



Appeal Decisions

Site visits made on 7 June 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2022

Appeal A Ref: APP/A5270/C/19/3230634

58 Western Avenue, Acton, London W3 7TY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anton Marmot against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 10 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to 11 self-contained residential units.
 - The requirements of the notice are to:
 - A. Cease the use of the property at [sic] 11 self-contained residential units;
 - B. Remove the kitchens and drainage connections from each of the 11 self-contained residential units;
 - C. Remove the bathrooms and drainage connections from each of the 11 self-contained residential units;
 - D. Remove the internal partitions that facilitate the subdivision of the property into 11 self-contained residential units;
 - E. Remove all resultant debris.
 - The periods for compliance with the requirements are: Six months for requirement A and 12 months for requirements B, C, D and E.
 - 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. 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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Appeal B Ref: APP/A5270/C/19/3230643

60 Western Avenue, Acton, London W3 7TY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anton Marmot against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 10 May 2019.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the property to 11 self-contained residential units.
 - The requirements of the notice are to:
 - A. Cease the use of the property at [sic] 11 self-contained residential units;
 - B. Remove the kitchens and drainage connections from each of the 11 self-contained residential units;
 - C. Remove the bathrooms and drainage connections from each of the 11 self-contained residential units;
 - D. Remove the internal partitions that facilitate the subdivision of the property into 11 self-contained residential units;
 - E. Remove all resultant debris.
 - The periods for compliance with the requirements are: Six months for requirement A and 12 months for requirements B, C, D and E.
 - 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. 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: Appeal A Ref: APP/A5270/C/19/3230634

1. It is directed that the enforcement notice is corrected and varied by:
 - At section 5, requirement A, the deletion of the word 'at' and the substitution with the word 'as' so that it reads 'Cease the use of the property as 11 self-contained residential units'.
 - At section 5, the deletion of the word 'six' and the substitution with 'twelve' so that it reads 'You are required to complete action 'A' within twelve months from the date this notice takes effect...'
2. Subject to the correction and variation above, 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.

Decision: Appeal B Ref: APP/A5270/C/19/3230643

3. It is directed that the enforcement notice is corrected and varied by:
 - At section 5, requirement A, the deletion of the word 'at' and the substitution with the word 'as' so that it reads 'Cease the use of the property as 11 self-contained residential units'.
 - At section 5, the deletion of the word 'six' and the substitution with 'twelve' so that it reads 'You are required to complete action 'A' within twelve months from the date this notice takes effect...'
4. Subject to the correction and variation above, 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.

Applications for costs

5. Applications for costs have been made in respect of both appeals by Mr Anton Marmot against the Council of the London Borough of Ealing. Applications for partial awards of costs have also been made in respect of both appeals by the Council of the London Borough of Ealing against Mr Anton Marmot. These applications are the subject of separate Decisions.

Preliminary Matters

6. The appellant initially requested that the appeal be determined by way of an inquiry. The appellant states for issues of human rights, an inquiry would give the tenants the chance to make their voices heard. Section 319A of the Act gives the Secretary of State (SoS) the power to determine the procedure for dealing with enforcement appeals. In this case, the SoS determined that, given the grounds of appeal, the evidence does not need to be tested under oath and can be appropriately considered under the written representations procedure. Interested parties, including occupants of the appeal properties, have been given the opportunity to participate through this appeal and I am satisfied no-one has been prejudiced by me dealing with the appeal in this way.
7. Since the enforcement notice was issued, the London Plan 2021 has been published. The Council has provided me with copies of relevant policies and the

appellant has been given the opportunity to comment on the implications of these policies through the appeal process and so I shall take them into account in my decision.

Ground (a)

8. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged. Although Appeals A and B concern different properties, given the similarity between the subject matters, I shall consider the ground (a) appeals together.

Main Issues

9. The main issues of the appeals are the effect of the appeal scheme on:

- The living conditions of the occupants of the flats, having regards to internal living space;
- The living conditions of the occupants of the flats, having regards to the provision of external amenity space;
- The living conditions of occupants of the flats and neighbouring occupants, having regards to noise and disturbance; and
- The character and appearance of the area.

Reasons

Living conditions – Internal living space

10. No 58 and 60 have each been subdivided into 11 self-contained units. Each unit has its own kitchen facilities and en suite bathroom. To the rear of the premises is a paved area which is shared between the two properties and an outbuilding with a boiler and washing facilities. Room sizes within the properties vary, ranging from around 14 square metres (sqm) up to around 24sqm.
11. Policy 3.5 of the Ealing Development Management Development Plan Document (DPD)(2013) seeks quality housing developments and makes reference to the space standards set out in the London Housing SPG, which have now been incorporated into the revised London Plan. Policy D6 of the London Plan (2021) states that housing development should be of high quality design and provide adequately sized rooms. Table 3.1 sets out the minimum gross internal floor areas. For a one storey dwelling, the requirements are 39 (37) square metres (sqm) for a one person and 50sqm metres for a two person dwelling.
12. While a number of occupants have written in support and confirmed they find the accommodation satisfactory, particularly during the Covid-19 pandemic when sharing facilities is likely to have been less desirable, the London Plan explains that ensuring homes are of adequate size and fit for purpose is crucial in an increasingly dense city. The space standards are minimums and apply to all new self-contained dwellings of any tenure. The space within the units falls significantly below the required 37sqm set out in the London Plan and therefore fail to provide satisfactory living conditions for occupants and future occupants,

contrary to policy 3.5 of the DPD and policy D6 of the London Plan, the requirements of which are set out above.

13. Planning permission 201195FUL was granted on 18 November 2020 for the change of use of No's 58 and 60 Western Avenue from single dwellinghouses (Use Class C3) to two Large Houses in Multiple Occupation (HMO) with a combined total of 16 rooms and 20 occupants (Use Class *Sui Generis*)(Retrospective Application in a Modified Form). I note that HMO licences have also been obtained for the properties.
14. In considering the appeal under ground (a), I can only consider the whole or any part of the matters. The properties have been converted to self-contained flats, whereas what is permitted under 20195FUL is an HMO. The layout of the buildings would be significantly different, with substantial kitchen and living/dining areas on the respective ground floors and kitchen/dining areas on the first floors. Kitchen facilities would be removed from the individual bedrooms and each property would have 8 bedrooms and up to 10 occupants.
15. Whilst I have had regard to case law *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566, *Bhandal v SSHCLG & Bromsgrove DC* [2020] EWHC 2724 (Admin); [2021] JPL 611 EN and *Miaris v SSCLG & Bath and NE Somerset Council* [2015] EWHC 1564 (Admin), [2016] EWCA Civ 75, *Alderson v Secretary of State for Communities and Local Government* [2017] EWHC 1415 (Admin), *Arnold v Secretary of State for Communities and Local Government* [2017] EWCA Civ 231 commended to me by the appellant, I consider that the planning permission does not form any part of the matters stated in the notice.
16. I acknowledge even future development prospects can be taken into account in support of a development proposal, as held in *Tower Hamlets LBC v SSHCLG* [2019] EWHC 2219 (Admin), and whilst I do not consider the planning permission constitutes part of the matters, it is clearly a fallback position. However, while the room sizes permitted under 20195FUL were held to be acceptable by the Council, that is for a different development. Occupants of the HMO rooms would have access to communal living areas, whereas occupants of the appeal units are likely to spend most of their time in their rooms, since there are no communal living areas, and the outside space is limited.

Amenity Space

17. Policy 7B of the DPD seeks to ensure coherent development of the site. The justification of the policy explains to achieve coherent development, schemes should ensure high quality external spaces offering good amenity to users. Where development increases demand for open space, policy 7D of the DPD seeks to secure an appropriate contribution towards meeting this additional demand.
18. Table 7D.2 sets out private garden space provision requirements of 5sqm per 1-2 person unit, plus 1sqm for each additional occupant for a house or flat. The Planning New Garden Space Supplementary Planning Document (SPD)(2015) advises that this is a minimum standard and will be required of all residential development.
19. To the rear of the dwellings, the boundary between the two gardens has been removed to create a single space with an outbuilding, which serves No 58 and 60. The space is modest, and while it is no different to the space which would

be available to occupants of the building in the event the appellant implements permission 201195FUL, the space serves at least 2 additional individuals.

20. Furthermore, the space to the rear space is shared by the occupants of the other units of Nos 58 and 60 and while the front gardens are available to the occupants, they are not private space. Although occupants of the HMO would also share the outside space, they would also be sharing other living space within the buildings and would not therefore expect the same levels of privacy as an occupant of a flat.
21. While public open space may meet the recreational needs of occupants, I did not see any meaningful open space within the vicinity of the site. I consider occupants of the buildings are unlikely to choose to walk to Wormwood Scrubs Park regularly given its distance from the appeal site. Furthermore, public open space would not meet the day to day needs for activities such as drying clothes. The lack of private garden space is, in my view, harmful to the living conditions of occupants and contrary to policies 7B and 7D, the requirements of which are set out above.

Living conditions: Noise and disturbance

22. Policy 7A of the DPD seeks to ensure that development does not erode the amenity of surrounding uses or the site itself and policy 7B of the DPD seeks to ensure development achieves a high standard of amenity for users and for adjacent uses. Policy D3 of the London Plan seeks to deliver appropriate amenity and prevent or mitigate the impacts of noise, amongst other things.
23. Although the appeal buildings provide accommodation for up to 11 different households, were I to uphold the notice, each of the buildings could be occupied by up to 10 different individuals. In terms of comings and goings, this would generate a similar level of noise and disturbance to occupants of the appeal buildings and neighbouring occupants.
24. Furthermore, I note that no complaints regarding noise have been received by the Council and occupants have not raised concern regarding noise. While the absence of complaints does not mean that noise is not an issue at a property, I consider the layout of the units, with bathrooms generally positioned away from sleeping areas, noise levels are unlikely to be harmful.
25. Consequently, I consider there is no harm arising from noise and disturbance from the appeal scheme and no conflict with policies 7A and 7B of the DPD and policy D3 of the London Plan, the requirements of which are set out above.

Character and appearance

26. The appeal properties comprise a pair of semi-detached dwellings which front onto the A40, which has multiple carriageways and lanes. The character of Western Avenue is varied, with multistorey flatted developments sitting alongside modest two and three storey residential and commercial properties. Although the buildings have clearly been modified over time, the notice does not attack any such external works, nor does it require such works to be removed.
27. The Council suggests the material change of use to self-contained flats is out of character with the area. However, were I to uphold the notice, the appellant could convert the buildings to HMOs for up to 20 individuals. In terms of the

character and appearance of the area, I consider the effect is likely to be very similar. Given the varied character of the area, I consider there is no harm to the character and appearance of the area and no conflict with policy 7.4 of Ealing's Adopted Development Management DPD (2013), which seeks to protect local character and policy D3 of the London Plan (2021) which seeks development which responds to the existing character of a place, amongst other things.

Other Matters

28. Two interested parties have raised concern about accommodation within one of the buildings. The concerns raised, however, appear to relate to the management of the property rather than its acceptability in planning terms.
29. The appellant has drawn my attention to appeal decision APP/A5270/W/19/3234079, however, it relates to the conversion of a single dwellinghouse into a Large House in Multiple Occupation (HMO) and is therefore not comparable to the appeal scheme before me.

Conclusion on Ground (a)

30. While I have found the appeal schemes do not harm the character and appearance of the area or the living conditions of occupants and neighbouring occupants with regards to noise and disturbance, these are neutral factors in my consideration of the appeals. The appeal schemes fail to provide satisfactory living conditions for their occupants.
31. Thus, I conclude that the developments conflict with the development plan as a whole and there are no material considerations which indicate that the decisions should be taken otherwise in accordance with the development plan.

Ground (f)

32. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by the matters stated in the notice, or... to remedy any injury to amenity which has been caused by any such breach.
33. As confirmed in *Mata v SSCLG* [2012] EWHC 3473 (Admin), it is important to construe the enforcement notice which has been issued. It is clear from the wording of the notice that its purpose is to remedy the breach of planning control.
34. Section 173 of the Act sets out that a notice may remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. Planning permission has been granted for two *sui generis* HMOs. The appellant suggests that to avoid any residual aspects of the notice causing disproportionate prejudice to the appellant and his tenants, the notices should be quashed.
35. I accept that the enforcement procedure is intended to remedial rather than punitive. As set out in *Tapecrowns Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744 I have wide powers to decide whether there is any solution, short of a complete remedy of the breach, which is acceptable in planning and

amenity terms. However, were I to quash the notice and grant planning permission for the development already carried out, this would be for materially different development, which for the reasons set above, I have found to be unacceptable in planning and amenity terms.

36. The alterations to create the *sui generis* HMOs would involve extensive internal alterations to remove the cooking facilities from the flats and the removal of some internal partitions to create communal areas at ground and first floor. The level of occupation would also be reduced. While an appeal under ground (a) and (f) can be used together to achieve more than could be gained under (f) alone, it does not give me the power to grant permission for development which does not form part of the matters alleged in the notice.
37. The Council suggest that the notices should be varied to enable the appellant to comply with the respective planning permissions. However, the planning permission was granted on 18 November 2020, after the enforcement notices had been issued. Section 180 of the Act sets out that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Since the planning permission was granted after the enforcement notices had been issued, it is unnecessary for me to vary the requirements of the notice.
38. The appellant states the previous use of the buildings was single dwellinghouses. While the properties would previously have had partitions, the requirements only require the removal of those internal partitions that facilitate the subdivision of the property into 11 self-contained units. Their removal is therefore not excessive.
39. From my inspection of the site, I consider it highly likely that the kitchens and bathrooms and their associated drainage connections, have been installed to facilitate the change of use. They are all modest in size, appear relatively new and are therefore unlikely to have served the properties when they were single dwellinghouses. Consequently, it would not be excessive to require their removal.
40. Section 57(4) of the Act sets out that where an enforcement notice has been issued, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. Thus, should the appellant choose not to implement the HMO planning permission, he could revert the buildings to two single dwellinghouses and install kitchens, bathrooms and drainage connections as part of the lawful use since the provisions of section 180 of the Act would ensure that the notices cease to have effect so far as inconsistent with the permission granted by section 57(4).
41. The appellant has drawn my attention to APP/A5270/C/16/3145183. However, in that case, the Inspector was provided with a plan and suggested variations to the requirements, which the appellant accepted would deal with the excessive requirement to remove sub-divisions. As pointed out by the Council, the Inspector in that case found the lawful use of part of the building was as two self-contained flats, whereas in this case planning permission was granted after the enforcement notices were issued. It is therefore not comparable to the appeal scheme before me.

42. I note the appellant's concerns regarding the conditions attached to the above permission. However, it was open to the appellant to appeal those conditions following the grant of planning permission. It is not open to me to consider the appropriateness of those conditions through this appeal.

43. Thus, for the reasons given above, the appeals under ground (f) must fail.

Ground (g)

44. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant requests a considerable extension to the compliance period and asks that the facts of the 'current health crisis' and economic downturn should be taken into consideration.

45. I saw that the units appear to be occupied and am advised that the form of tenancy agreement is Assured Shorthold Tenancy (AST), which the length of agreement of is either 6 or 12 months. While some of the tenants may wish to remain in the property following its conversion to an HMO, given the works involved and the reduction in the number of occupants, at least some of the current occupiers are likely to need to relocate.

46. It may be possible to minimise disruption to existing tenants by allowing a longer compliance period for the cessation of the use, so that works can be done in stages. Given the number of occupants across the two properties and the extent of the works that would be required to convert the buildings, I consider it would be reasonable and proportionate to extend the compliance period for requirements A to 12 months. Since the overall compliance periods would not be extended, this would not undermine the reasons for taking enforcement action.

47. The appellant has raised concern regarding the effect of the Coronavirus pandemic on their ability to comply with the notices. However, since the appellant's submissions in this regard, circumstances relating to the pandemic have significantly changed and restrictions on eviction notice periods have since returned to pre-pandemic periods. While possession proceedings may still be affected by the pandemic and the current economic situation, extending the period of compliance to 12 months for requirement A would assist in this regard.

48. Furthermore, as the Council points out, should the appellant have genuine issues in securing the eviction of tenants, the Council can use its discretionary power under section 173A(1)(b) of the Act.

Conclusion

49. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeals on ground (g) succeed to that extent.

M Savage

INSPECTOR