



Appeal Decision

Site visit made on 2 February 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2022

Appeal Ref: APP/T5150/C/20/3254268

48-50 Christchurch Avenue, London, NW6 7BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Malik Ramzan (Ramzan and Sons Investments Limited) against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/18/0242, was issued on 6 May 2020.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the outbuilding into two dwelling houses ("the unauthorised change of use").
 - The requirements of the notice are:
 - Step 1 Permanently cease the use of the outbuilding as two dwellinghouses.
 - Step 2 Remove all partitions, doors, kitchens, bathrooms, facilitating the use of the outbuilding as two self-contained dwellings.
 - Step 3 Remove all waste and debris, arising from compliance with the above steps, 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), (d), (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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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - Replacing 'the outbuilding into two dwellinghouses' from Schedule 2 with 'part of the outbuilding, known as Garden Flat B, into a dwellinghouse.'
 - Replacing 'the outbuilding as two dwellinghouses' from Step 1 of Schedule 4 with 'the part of the outbuilding known as Garden Flat B as a dwellinghouse'.
 - Replacing 'the outbuilding as two self-contained dwellings' from Step 2 of Schedule 4 with 'part of the outbuilding known as Garden Flat B as a dwellinghouse'.
2. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

The Appeal on Ground (d)

3. Nos 48 – 50 Christchurch Avenue essentially comprise a four storey building with outbuilding situated within a large rear garden. The main building is used as a house in multiple occupation (HMO). The alleged breach relates to the material change of use of the outbuilding into two dwelling houses, which the appellant refers to as Garden Flats A and B.

4. In order to succeed on ground (d), it is for the appellant to demonstrate, on the balance of probabilities, that the material change of use of the outbuilding into two dwellinghouses occurred more than four years before the date of issue of the enforcement notice and continued without material interruption for a period of four years thereafter, so as to be immune from enforcement action¹. The material date is therefore 6 May 2016.
5. The Council confirms that in March 2014, a certificate of lawful use or development (LDC) was granted² for the HMO and existing single storey rear garden flat. The Council's report refers to the garden flat within an existing outbuilding in the rear garden being in use for a period of four years or more. That is reflected in the reasons for granting the LDC which confirms that the garden flat is immune from enforcement action. The associated plan unambiguously shows the garden flat within part of the outbuilding closest to the main building (Garden Flat A).
6. Further evidence is provided of a continued use of the garden flat thereafter in the form of signed tenancy agreements dated 30 November 2015, 4 April 2016 and 28 January 2019. Confirmation from June 2020 is also provided that Garden Flat A has been registered for Council tax since December 2008.
7. Therefore, as, on the balance of probabilities, there has been no subsequent material change of use, the LDC from 2014 is conclusive.
8. However, the plan accompanying the LDC, dated 14 February 2013, annotates the remaining area of the outbuilding (purported to be Garden Flat B) as a storeroom. That same arrangement is also shown on the plan, dated 6 November 2012, accompanying a building regulations application of May 2014. The Building Control Certificate also refers, in the singular, to an existing single storey rear garden flat, thereby reflecting the arrangement shown on the plan. Similarly, the HMO licence dated 21 March 2016, which is after the material date, refers only to a ground floor garden flat - singular.
9. An application by the appellant to amend the street numbering was submitted on 13 May 2016 - after the material date, which again only refers to a garden flat (singular). An email by the appellant dated 17 May 2016, in respect of that application, further confirms that the 'Garden Flat remains as it is', and that is reflected in the street numbering confirmation of 24 May 2016, which makes no reference to a second flat.
10. The appellant's affidavit refers to entering into negotiations to purchase Nos 48-50 in late 2014/ early 2015 and at that time observing two flats at the rear of the building. It is stated that Flat A was rented out whilst the second flat, now known as Flat B, was given to the caretaker rent-free, with no tenancy agreement. A letter from the previous owner also states that the rear part of the outbuilding was not a storeroom but caretaker's accommodation from 2012 and onwards. The affidavit made by the builder who carried out work at the property similarly states that Flat B was occupied by a caretaker when he visited the property in December 2015.

¹ s171B(2) of the Town and Country Planning Act 1990

² Application ref: 13/0439 - Certificate of lawfulness for existing use as HMO (C4), consisting of one self-contained 2 bed unit (Unit 23), 5 x self-contained 1-bed units (Units 6, 9, 13, 19, 22) 9 x studio units (Units 2, 3, 5, 10, 12, 14, 15, 16, 21), 1 x bedsit with kitchenette (Unit 4), 2 bedsits with bathroom (Units 7, 17) and 5 bedsits (Units 1, 8, 11, 18, 20) with associated communal facilities and existing single storey rear garden flat (unit 24).

11. No information is provided on the frequency or nature of the use, but rent-free caretaker's accommodation is likely to have been functionally linked, and part and parcel of the main use of Nos 48-50 as a HMO. On that basis, even if that part of the outbuilding was used as caretaker's accommodation, rather than as a storeroom, it does not assist the appellant's case because, as a matter of fact and degree, no material change of use took place so as to create separate planning unit.
12. The appellant explains that he subsequently acquired the appeal property on 30 November 2015 and undertook renovation work to the main building and garden flats, including upgrading the caretaker's accommodation to a flat that could be rented out as Garden Flat B. A refurbishment list is provided but that does not clarify what work was carried out at Garden Flat B and when. Builder's receipts are provided but again it is not clear how they relate to Garden Flat B. Nevertheless, an affidavit made by the builder confirms that *'works were completed with respect to Flats A and B by the end of February 2016'*.
13. The appellant's affidavit states that, once renovated, Flat B was rented from 5 March 2016 to a Mr Bacur. That name is consistent with the signed tenancy agreement provided for Garden Flat B of the same date. However, if that does represent the commencement date of the breach of planning control, it is contradicted in the appellant's email to the Council's Benefit's Department dated 15 August 2019, which explicitly states that Flat B was turned into a flat in 2018 and used for rental purposes.
14. Tenancy agreements dated 1 August 2016 and 14 October 2017 are unsigned and therefore carry limited weight. Moreover, in respect of the 2017 agreement, the schedule of rent received shows no payment for all of the dates listed (between 6 August 2016 and 28 July 2018).
15. The tenancy agreement from 1 August 2018 is initialled (although it is difficult to reconcile that with the name of the tenant) and receipts are provided for rent paid from that tenant dated 1 November 2018, 1 December 2018 and 1 January 2019. The tenancy agreement dated 5 August 2019 is signed and receipts for the payment of rent are provided from 1 April 2019 and 18 August 2019. This evidence is consistent with the appellant's above referenced email that confirmed that Garden Flat B was turned into a flat in 2018.
16. An email from the Council Tax Officer confirms that that Garden Flat B was registered for Council Tax by 29 October 2019 but does not clarify when the initial registration was made or that any payments had been received.
17. The affidavits made by the occupants of Apartments 1, 3 and 17 in the main building state that Flats A and B were, and continue to be used for accommodation purposes. The builder similarly states that the flats were being used as residential premises. However, those statements are of limited assistance as no dates are provided.
18. Regardless of whether or not there has been deliberate concealment, as alleged by the Council, I do not find the appellant's evidence to be sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the material change of use of Garden Flat B occurred more than four years before the date of issue of the enforcement notice and continued without material interruption for a period of four years thereafter, so as to be immune

from enforcement action. The ground (d) appeal does not succeed in respect of Garden Flat B.

19. The appellant has raised concern regarding the clarity of the allegation, the reasons for issuing the enforcement notice and its requirements, given that Garden Flat A benefits from a LDC. Having regard to the above, the allegation is technically correct as there has been a material change of use of the outbuilding into two dwelling houses (from one). I do not therefore find the notice to be hopelessly ambiguous and uncertain, so as to amount to a nullity. Nevertheless, to be clear, I will correct the allegation to refer to Garden Flat B only, thereby reflecting the lawful status of Garden Flat A.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

20. Given my above findings, the ground (a) appeal relates to Garden Flat B only. The main issues are whether Garden Flat B provides acceptable living conditions for occupants, with particular regard to the provision of internal living space; and the effect of the use of Garden Flat B on the external living space of occupants of the main building and Garden Flat A.

Reasons

Internal living space

21. London Plan Policy D6 states that housing development should be of high quality design and provide adequately sized rooms with comfortable and functional layouts which are fit for purpose. It states that dwellings must provide at least the gross internal floor area and built-in storage area set out in Table 3.1. For a one person dwelling with shower room, that is 37m². Policy DMP 18 of the London Borough of Brent Local Plan Development Management Policies (LPDMP) states that the size of dwellings should be consistent with the London Plan minimum space standards. Policy DMP 1 similarly seeks high levels of internal amenity.
22. The appellant states that it is unclear whether the reason for issuing the enforcement notice (that the unauthorised change of use has resulted in the provision of under-sized and otherwise sub-standard accommodation) refers to both garden flats or just Garden Flat B. The reality is that both fall significantly below the minimum standards. However, for the reasons explained under ground (d), Garden Flat A is immune from enforcement action.
23. The appellant appears to be confusing that fact by insinuating that Garden Flat A has been found to be acceptable; planning merits do not fall to be considered in an application for a LDC. The very significant deficiencies of Garden Flat A cannot therefore be used to justify the acceptability of Garden Flat B, which at 29.1m², falls well below the minimum standards for a one person dwelling. At the time of my site visit, I also observed a bunk bed, thereby suggesting occupation by two people. In that case, the deficiency would be even greater as the minimum standard for the same is 50m².
24. In any case, even for one person, the internal accommodation is oppressively cramped and claustrophobic due to its meagre size. The main living space is restricted to a kitchen/diner; there is no space for a lounge area. Save for a glazed external bedroom door, the flat is single aspect and most of the

windows are obscure glazed. That may be necessary to protect the privacy of the occupants from the adjacent communal garden space, but the very limited outlook further exacerbates the oppressive and depressing nature of the internal space, which is not fit for purpose.

25. The appellant argues that Flat B provides a high standard of accommodation but it is not possible to reconcile that claim with my own observations and the photographs provided.
26. The appellant further argues that provision of Flat B helps achieve the aims of the London Plan by adding to the range of housing choice. I do not agree. In my view, Flat B is precisely the type of sub-standard accommodation that London Plan Policy D6 seeks to prevent. Consequently, the provision of the same attracts no weight in terms of its contribution to the Borough's housing stock.
27. I therefore find that Garden Flat B provides unacceptable living conditions for occupants, contrary to LPDMP Policies DMP 1 and DMP 18 and London Plan Policy D6.
28. I recognise that the National Planning Policy Framework states that planning decisions should support development that makes efficient use of land but that takes into account the importance of securing well-designed, attractive and healthy places, which the alleged development does not achieve. Moreover, the use of the building is in conflict with paragraph 129 of the Framework which states that planning decisions should create places with a high standard of amenity.

External living space

29. The occupants of the main building at Nos 48-50 and the garden flats benefit from a large, flat communal garden. However, the photographs provided by the Council from 2018 show makeshift extensions to the outbuilding as well furniture and tents in the garden. Although that will have undoubtedly detracted from the quality of the garden space, those features have since been removed.
30. Given that the ground (a) appeal is restricted to the effects of Garden Flat B, a low occupancy of the same will make little discernible difference to the quality of the space available to the occupants of the HMO or Garden Flat A.
31. Accordingly, I do not find conflict with LPDMP Policy DMP 19 or Principle 5.2 of Supplementary Planning Document No.1 – Brent Design Guide, which state, amongst other things, that new development should provide well-designed communal amenity space for new residents.

Other Matters

32. The appeal site falls within the Brondesbury Conservation Area. I therefore have a statutory duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
33. As the works to facilitate the use are largely internal and the use itself limited to a small additional dwelling, the alleged development results in a neutral effect on the Conservation Area as a whole, thereby preserving the same.

The Appeal on Ground (f)

34. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to immunity caused by the breach. In this case the Council confirm it to be the former. That is consistent with the requirements, which are to permanently cease the use of the outbuilding as two dwellinghouses, remove all partitions, doors, kitchens, bathrooms, facilitating the use and to remove all waste and debris arising.
35. Essentially, the appellant's case under ground (f) is that the requirements of the notice should not apply to Garden Flat A, which has been granted a LDC. As explained under ground (d), I will correct the allegation to reflect that fact. It follows that the requirements of the notice should also be varied to refer to Garden Flat B only, which is not immune from enforcement action or acceptable in planning terms. Should the appellant wish to return its use to a storeroom, that will be a matter for him.
36. The appeal on ground (f) succeeds to the extent explained.

The Appeal on Ground (g)

37. The ground (g) appeal is that the six months given to comply with the enforcement notice falls short of what should be reasonably allowed. The appellant requests a period of 12 months in order to allow tenants time to find new housing, and to allow the appellant time to raise the funds to carry out the remedial works.
38. At the time of my site visit Garden Flat B was unoccupied so unless that situation has changed in the intervening period then alternative accommodation would not be required. If it is now occupied, six months is sufficient time to allow tenants opportunity to find new housing. Indeed, given my findings under ground (a), it is clearly undesirable for a tenant to have to live in the property any longer than necessary.
39. No evidence is provided to show that funds are required to be secured to comply with the notice and having regard to the limited size and extent of fixtures and fittings, there is likely to be a limited financial burden on the appellant to do so.
40. The appeal on ground (g) fails.

Conclusion

41. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and 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.

Richard S Jones

INSPECTOR