



# Appeal Decision

Site visit made on 16 March 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 20 April 2022**

**Appeal Ref: APP/T5150/C/21/3267040**

**Studio A-F, 88 Stag Lane, EDGWARE HA8 5LW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Roshi Cheema against an enforcement notice issued by the Council for the London Borough of Brent.
- The notice, numbered E/20/0207, was issued on 15 December 2020.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to six flats and without planning permission, the erection of a hip to gable roof extension and rear dormer window.
- The requirements of the notice are:
  - STEP 1 Cease the use of the premises as SIX flats, and its occupation by more than ONE household.
  - STEP 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.
  - STEP 3 Demolish the unauthorised hip to gable roof 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. Restore the premises so that it reflects Plans A to E attached to this notice.
  - STEP 4 Alter the floor layout of the premises in accordance with the approved plans of planning permission ref. 17/5262, please refer to Plan A to E attached to this notice.
- 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. 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.

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

## Preliminary matter

1. The Brent Local Plan 2019 – 2041 ('the BLP') was adopted in February 2022 and comprises part of the development plan to be considered in the determination of this appeal. It replaces the previous Core Strategy adopted in 2010 and the Development Management Policies Plan adopted in 2016.

## Appeal on ground (b)

2. The appeal on this ground is argued in the context of the change of use only. To succeed on this ground the appellant needs to show, on the balance of probability, that the change of use to 6 flats had not occurred at the time the notice was issued. The relevant date is 15 December 2020, and the burden of proof rests with the appellant.
3. Prior to its extension and alteration, the appeal property was a 3 bedroomed detached house, and its lawful use was a dwellinghouse within the meaning of

Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended ('the UCO'). It is the appellant's contention that when the notice was issued the property was being used as a single dwellinghouse by not more than 6 residents as a house in multiple occupation ('HMO'), a use falling within use Class C4 of the UCO.

4. In this case the living accommodation is occupied by 6 residents as their main residence, and who do not form a single household. Their occupation of the living accommodation is the only use of that accommodation. The matters in dispute are (i) whether two or more of those households share one or more basic amenities or the living accommodation is lacking one or more basic amenities; and (ii) whether the living accommodation consists of self-contained flats.

#### *Basic amenities*

5. Basic amenities are (i) a toilet, (ii) personal washing facilities, or (iii) cooking facilities<sup>1</sup>. There is no dispute that each studio contains a toilet and personal washing facilities, 2 of the basic amenities. While each studio has fitted kitchen units, a sink and fridge freezer, they do not have built in cooking facilities. However, photographs provided by the Council, dated 5 March 2020, show that the 4 studios that officers were able to access had free-standing cookers. The Council claim that access was not available to what are now the shared kitchens on the first floor. Further, the Council claims that the tenant they spoke to on 5 March 2020 had no knowledge of any shared kitchen facilities.
6. The appellant claims to have had no knowledge of the free-standing cookers being placed in the studios. The managing agent, Pinnacle Assets, confirmed by letter dated 11 November 2021 that *"the portable cookers were provided to the tenants...at the beginning of the pandemic due to tenants' concerns over rising cases of Covid and fear of spread from the communal kitchens at the time"*. Pinnacle Assets go on to say that *"the cookers were then removed between June and August 2020 following the ease in restrictions of first lockdown"*. The appellant also claims that, had the Council undertaken a further visit before issuing the notice, they would have seen that the cookers had been removed.
7. In respect of the pandemic, Government advice relating to stopping non-essential contact and travel was announced on 16 March 2020 and lockdown measures legally came into force on 26 March 2020. In June to August 2020 lockdown measures were eased. However, the photographs taken on 5 March 2020 show that the provision of cookers in each of the studios pre-dates Government Covid advice. The Council's evidence also refers to Studio F not yet being occupied on 5 March 2020, yet the photograph shows it has a cooker.
8. If Pinnacle Assets arranged for the cookers to be provided and removed, it would not be unreasonable for them to have provided copies of purchase receipts or copies of documents relating to the cookers' removal, such as correspondence with the tenants to arrange access or work orders for the cookers' installation and removal.

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<sup>1</sup> Section 254 of the Housing Act 2004

9. While photographic evidence taken closer to the date the notice was issued would have been helpful, it is for the appellant to provide sufficiently precise and unambiguous evidence to show that, on the balance of probability, the cookers had been removed. In the absence of evidence to substantiate Pinnacle Assets' claims, I find it more likely that the cookers were provided as part of the fixtures and fittings, like the fridge freezers, and that the cookers were removed once the notice was served. Furthermore, there is nothing before me to confirm when the shared kitchens were installed or that two or more households shared one or more basic amenity at the date the notice was issued.
10. I saw that the free-standing cookers had been removed and that 2 communal kitchens were accessible at the time of my visit. However, this is not relevant to the determination of an appeal on this ground as it post-dates the relevant date.
11. Taking all these factors into account, I find that the appellant's evidence is imprecise and ambiguous. It therefore fails to show that, on the balance of probability, the occupiers of the studios did not lack any basic amenity at the date the notice was served.

#### *Self-contained flats*

12. A 'flat' is defined in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('the GPDO') as '*a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which is divided horizontally*'. Each studio forms part of the building and I have already concluded that the studios did not lack any of the basic amenities, which were available for the exclusive use of each studio's occupants.
13. The Council has provided copies of energy performance certificates and Council Tax banding documentation for the 6 individual studios. Further photographs taken on 5 March 2020 show multiple energy meters at the premises. The appellant has also confirmed that each studio has an independent water heating system. These show a further degree of independence between studios. Taking all these factors into account I find that each studio, at the time the notice was served, had all the facilities required for day-to-day private domestic existence. As such, each studio was a self-contained flat.
14. For the reasons given above, the appellant has failed to show, on the balance of probability, that the studios were not in use as flats at the date the notice was issued. The appeal on ground (b) fails.

#### **Appeal on ground (c)**

15. The appeal on this ground is argued in the context of the hip to gable extension and rear dormer window only. The appellant needs to show that this operational development does not constitute a breach of planning control. The onus of proof is on the appellant and the relevant test is the balance of probability.
16. The Council has previously granted planning permission for a single and two-storey side extension and single storey rear extension<sup>2</sup> ('the PP') and issued a

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<sup>2</sup> Planning application reference: 17/5262

Lawful Development Certificate<sup>3</sup> for alterations and extensions to the roof ('the LDC'). Plans of the 'existing' dwelling, which accompanied each of those applications, depict the dwelling as it existed before either set of approved works were carried out. The approved 'proposed' plans show the existing dwellinghouse and either the PP works or the LDC works. Due to the designs of the approved roofs, it would not be possible to implement both schemes independently of one another. To benefit from either of these planning permissions the appellant would need to show that the works were completed independently of one another, in accordance with the approved plans, before the material change of use to flats occurred.

17. There is nothing before me to show that the LDC scheme was constructed before the PP scheme was erected or that after the works were completed the use of the premises remained in use as a single dwellinghouse. Instead, it is more than likely that the hip to gable extension, rear dormer window, single and two-storey side extension and single storey rear extension, and internal re-configuration to flats was carried out as a single building operation. The operational development is therefore substantially different to the works previously granted planning permission by the PP and the GPDO, as confirmed in the LDC. The hip to gable extension and rear dormer window forms an integral part of a larger development that requires planning permission.
18. Even if I had found the PP and LDC could still be applied to the development, carrying out the works as a single building operation has resulted in physical changes to the roof construction. The roof over the two-storey extension is not hipped into the main roof as approved, instead part of its roof is mono-pitched and attached to the hip to gable extension and rear dormer window. Where operations that could be permitted development are physically attached to operations that need planning permission, the whole operation needs planning permission. The hip to gable extension and rear dormer window could not therefore benefit from express planning permission granted by the GPDO.
19. The operational development carried out is development requiring planning permission. No planning permission has been granted for the operational development and it constitutes a breach of planning control.
20. For these reasons, the appeal on ground (c) fails.

### **Appeal on ground (a) and the deemed application for planning permission**

21. The appellant concedes that the use as flats would not be policy compliant and the appeal on this ground is argued in the context of the operational development only. The **main issue** is the effect of the development on character and appearance of the premises and surrounding area.

#### *Character and appearance*

22. The two separate extension proposals may have been acceptable in planning terms. However, combining the two proposals and the resultant changes to the roof configuration has led to the building having a top-heavy appearance. The visual dominance of the roof is further emphasised by the building's location towards the brow of a hill. The size and design of the development is therefore out of keeping with that of the host property and the surrounding locality.

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<sup>3</sup> Planning application reference: 18/4243

While the extensions have been constructed out of materials that match those of the host dwelling, this does not outweigh the harm I have identified.

23. For the reason given above, the character and appearance of the development conflicts with policy DMP1 of the BLP, which seeks to deliver high quality development which complements the locality, amongst other things. The development is also contrary to guidance set out in Residential Extensions & Alterations SPD No.2 (January 2018), which provides detailed design criteria for various types of residential extension proposals.

*Conclusion on ground (a)*

24. For the reasons given above, the appeal on ground (a) fails.

**Appeal on ground (f)**

25. To succeed on this ground, it needs to be shown that the steps required by the notice to be taken, or the activities require by the notice to cease, exceed what is necessary to remedy the breach or the injury to amenity, whichever the case may be. The Council confirm that the purpose of the notice is to remedy the breach of planning control.
26. Step 1 requires the use of the premises as 6 flats and its occupation by more than one household to cease. Compliance with Step 1 could be achieved by reducing or increasing the number of flats. This would not remedy the breach and the use of all flats needs to cease. Step 1 will be varied accordingly.
27. There are also circumstances when a Class C3 dwellinghouse can be occupied by more than one household. Step 1 therefore also exceeds what is necessary to remedy the breach. Varying Step 1 so it refers to ceasing the use as flats and deleting the reference to households would not cause injustice as the appeal parties understand it is the use as flats that must cease.
28. Step 2 requires the removal of all works that facilitate the use as flats, including the removal of all kitchens, all en-suite bathrooms/shower rooms and all toilets. The previous lawful use of the property as a single dwellinghouse would require kitchen, personal washing facilities and toilet facilities. Given the lawful use of the property, Step 2 is excessive. The appellant requests that one kitchen should be allowed to be retained, which I find reasonable. There is no requirement to demolish the two-storey side and single storey rear extensions and it would therefore benefit from planning permission granted by s173(11) of the Act once the varied requirements of the notice are complied with. The previously approved ground and first floor plans show that the extended dwellinghouse would have had 3 bathrooms, which no doubt included toilets. The appellant's request that 3 bathrooms/shower rooms and 3 toilets be allowed to be retained is therefore reasonable.
29. Step 3 only requires the demolition of the hip-to-gable roof extension. This represents under enforcement as it does not require the demolition of the rear dormer window or the single and two-storey side extension and single storey rear extension. The rear dormer window forms an integral part of the hip-to-gable extension as it spans its entire rear elevation. The demolition of the dormer is therefore implicit as part of the demolition of the hip to gable extension. For clarity however, Step 3 will be varied to include the demolition of the rear dormer window and restoration of the roof to its former condition.

These additions would not go beyond what is required by the notice and would not cause injustice to the appellant.

30. Further, Step 3 requires '*Restore the premises so that it reflects Plans A to E attached to this notice*' and Step 4 requires '*Alter the floor layout of the premises in accordance with the approved plans of planning permission ref.17/5262, please refer to Plans A to E attached to this notice*'. While there are 5 plans attached to the notice, they are not annotated A to E. It is however clear which plans are being referred to. These plans are the proposed elevations and floor plans granted planning permission by the PP. There is nothing before me to show that the PP has previously been implemented. It would not therefore be possible to 'restore' the premises to reflect Plans A to E. Furthermore, carrying out development to comply with Plans A to E would exceed what is required to remedy the breach of planning control and I shall delete this requirement from Steps 3 and 4 accordingly.
31. For the reasons given above the appeal on ground (f) succeeds to this limited extent.

### **Appeal on ground (g)**

32. An appeal on this ground is that the period specified in the notice is too short. The appellant requests a period of 12 months, as they estimate it will take 2 months to carry out the tender process, 1 to 6 months for the works to start depending on the appointed contractor's availability, and the estimated time for the works to be completed is 2 to 3 months.
33. In addition to the issues identified by the appellant, the demolition of the hip to gable extension and rear dormer window would leave the roof over the two-storey side extension incomplete. This is a matter for the appellant and Council to resolve but a further planning permission may be required. While I do not necessarily accept the appellant's suggested timescales, including time to resolve the roof's configuration with the Council could take approximately 2 to 3 months. Adding this to the tender process, likely date for works to commence and for completion of the agreed works, a period of 12 months is reasonable.
34. The appeal on ground (g) succeeds, to this limited extent.

### **Overall conclusion**

35. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) and (g) succeed to that limited extent.

### **Formal Decision**

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

*In schedule 4 WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH:*

- *The deletion of all the words in STEP 1 and the substitution of the words 'Cease the use of the premises as flats.'*
- *The deletion of all the words in STEP 2 and the substitution of the words 'Remove all internal partitions, items, materials and debris associated*

*with the unauthorised change of use, including the removal of all but ONE kitchen, all but THREE bathrooms/shower rooms and all but THREE toilets.*

- *The deletion of all the words in STEP 3, and the substitution of the words 'Demolish the unauthorised hip to gable roof extension and rear dormer window, remove all items and debris arising from that demolition and restore the roof of the property to its former condition'.*
- *Delete STEP 4 in its entirety.*
- *Delete Plans A to E from the notice.*

Subject to these variations, the enforcement notice is upheld.

*M Madge*

INSPECTOR