarters means that occupiers are likely to experience an appreciable lack of privacy in this bedroom. The above factors lead me to conclude that the third bedroom would not provide suitable living conditions for the occupiers of the unit. This space would be inherently unsuited to use as a bedroom and in practice it is more likely to be put to some other household use, such as domestic storage.
11. The two existing bedrooms in the ground floor unit directly overlook its amenity space. The ability to access the amenity space from a bedroom affords convenience to occupiers and has minimal implications in terms of privacy. Therefore, the proposed third bedroom aside, occupiers of this unit enjoy levels of privacy not appreciably different to that enjoyed by the occupiers of other ground floor flats. In general, residential occupiers are unlikely to spend as much time in the kitchen/diner compared to their living room or bedrooms. Moreover, when using the kitchen/diner they are highly likely to be engaged in practical household activities such as washing clothing, preparing food or eating, as opposed to passive leisure or recreational pursuits where direct access to daylight might be regarded as more important. Therefore, by itself the absence of a window in the reconfigured ground floor kitchen/diner would not be unacceptable. However, none of this compensates for the restricted size, outlook and lack of adequate privacy in the proposed third bedroom.

12. The appellant described the maisonette as providing two bedroomed, three-person accommodation. Even so, as already noted the maisonette currently contains three bedrooms and when I visited it was being occupied by at least four persons. The maisonette has a GIA of around 67 m². Its size is therefore significantly deficient compared to the minimum standard of 84 m² for a three bedroom, four-person two storey dwelling in LP Policy D6 and Table 3.1.
13. During my visit, I observed that the lounge/diner in the maisonette is of modest size. The space left over after a small sofa and a dining table had been provided offered limited capacity for accumulating other basic items of furniture, for providing everyday items such as a TV, music system, computer games console or for storage, without impeding circulation. In my view, the lounge/diner could not comfortably accommodate more than a couple of people eating, socialising or relaxing at the same time. Similarly, whilst the kitchen contained everyday facilities including a cooker, hob, sink, worktops, cabinets and a washing machine, this left a narrow space for the occupiers to go about day-to-day activities such as preparing food or washing clothes. It is doubtful whether more than one person at a time is able to conveniently use this space. As a result, the space available for living, eating, preparing food and clothes washing has a cramped and confined feel which is unsuitable and inadequate for the number of people occupying the maisonette. The significant deficiency of the maisonette in terms of its size assessed against the minimum standard underpins my findings in this respect.
14. I was only able to access one of the bedrooms in the maisonette. This room comfortably accommodated a bed, some furniture as well as domestic paraphernalia, whilst leaving reasonable space for storage and circulation. I was given no reason to believe that the other two bedrooms were especially cramped or that any of the bedrooms fail to meet the minimum size standards in LP Policy D6. The lounge/diner, kitchen and bedrooms are all lit by reasonably-sized windows, providing suitable levels of natural light as well as a reasonable outlook towards the front and rear of the property. A good standard of privacy is afforded in all of the rooms. Also, there are ample ablution facilities as two bathrooms are provided. However, these factors do not compensate for the restricted size of the lounge/diner and kitchen.
15. Reducing the maisonette to two bedrooms would still mean that its GIA falls below, albeit then only slightly, the minimum standard of 70 m² for a two bedroom, three-person dwelling on two floors in LP Policy D6 and Table 3.1. Although the minimum standards should not be applied rigidly, it is also important to remember that such standards represent a basic expectation in new development. A deficiency in internal floor space when assessed against the minimum standard is therefore highly likely to be an indication of unsuitable living conditions. My findings in respect of the restricted size of the maisonette kitchen, which would apply equally in respect of a two bedroom, three-person unit, bear out this point.
16. The appellant supplied several examples of appeals where permission had been granted for dwellings, notwithstanding deficiencies in respect of the minimum space standards. As I was not provided with the full details, it is difficult to make an accurate comparison with the development in this appeal. In any event, it seems that there were no unsuitable living conditions provided for the occupiers in any of those examples. Therefore, those examples provide limited assistance to the appellant's case.

17. Accordingly, the unauthorised flats do not provide suitable living conditions for the existing and future occupiers. The failure to provide high levels of internal amenity means that the development conflicts with criterion in BLP Policy DMP1. There is also failure to meet the minimum standards and to provide sufficient daylight and sunlight in the design, in conflict with LP Policy D6. Furthermore, by failing to provide a high standard of amenity for existing and future users, the development is inconsistent with the Framework.

Living conditions-adjoining residential occupiers

18. The property is located towards the end of a residential cul-de-sac. Although there are nearby sources of urban noise, including a railway line and a main road, on the whole the surrounding area has an established residential character and local residents could expect to enjoy reasonably good levels of peace and tranquillity. Even so, any increase in incidences of noise and disturbance due to the unauthorised flats is not materially different from that which would occur by implementing the approved scheme. The effects on vehicle parking are also unlikely to be significantly different to that which would arise from the approved scheme. Provision of sufficient off-street vehicle parking, including cycle parking, to meet the needs of the occupiers could have been secured by imposing suitable planning conditions, had I been minded to allow the appeal and grant planning permission. Similar considerations apply in respect of suitable hard and soft landscaping, boundary treatments and waste bin storage provision.
19. Therefore, the development accords with criteria in BLP Policy DMP1, as it provides high levels of external amenity and is satisfactory in terms of parking. In addition, the development accords with criteria in BLP Policy BT2, as vehicle parking can be provided without negative impacts on existing parking, other forms of movement or the environment.

Effect on housing suitable for families

20. Reconfiguring the ground floor unit to provide three bedrooms would maintain family-sized accommodation. Additionally, the size of the property as extended exceeds 130 m², the ground floor flat has direct access to amenity space and the property is in an area with a public transport accessibility level (PTAL) higher than 3. Therefore, the development accords with BLP Policy BH11. Also, as there is no net loss of housing the development accords with BLP Policy BH10.

Other Matters

21. The development contributes towards increasing the housing supply in the Borough and to a mix of housing sizes, as well as promoting the effective use of land. However, implementing the approved scheme would result in similar outcomes, without the planning harm identified above. Therefore, I afford these matters limited weight.
22. Although of similar size, there are external and internal differences between the single storey rear extension as built and the approved scheme. Consequently, issuing a split decision is not appropriate, as whilst the extension is part of the breach granting permission for it would cause uncertainty.

Ground (a) conclusion

23. The development does not provide suitable living conditions for the existing and future occupiers of the units. This is in conflict with the Development Plan and is inconsistent with the Framework. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

24. The ground of appeal is that the requirements of the notice are excessive.
25. The purpose of the notice is clearly to remedy the breach of planning control, within s173(4)(a) of the Act. The notice states that as its purpose. The notice requires the unauthorised use as flats to cease, together with the removal of works that facilitated the unauthorised material change of use. Compliance with the requirements would remedy the breach, as the property would be restored to its condition prior to the breach taking place.
26. Steps 2 and 3 require removal of the second kitchen and third bathroom. Such facilities were clearly installed as part and parcel of and integral to the unauthorised material change of use. There was no evidence to suggest that those facilities were in situ prior to the unauthorised conversion to flats. Established case law confirms that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement action, so that the land is returned to its condition before the change of use took place².
27. As enforcement action is intended to be a remedial measure, whether the planning difficulties could be overcome at less cost and disruption is a relevant consideration. Even so, if the second kitchen and third bathroom were not removed, works which sustained the breach would remain in situ. The ground floor of the property would still on its own have the ability to afford those who used it the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwelling in established case law³. A similar situation would apply in respect of the facilities available in the upper floors. As a result, varying the notice to delete steps 2 and 3 would not remedy the breach and so does not represent an obvious alternative to the notice requirements.
28. Moreover, the appellant did not offer any detailed explanation as to why multiple kitchens and bathrooms would be required once the property reverted to use as a single dwelling. In my experience, it is relatively unusual to find either a single dwelling or small House in Multiple Occupation (HMO) within Use Class C4 of a similar floor area with two kitchens and three bathrooms. Therefore, whilst s55(2)(a)(i) of the Act provides that works which affect only the interior of a building are not taken to involve development, in practice I consider that there is a limited likelihood of the additional kitchen and bathroom being immediately reinstalled after compliance with the notice. It follows that this does not represent a realistic 'fallback' position.

² *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630.

³ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307.

29. Step 5 requires restoration of the pre-existing internal layout of the property. Reconfiguring the internal layout, including the provision of a lounge/diner at first floor level, was also part and parcel of and integral to the unauthorised material change of use. For reasons similar to those set out above in respect of steps 2 and 3, not reverting the property to its pre-existing layout would fail to remedy the breach and so does not represent an obvious alternative to the notice requirements. In addition, since it is relatively unusual in properties of this size to have a lounge/diner on the first floor, there is a limited likelihood of the internal layout being changed back again immediately after compliance with the notice. It follows that this also does not represent a realistic 'fallback' position.
30. Steps 6 and 7 require removal of the extension. Although there is now approval for a similar extension, correcting and varying the notice to delete reference to the extension is unnecessary. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission, having regard to s180 of the Act.
31. Therefore, in my view the requirements remedy the breach in a proportionate fashion and are not excessive, having regard to the purpose of the notice. They represent the minimum requirements for remedying the breach. Nevertheless, as it is also possible to remedy the breach by making the development comply with the terms of a planning permission, the approved scheme for two flats is an important factor. Where, as in this instance, there are significant differences from an approved scheme, it is appropriate to provide the alternative of remedying the breach by making the development comply with the terms of the relevant permission. There is nothing before me to suggest that the approved scheme is not capable of being implemented. The differences between the unauthorised flats and the approved scheme are clearly documented and the remedial works required to comply with that scheme are therefore readily apparent. As a result, the requirement would be sufficiently precise in order to remedy the breach. There would be no injustice caused by varying the notice as set out above.
32. Consequently, whilst I find that the steps required are not excessive, I shall vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeal succeeds to that extent.

Ground (g) appeal

33. The ground of appeal is that the time for complying with the requirements of the notice falls short of what should reasonably be allowed.
34. I am mindful of the general pressures on the availability and affordability of housing in London. Nevertheless, there was no firm evidence of a particular shortage in the Borough of accommodation similar to the unauthorised flats, or of unduly lengthy waiting times for such accommodation to become available. I appreciate that the appellant might wish to 'run down' the occupiers' tenancy agreements. However, the situation that will be faced by the occupiers when their tenancies are due to expire is little different to that experienced by many other tenants when a landlord seeks to obtain possession. Therefore, in my view the six-month period specified provides ample time for the tenants to search for and secure alternative accommodation without placing them at a significant risk of homelessness.

35. The prospect of a further application being submitted can in certain circumstances warrant extending the period for compliance. For example, an alternative scheme may have been advanced during an appeal which might merit consideration by the Council following the submission of an application. However, that does not apply in this instance as there is a recently approved scheme for two flats. The appellant is not bound to make a proposed LDC application for an alternative use within Use Class C4. Neither would there seem to be an especially strong motive for them doing so, having regard to the approved scheme. In any event, there is no sound reason why such an application, where the considerations are likely to be relatively straightforward, could not be determined within a couple of months.
36. Accordingly, six months provides ample time for complying with the notice. It follows that extending the time for compliance to twelve months would achieve little beyond perpetuating the breach and the planning harm caused. As the compliance period is not unreasonably short, the ground (g) appeal fails.

Conclusion

37. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR