



Appeal Decisions

Site visit made on 16 March 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 April 2022

Appeal A Ref: APP/T5150/C/21/3267309 and

Appeal B Ref: APP/T5150/C/21/3267311

32 Melrose Gardens, Edgware HA8 5LN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Ghanshyam Pindoria and Appeal B is made by Mrs Radha Pindoria against an enforcement notice issued by the Council for the London Borough of Brent.
- The notice, numbered E/17/0334, 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 four dwellings.
- The requirements of the notice are:
 - STEP 1 Cease the use of the premises as two or more dwellings.
 - STEP 2 Remove the kitchenettes from the side garage of the premises.
 - STEP 3 Remove the bathrooms from the former garage of the premises.
 - STEP 4 Restore the external and internal configuration to the original side garage before the unauthorised development took place.
 - STEP 5 Remove the brick wall and front door to the façade of the former garage and replace with a garage door. Reinstate the garage so that it can be used to park a car.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) and Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (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.

Summary of Decision: The appeals succeed in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decisions.

Background and preliminary matters

1. The appeal property has been altered to provide a 2-storey dwellinghouse, occupied by the appellants and their family, and 3 further units of residential accommodation on the ground floor, numbered Room 1, Room 2 and Room 3. The 2-storey dwelling is accessed via a porch located to the lefthand side of the building's frontage. The former garage door located at the righthand side of the frontage has been replaced with brickwork and a further pedestrian entrance door. This door opens into a corridor from which Rooms 1, 2 and 3 are accessed. A door at the end of the corridor opens into the appellants' home.
2. While I was refused access to Rooms 1 and 2, tenants of both those Rooms were in attendance and verbally confirmed that they have their own cooking and personal washing facilities. The appellants also verbally confirmed that, in the absence of being able to view Rooms 1 and 2, I could rely on the Council's photographs as providing a true and accurate record of their layout and facilities. I shall proceed on that basis.

3. 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.

Appeals A and B – appeal on ground (b)

4. To succeed on this ground the appellants should show that, at the time the notice was issued, the property was not in use as 4 dwellings. The onus of proof is on the appellants and the relevant test is the balance of probability.
5. Prior to its alteration, the appeal property 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 appellants' contention that when the notice was issued, the property was in use as a house in multiple occupation ('HMO'), a use falling within use Class C4 of the UCO.
6. The word dwellinghouse itself is not defined either in the UCO or in the Town and Country Planning Act 1990 as amended ('the Act'). However, a common feature of all premises or accommodation which can, in general, be described as dwellinghouses is that they are buildings, or part of a building, that ordinarily afford the facilities required for day-to-day private domestic existence. The definition of use Class C4 is set out in the UCO as '*Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"*'.
7. Information provided by the appellant in response to the planning contravention notice ('PCN') and accompanying the appeal includes that:
 - The appellants, their 3 children and a parent occupy part of the ground floor accommodation and all the first-floor accommodation, forming one household.
 - Rooms 1, 2 and 3 are occupied by 3 further households, consisting of a total of 4 people.
 - Rooms 1, 2 and 3 are rented out by a letting agency.
 - There is only one kitchen within the property, which was installed in 2008 but disassembled and re-assembled in another part of the property in 2018.
 - Rooms 1, 2 and 3 have a small worktop space, a freestanding electric microwave hob and small undercounter fridge.
8. Section 254 of the Housing Act 2004 ('the 2004 Act') sets out tests for identifying and defining an HMO. In this case the living accommodation is occupied by 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.
9. There is no dispute that the appellant and his family occupy the greater proportion of the premises, which includes a fully fitted kitchen and 3 bathrooms. What is in dispute is (i) whether two or more of the households occupying the living accommodation 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 dwellings.

10. Basic amenities are (i) a toilet, (ii) personal washing facilities, and (iii) cooking facilities¹. There is no evidence to show that the residents of Rooms 1, 2 and 3 have access to the kitchen located in the appellant's part of the premises. Rooms 1, 2 and 3 are behind lockable doors located off a shared corridor leading from a separate means of access into the premises. There is no dispute that each Room has its own personal washing facilities and toilet facilities; 2 of the 3 basic amenities. Each Room also has a kitchenette consisting of wall and base kitchen units, a sink with drainer and worktop. Within each kitchenette there are microwave ovens and refrigerators. Each Room may only have rudimentary cooking facilities, but they are the only cooking facilities available to the residents of those Rooms. As such, none of the 4 identified households share any basic amenities and each of the 4 units of accommodation has exclusive use of all 3 basic amenities. Furthermore, the premises are occupied by 10 residents. The use of the premises does not therefore fall within the definition of a use Class C4 HMO.
11. Notwithstanding the rudimentary nature of the cooking facilities in Rooms 1, 2 and 3, each household occupies its own independent unit of accommodation. Each independent unit of accommodation contains facilities for day-to-day private domestic existence and each Room is therefore a dwellinghouse. The lack of independent utility or Council Tax bills does not show that the premises have not been divided into 4 dwellings.
12. For these reasons, the appeals on ground (b) fail.

Appeals A and B – appeal on ground (c)

13. If the matters alleged have occurred, to succeed on this ground the appellants need to show that the matters do not constitute a breach of planning control. The onus of proof is on the appellants and the relevant test is the balance of probability.
14. I have already found that the premises has been converted into 4 dwellings as a matter of fact. S55(3)(a) of the Town and Country Planning Act 1990 as amended ("the Act") states '*the use as 2 or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used*'. The change of use to 4 dwellings is therefore material and requires planning permission.
15. Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('the GPDO') provides for several material changes of use to dwellinghouses. A change of use from one dwellinghouse to 2 or more dwellinghouses is not however included within any of the permitted changes provided for in Part 3 of Schedule 2 of the GPDO.
16. The change of use to 4 dwellings is development requiring planning permission. That planning permission has not been granted, either by application or express permission granted by Article 3(1) and Part 3 of Schedule 2 of the GPDO. The change of use from one to 4 dwellings constitutes a breach of planning control.
17. For this reason, the appeals on ground (c) fail.

¹ Section 254 of the Housing Act 2004

Appeal A – appeal on ground (a) and the deemed planning application

18. In respect of whether planning permission ought to be granted for the material change of use to 4 dwellings, the **main issue** is the effects of the development on residents' living conditions.
19. Local planning policy supports the principal of converting family sized homes, where that home has a floor area of at least 130 square metres or could be acceptably extended to achieve 130 square metres, and it is within an area of PTAL3 or above. There is no evidence before me to show what the floor area of the premises is or whether the premises are located within an area of PTAL3 or above. The material change of use does however include 1 x 3 bed roomed dwelling. There is also no dispute that the appellant's dwellinghouse provides satisfactory living conditions, having separate kitchen and living spaces, several bedrooms and bathrooms, and access to outside amenity space and parking facilities.
20. Development plan policies and national guidance seek to deliver high quality homes of adequate size that are fit for purpose. Having regard to the minimum space standards identified in policy D6 of the London Plan 2021, Rooms 1, 2 and 3 would best be described as studios with shower rooms. Studios are required to have a minimum floor area of 37 square metres. In the absence of specific floor space measurements, the Council's photographic evidence shows Rooms 1, 2 and 3 to have limited floor space. The living/sleeping areas are cramped, restricting residents' ability to carry out a variety of normal day-to-day domestic activities. Circulation space within the Rooms is also severely constrained by furniture required for every day domestic activities.
21. The windows of Rooms 1 and 2, while facing out the rear of the premises, look out onto a shallow patio area, beyond which a single storey outbuilding obstructs views of the garden. While Rooms 1 and 2 may have the means to access to the rear garden, there is no evidence to suggest that residents of those Rooms are allowed to use the garden. The window to Room 3 looks out on to the paved frontage, which is used for parking vehicles, and it has no means of access to the rear garden. Furthermore, no details have been provided in respect of the availability of bin storage, personal storage or cycle storage facilities for residents.

Conclusion on ground (a)

22. The limited space within Rooms 1, 2 and 3, and lack of outlook, amenity space and storage facilities result in substandard living conditions for residents. The development is contrary to policies DMP1, BH6, BH10, BH11, BH13 and BT2 of the BLP and policy D6 of the London Plan (March 2021), which seek to deliver high quality development with adequate living conditions to meet all residents' amenity needs.
23. For these reasons, the appeal on ground (a) fails.

Appeals A and B – appeal on ground (f)

24. An appeal on this ground is that the steps required to be taken or activities required to cease, exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity arising from the breach, as the case may be. The aim of the notice is to remedy the breach of planning control.

25. Step 1 is reasonably necessary to ensure the use as 2 or more dwellings is ceased and therefore to remedy the breach of planning control. This step has not been complied with as Rooms 1, 2 and 3 are occupied as independent, self-contained dwellinghouses.
26. It is clear, from the PCN response, that the additional dwellings occupy part of the original dwelling's ground floor accommodation and not just the former garage. Steps 2 and 3 require the kitchenettes and bathrooms to be removed from the former garage, however only 2 kitchenettes and 2 bathrooms are located within what was the garage. The third kitchenette and third bathroom are located within what was part of the original dwelling's ground floor accommodation and would need to be removed to remedy the breach. The appellants confirm that they have relocated the dwelling's original kitchen elsewhere in the property and that their dwelling has 3 bathrooms. Therefore, for clarity, steps 2 and 3 need only refer to the removal of all but one kitchen and all but three bathrooms. Step 4 need only require the restoration of the external and internal configuration of the dwellinghouse and garage to that which existed before the unauthorised development took place.
27. Compliance with the varied steps 2, 3 and 4 would result in the garage being reinstated and being made available for its intended use. Step 5 is therefore superfluous and shall be deleted.
28. The ground (f) succeeds to this limited extent.

Appeals A and B – appeal on ground (g)

29. To succeed on this ground it needs to be shown that the period to comply with the requirements of the notice is too short. The appellants argue that 6 months is wholly unreasonable during a national pandemic, when having builders in their home could put vulnerable residents at greater risk, and when it is difficult to find reasonably priced builders. The appellants indicate that a period of 12 months would be reasonable in these circumstances.
30. Restrictions resulting from the pandemic have been lifted. The varied steps to be taken relate predominantly to Rooms 1, 2 and 3. Builders would not therefore have to access the appellants' home to any great extent. As such any risk arising from Covid 19 for remaining residents would be negligible. A period of 6 months does not fall short of what should be reasonably allowed.

Overall conclusion

31. For the reasons given above, I conclude that the appeals 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 Decisions

32. It is directed that the enforcement notice be varied by:

In schedule 4 WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH OF PLANNING CONTROL – S173(4)(A) in:

- *STEP 2, delete all the words and substitute the words 'Remove all but ONE kitchen or kitchenette.'*

- *STEP 3, delete all the words and substitute the words 'Remove all but THREE bathrooms.'*
- *STEP 4, delete all the words and substitute the words 'Restore the dwelling with garage to its condition before the change of use took place.'*
- *Delete STEP 5*

Subject to the variations, the appeals are 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.

M Madge

INSPECTOR