



Appeal Decision

Site visit made on 21 March 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/T5150/C/20/3256716

2 Woodcock Hill, Harrow HA3 0JG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Dr Hazim Obaydi against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 22 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO), occupied by more than six people.
 - The requirements of the notice are:
 - STEP 1 Cease the use of the premises as a House in Multiple Occupation.
 - STEP 2 Remove all kitchens and cooking facilities, except ONE, from the premises and remove all associated items, debris and materials arising from this removal from the premises.
 - STEP 3 Remove all bathrooms and bathroom facilities, except THREE, from the premises and remove all associated items, debris and materials arising from this removal from the premises.
 - STEP 4 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 a kitchen, dining room and lounge on the ground floor.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - (1) Substituting the site plan attached to the issued enforcement notice with the one attached to this decision.
 - (2) The deletion of the words "shown outlined bold in BLACK on the attached plan" and the substitution of the words "shown outlined in red on the attached plan" in Schedule 1 of the notice.
 - (3) The addition of the words "occupied by more than six people" in STEP 1 of the requirements, so that it reads: *STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO) occupied by more than six people.*
2. Subject to these corrections and variation, 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.

Preliminary Matter

3. Since the appeal was made both the London Plan 2021 and the Brent Local Plan¹ have been adopted. The Council were asked to confirm and provide copies of the policies from both plans, which they intend to rely on. The appellant was given the opportunity to provide comments in relation to those policies and any comments received have been considered.

The Enforcement Notice

4. I have powers to correct a defective enforcement notice. It appears to me, based on the appellant's ground (e) appeal, that the plan attached to the notice is incorrect. It does not accurately identify the land to which the notice relates as it includes The Annexe, which does not form part of the breach of planning control as confirmed by the Council.
5. Consequently, I will correct the notice by amending the plan so that it relates only to the property where the breach of planning control is taking place, exercising my powers under s176 of the Act, as I am satisfied that the notice can be corrected without causing injustice to either party.

The appeal on ground (e)

6. An appeal on this ground concerns whether the enforcement notice was properly served on everyone with an interest in the land.
7. There is no evidence that the enforcement notice was first issued in 2016. It is evident that the appellant is confusing the date of the Council's initial investigation with the issue of the notice. The appellant also argued that the notice was served on The Annexe which does not form part of the breach, essentially that it was served on too many people.
8. However, this argument does not support this ground of appeal, where the question is whether those people who should have been served with the notice have been served with it (and if not, whether any prejudice to them arises). The appellant does not contend that there has been any failure of service and accordingly the ground (e) appeal must fail.

The appeal on ground (a) and the deemed planning application

Main issues

9. The main issues are (i) whether there is an identified need for the HMO (ii) the effect on the living conditions of occupants with regard to the standard of accommodation (iii) the effect on the character of the area and the living conditions of neighbouring occupants with particular regard to noise and disturbance and (iv) the availability of on-street parking.

Identified need

10. Policy BH10 of the Local Plan states that development resulting in the net loss of residential dwellings will be supported only in exceptional circumstances including where it provides social or physical infrastructure to meet an identified local need which could otherwise not exist. The justification states

¹ London Borough of Brent Brent Local Plan 2019-2041 Adopted February 2022

that as identified in the SHMA² and Policy BH6 Housing Size Mix, provision of family accommodation (3 bed or more dwellings) to meet Brent's needs is a priority.

11. Policy BH7 of the Local Plan sets out that proposals for student accommodation, non-self-contained or self-contained residential accommodation with shared facilities or on-site support/care to assist residents in their daily lives will be supported subject to several criteria, including where there is a demonstrable *specific Brent need* [my emphasis], or in the case of purpose-built student accommodation a London need, for the particular use.
12. It is recognised in the Local Plan, that changes in demographics, welfare and lifestyle choices mean that there will be increased demand for these types of accommodation and that these types of uses make a significant contribution to meeting local and in the case of students, London needs.
13. However, it is also stated that the cost, limited availability of housing and flexibility of development rights has resulted in many Brent homes becoming houses in multiple occupation.
14. The justification at 6.2.68 explains that *Brent is an area with lower property values than some parts of London, particularly inner London. Pressure created by welfare reform and support agency budgets to reduce costs might provide drivers for relocation to Brent. For the reasons identified in relation to potential adverse factors identified above in relation to concentration, Brent is reluctant to encourage such a move. Consequently, it will seek to ensure that with the exception of students, the accommodation proposed is addressing a Brent population specific need.*
15. The appellant stated that the dwelling, because of its size, would be significantly excessive for use by a single family. They also contend that there has been, for a number of years, high demand for this type of HMO in Brent, *providing convenient, affordable and safe homes for residents who have been victims of domestic violence, students on low incomes, vulnerable people with mental illnesses and those receiving benefits from Brent.*
16. Nonetheless, beyond generalised assertions regarding demand, the appellant has provided no detailed or precise evidence to demonstrate that there is a specific Brent need for this type of accommodation. Consequently, I find that the development is contrary to Policies BH7 and BH10 of the Local Plan.

Standard of accommodation

17. I acknowledge that standards for HMO licences serve a different purpose, namely ensuring accommodation meets a minimum standard for human habitation however, the justification to Policy BH7 states that HMOs must meet the standards of Brent's HMO licensing scheme, including minimum room sizes.
18. In this case the property is licensed for up to 17 people however, the appellant stated that there have never been more than 10 occupants. Whilst the Council disputes this and having regard to photographs of bedding on some floors, since this is a matter which could be secured by condition, it is reasonable to base my assessment on 10 occupants.

² The Brent Strategic Housing Market Assessment 2018

19. I was unable to see inside all the rooms at my visit however, floor plans have been provided. It seems to me that the rooms are reasonably sized. Further, there is access to two kitchens, that on the first floor being modest in size but the ground floor kitchen/diner is reasonably large. There is a rear garden although, it appears that only the occupants of rooms two and four have access to this space. Nevertheless, given the generally reasonable size of the rooms and that the property has an HMO license for up to 17 people, on balance, I find the accommodation provides adequate living conditions for 10 occupants. Therefore, there is no conflict with Policies BH7 and DMP1 in respect of the standard of accommodation or the amenity protection aims of the National Planning Policy Framework (the Framework).
20. The Council referred to Policy D6 of the London Plan 2021 which relates to housing quality and standards. Whilst in the absence of explanation I do not find this policy relevant, it appears that it would in any event comply with the minimum gross internal floor area and those for bedrooms.

Character and living conditions of neighbouring occupants

21. The property is semi-detached and occupies a corner position, with a road to the side and a reasonably busy road to the front. There are shops and businesses in the immediate vicinity fronting Woodcock Hill where it meets the busier mixed-use area on Kenton Road.
22. I acknowledge that compared to use by a single-family functioning as a single household, the character of the property's use as an HMO is likely to be different. For example, comings and goings to and from the property are likely to be more frequent given the property could be occupied by unrelated individuals or couples. There is also potential for general disturbance to be caused to nearby residents due to an increase in residential activity associated with the level and character of the use of the property.
23. However, I am mindful that the property has been operating as an HMO since 2015 and whilst the Council have raised general concerns, they have provided no explanation as to how this HMO has had an unacceptable impact on the character of the area nor, have I any substantive evidence that the use has caused, or is causing, unacceptable noise and disturbance. Having regard to this and the location of the property, on balance, I find no conflict with the aims of Policy DMP1 of the Local Plan in so far as it aims to protect living conditions, or the amenity protection aims of the Framework.

Parking

24. With a Public Transport Accessibility Level (PTAL) rating between 3 and 4 it is evident that occupants of the HMO can easily access public transport and I observed at my visit that the site is within easy walking and cycling distances of services and facilities.
25. I recognise that if occupants of the appeal property all had cars this would increase pressure for on-street parking in the area. However, considering the type of accommodation, which the justification to Policy BH7 states, is likely to be aimed at people with limited accessibility to personal transport, and the accessibility of services and facilities by non-car modes, I consider this reduces the desire to own a car.

26. There is off-street parking for two vehicles at the front of the property and I saw at my visit that there is limited on-street availability in the vicinity of the site. In the absence of evidence, that there is a material shortage of parking or that the use is resulting in excessive on-street parking or inconsiderate parking that is causing highway safety issues, I find there is no harm and no conflict with Policy BT2 of the Local Plan which sets out maximum standards.

Other Matters

27. The appellant's case under ground (f) is essentially that the requirements of the notice are excessive since the property could be used as a Class C4³ HMO. However, since permitted development rights are not granted retrospectively and bearing in mind the effect of Article 3(5) of the GPDO⁴, the use as a C4 HMO could only be lawfully implemented once the notice has been complied with and the property returned to its lawful use as a single dwellinghouse.
28. Such a fallback can attract significant weight as a material consideration however, there must be a realistic prospect of the fallback being implemented. In this case whilst the appellant stated that they could use the property as a C4 HMO, I have no evidence to indicate that there is a real prospect that they would once the notice has been complied with implement the use as a C4 HMO. Consequently, and whilst I acknowledge that the C4 use would have a similar effect, I cannot be certain that it represents a realistic fallback and is therefore a matter of limited weight in my assessment.
29. Whilst the current occupants could lose their home, in this case, I am satisfied that the legitimate planning policy aims to manage the use of housing in the borough can only be adequately safeguarded in this instance by dismissing the appeal and upholding the enforcement notice. This course of action would be a proportionate response necessary in the wider public interest.
30. I acknowledge that the appellant did not intend to breach planning controls nor was there any deliberate concealment. However, these and the appellant's misgivings about the Council's approach to the investigation are matters which have no bearing on the planning merits of the development.

Conclusion on ground (a)

31. Whilst the HMO does not harm the character of the area or the living conditions of neighbouring occupants, is located in an area with good access to public transport and other amenities, is of an acceptable quality meeting appropriate standards for the needs of its occupants and there is no evidence it will lead to an over-concentration of the type of accommodation in the area, these considerations do not outweigh the conflict with Policy BH10 in so far as it has not been demonstrated that there is a specific Brent need for the HMO.
32. As such, the use as an HMO is contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.

³ Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO)

33. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

34. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the unauthorised use of the property should cease, and the layout be returned to reflect that of a single dwellinghouse. I therefore find that the purpose of the notice is to remedy the breach of planning control.

35. I have considered the appellant's argument that the requirements are excessive since the property could be used as a C4 HMO as permitted development, under ground (a).

36. It is a well-established principle 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.

37. It seems to me, in the absence of any evidence to the contrary, that the number of bathrooms, kitchens and the layout of the premises have facilitated the unauthorised use. Consequently, the removal of all but one kitchen and all but three bathrooms is necessary, along with the other steps, to secure the cessation in the use of the premises as an HMO.

38. The requirement to cease the use as an HMO would in effect prevent the appellant from exercising permitted development rights in respect of the change of use to a Class C4 HMO, once the property was returned to the previous lawful use as a Class C3 single dwellinghouse. There is no evidence before me to suggest that such rights are restricted in respect of this property and consequently, in this regard the requirement is excessive. I shall therefore vary the requirement to refer to use as an HMO occupied by more than six people, this reflects the breach of planning control.

39. I shall vary Step 1 of the requirements to reflect my finding on this matter and to this limited extent the appeal on ground (f) succeeds.

Conclusion

40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR

E/16/0070 - 2 Woodcock Hill, Harrow, HA3 0JG

**Brent**

Plan referred to in Town Planning Enforcement Notice
Site address: **2 Woodcock Hill, Harrow, HA3 0JG**
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