



Appeal Decision

Site visit made on 22 November 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2023

Appeal Ref: APP/T5150/C/22/3293655

6 Logan Road, Wembley, HA9 8PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Marius Solovastru against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/20/0257, was issued on 18 January 2022.
- 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) and flats and the erection of a single storey extension and canopy extension to the rear of the premises.
- The requirements of the notice are to: (1) Cease the use of the premises as an HMO and flats; (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; (3) Remove all bathrooms and bathroom facilities, except two, from the premises and remove all associated items, debris and materials arising from this removal from the premises; (4) Remove all partition walls facilitating the unauthorised change of use of the premises and remove all associated items, debris and materials arising from this removal from the premises, so that the internal layout of the premises is returned back to a single-family dwellinghouse; (5) Demolish the single storey rear extension and remove all associated items, debris and materials arising from this demolition from the premises; and (6) Demolish the rear canopy extension and remove all associated items, debris and materials arising from this demolition from the premises.
- The period for compliance with the requirements is: 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Act. 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 permission is granted for the single-storey extension to the rear of the premises, but otherwise the appeal fails, and the enforcement notice is upheld as varied in the terms set out in the Formal Decision.

Application for costs

1. An application for costs, made by the Council of the London Borough of Brent against Mr Marius Solovastru, is the subject of a separate Decision.

Preliminary matter

2. The Council adopted the Brent Local Plan 2019-2041 ("the BLP") around the time the appeal was made. The adopted versions of policies DMP1, BH10, BH11 and BH13 were identified in the Council's statement of case and were therefore available for comment by the appellant.

The appeal on ground (b)

3. The appeal on this ground is limited to the use of the building. To succeed, the appellant needs to show that, in the period leading up to the issuing of the notice, and on the date of issue, the alleged change of use of the building to an HMO and flats had not occurred.
4. The notice does not state how the building is alleged to have been divided between the HMO and the flats, nor how many flats had been formed, or whether any flat was self-contained. The appellant contends the entire building was in use as an HMO occupied by not more than 6 residents when the notice was issued and that, while rooms within the HMO had included 'small kitchenettes', these were secondary to a communal kitchen.
5. An application to licence an HMO under the Housing Act 2004, made in July 2020, confirms that 2 self-contained flats (rooms 1 and 2) were then occupied on the ground floor. An accompanying plan shows a kitchen with oven and hob, heat and carbon monoxide detectors and a fire blanket in each flat, where the rooms now described as kitchenettes are. This evidence indicates that, as a matter of fact and degree, each of these flats had all the facilities required for day-to-day living. The flats were therefore separate units of occupation and did not form part of the HMO.
6. The remainder of the building included 3 rooms, none with dedicated cooking facilities, served by a communal kitchen. The building therefore comprised an HMO and 2 flats in July 2020, indicating that the alleged change of use had occurred. There is no suggestion that any other flats had been formed when the notice was issued, so it is reasonably clear what it attacks.
7. The appellant states the kitchens associated with the 2 flats were secondary to the communal kitchen, making the entire building an HMO. He also states that he would not have installed the communal kitchen if he had intended to create a development of self-contained flats. However, the communal kitchen was always needed to serve rooms 3, 4 and 5, which are not flats, and there is no evidence that the tenants occupying rooms 1 and 2 used it. This aspect of the appellant's case contradicts the detailed evidence presented in the July 2020 licence application but is not supported by documentary evidence, such as the terms of the tenancies relating to rooms 1 and 2.
8. The ovens and hobs were subsequently removed from the kitchens associated with rooms 1 and 2, but it is not agreed when that was. The appellant does not specify a precise date but states it was after an enforcement officer visited in July 2021 and before the notice was served on 18 January 2022. While photographic evidence indicates that the ovens and hobs had been removed by 21 February 2022, that was after the notice had been issued.
9. Removing ovens and hobs from the kitchens would have been a significant change for the affected tenants, possibly altering the terms of their tenancy agreements, and would have required prior notice and co-operation. The lack of a precise date for the works prior to the date on which the notice was issued, for example in formal communication to the tenants, undermines the credibility of the appellant's claim.
10. In contrast, a note of a licensing inspection undertaken on 21 February 2022, over a month after the notice was issued, records 3 kitchens within the

building. While I note the appellant's view that the licensing officer may have used the word 'kitchen' as shorthand, or in a casual way, that appears to be supposition that is not supported by the detail in the inspecting officer's note.

11. The note records room 1 as "with kitchen (own door)", which tallies with my observation that there is no lock on the door between room 1 and the kitchen. The kitchen associated with room 2 is recorded as "for use of rear bedroom only" and it seems unlikely the licensing officer would have formed that opinion without reasonable evidence gained through observation or advice.
12. Photographs sent by the appellant to his agent on the same day as the licensing inspection purport to show that the ovens and hobs had been removed from the kitchens associated with rooms 1 and 2. However, they only show one kitchen, most likely that associated with room 1, and do not confirm whether those facilities had been removed before the notice was issued, over a month earlier, as claimed.
13. A communication sent from a Council officer to the appellant on 7 February 2022 referred to "laundry/storage rooms within rooms 1 and 2". That appears consistent with the appellant's claim that the kitchens had become restricted to those purposes after the ovens and hobs were removed. However, the communication was provided in the context of pre-application advice, and it is unclear whether the laundry/storage rooms under discussion were existing or proposed features. Furthermore, it does not confirm that the rooms had ceased being used as kitchens when the notice was issued some 3 weeks earlier.
14. While neither of the kitchens associated with rooms 1 and 2 included cooking facilities by the time of my site visit, the foregoing evidence is not precise as to when those facilities were removed. It has therefore not been demonstrated, on the balance of probability, that the use of the building as an HMO and flats, which had been instituted in July 2020, had ceased in the period leading up to the issuing of the notice or on the date it was issued.
15. For these reasons the appeal on ground (b) must fail.

The appeal on ground (c)

16. The appeal on this ground relates to the use of the building, not the operational development comprising the extensions. To succeed, the appellant needs to demonstrate that the change of use to an HMO and flats does not constitute a breach of planning control because it is not development or does not require planning permission. While the appellant disputes that a change of use to an HMO and flats had occurred, he accepts that such a change of use is development.
17. The building was previously used as a single dwellinghouse and a change of use from that to use as a small HMO, occupied by not more than 6 residents, may be permitted development. This would be by reason of Article 3 and Schedule 2, Part 3, Class L ("Class L") of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order"). However, I have found that the building was instead converted to an HMO and flats, as alleged, and no permitted development right to change the use of a building from an HMO and flats to an HMO has been identified. Furthermore, the single-storey extension is unauthorised and Article 3(5)(a) of the Order prevents Class L from granting planning permission in those

circumstances. Accordingly, the material change of use alleged in the notice is development requiring planning permission.

18. For these reasons the appeal on ground (c) must fail.

The appeal on ground (a)

19. The appeal on this ground, and the deemed planning application ("the DPA"), are limited to the operational development comprising the single-storey extension to the rear of the premises. While the canopy extension has been removed, the parties do not agree whether it was still in place when the notice was issued.

20. The main issues are therefore the effect of the single-storey extension on:

- The character and appearance of the area.
- The living conditions of neighbours and occupiers of the premises.

Character and appearance

21. Logan Road is a quiet residential road of early to mid C20th semi-detached housing and is characteristic of the surrounding area. Highway verges are broken by wide crossovers that typically lead to hard surfaced car parking areas in front of houses. There are few street trees.

22. The single-storey extension is not visible from the road or from any other public area, so its effect on character and appearance is largely dependent on how it may be perceived from surrounding dwellings and private gardens.

23. Single-storey flat roofed rear extensions are not unusual in the area. The Council had confirmed that such an extension, 6m deep and 3m high ("the original design"), was permitted development as an extension to a dwellinghouse and would not require prior approval¹. However, the extension as built was constructed to facilitate the different use of the premises as an HMO and flats, not as a dwellinghouse, and so was not permitted development. Furthermore, while there are differing reports of the depth of the extension, a plan submitted with the HMO licence application has a scaled internal depth of 6.104m. This indicates that the external depth of the built extension is greater than the 6m depth that had been confirmed to not require prior approval.

24. The appellant contends an extension to the original design is an available fall-back if the appeal were to fail. Subject to completely dismantling the current extension first, construction of the fall-back is feasible, although it would be challenging with tenancies in place. Furthermore, it could only be permitted development if the building were to be used as a dwellinghouse, which could include an HMO occupied by not more than 6 residents. That would appear to be the appellant's intention if the appeals on grounds (b) and (c) were to fail and the use as an HMO and flats were to cease.

25. An agreed measurement by which the extension exceeds the 6m depth of the permitted development fall-back has not been provided. Nevertheless, when viewed in context, the extension is broadly comparable with what could have been built in other circumstances. The design and materials do not appear out of keeping with the character of the main building or of residential extensions

¹ 19/4353, determined 17 January 2020.

and outbuildings found nearby. It therefore complements the locality and accords with policy DMP1 of the BLP in that respect.

Living conditions

26. Policy DMP1 also requires the extension's siting, layout, scale, type, density, materials, detailing and design to provide high levels of internal and external amenity. This must be considered in terms of the amenity of the occupiers of neighbouring dwellings and the occupiers of the building itself.
27. 4 Logan Road has a single-storey rear extension and a nearby flat roofed outbuilding. The outbuilding projects further than the extension to No. 6 but is set at a lower level. Owing to its scale and form, and this change in level, the extension will be visible in part over the boundary fence and therefore have some effect on the neighbour's outlook. However, none of the presented evidence, nor my observations of the site and its surroundings suggest that the occupiers of No. 4 do not enjoy a high level of internal and external amenity.
28. The single-storey extension also projects some distance beyond 8 Logan Road, which has not been extended to the rear. It therefore has some effect on the outlook from ground floor rooms to the rear of that property and from the patio area to the immediate rear. However, the extension does not appear to be much deeper than would have been built if the original design had been implemented, and it appears identical in terms of height.
29. Regardless of the practicality of implementing the original design as a fall-back, it was found to be permitted development not requiring the Council's prior approval. It is thus of a scale deemed to be generally acceptable in terms of its effect on the living conditions of neighbours. While the precise difference in depth between the original design and the extension as built has not been specified, it has not been shown that this has made the latter unacceptable. Consequently, I have no reason to believe that the occupiers of No. 8 would not enjoy a high level of amenity if the extension were to remain.
30. As part of the foregoing assessment, I have noted the absence of concern about the construction of the extension from either neighbour. While a neighbour suggests the single-storey extension may have been used for an unspecified commercial purpose, the notice does not attack any commercial use, so this is beyond the scope of the appeal. The same representation appears to allege that music lessons have been given in the outbuilding at the foot of the garden. However, the notice is silent on this, and it is therefore also beyond the scope of the appeal.
31. The Council contends that the "change of use and development", which must include the single-storey rear extension, have a significant impact on the living conditions of current and future occupiers of the premises. However, it is not made clear what effect, if any, the extension alone has in this regard.
32. While an extension might increase the amenities provided within a building for its occupiers, it could also entail a loss of external amenity space, which could prove unacceptable in some circumstances. Policy DMP1 of the BLP requires all development to provide a high level of external amenity but does not set standards for this. The private outdoor space requirements in London Plan policy D6 therefore apply and are exceeded. The single-storey extension

therefore accords with relevant development plan policies relating to living conditions and is acceptable in that regard.

Other Matters

33. Although not cited in its reasons for issuing the notice, the Council expresses concern about additional on-street parking demand on Logan Road. However, that concern is expressed in terms of the change of use, not the single-storey extension the subject of the DPA. No policy requirement for a residential extension to be accompanied by off-street parking provision has been identified.

Conclusion on ground (a)

34. For the reasons given, the operational development of the single-storey extension to the rear of the premises accords with the development plan as a whole and is acceptable. No planning conditions have been suggested by either party and I shall grant unconditional planning permission for this aspect of the development only.

The appeal on ground (f)

35. The appellant suggests the removal of all kitchens and cooking facilities except one (step 2) is all that would be required to remedy the breach insofar as it relates to the use of the premises. There is some consistency between this line of argument and his contention that the use of the premises as an HMO and flats had ceased, because ovens and hobs had been removed from the kitchens associated with rooms 1 and 2, when the notice was issued.
36. Nevertheless, it is not clear when the ovens and hobs were removed, so it has not been demonstrated that the use of the premises as an HMO and flats had been ceased when the notice was issued. Therefore, the requirement to cease the use of the premises as an HMO and flats (step 1) does not exceed what is reasonably required to remedy the breach of planning control.
37. In the alternative, the appellant contends that step 1, the cessation of the use, is the appropriate remedy and that the removal of additional kitchens, bathrooms, and partitions (steps 2, 3 and 4) goes beyond that. While I appreciate the logic of that argument, it seems clear that the kitchens associated with rooms 1 and 2 were installed to facilitate their alleged use as flats. The same can reasonably be said of partition walls. A notice may reasonably require the removal of such works if they are integral to the material change of use, even if they do not constitute development requiring planning permission in their own right².
38. Accordingly, steps 2 and 4 do not exceed what is reasonably required to remedy the breach of planning control. While the notice does not specify which partition walls would need to be removed, the appellant will know which walls were installed to make the building capable of being used as an HMO and flats.
39. Matters are not so clear with step 3, the removal of all but two bathrooms. While not every bedroom in a dwellinghouse might have an en suite bathroom, it is not uncommon for a dwellinghouse to have more than one bathroom, which may include at least one en suite. Nevertheless, there is no evidence of

² Somak Travel v SSE & Brent LBC [1987] JPL 630

the number of bathrooms in the building before the use as an HMO and flats was instituted. Nor is there evidence that the en suites were formed other than as part of the works that facilitated the change of use alleged in the notice. It has therefore not been demonstrated that the requirement to remove all but two bathrooms from the building exceeds what is reasonably required to remedy the breach of planning control.

40. Nevertheless, the notice relates to the entire property, including an outbuilding at the foot of the back garden that also includes a bathroom. However, no use of the outbuilding as a flat or as part of the HMO has been alleged, so this bathroom cannot have facilitated any such use. The removal of the bathroom from the outbuilding would therefore exceed what is necessary to remedy the breach of planning control and the notice should be varied accordingly.
41. As the appeal on ground (a) will succeed in respect of the single-storey extension to the rear of the premises, the notice will need to be varied by deleting step 5 entirely. While the canopy extension the subject of step 6 has been removed, it is not clear that was done before the notice was issued. Accordingly, the requirement to remove it has not been shown to exceed what is reasonably required to remedy the breach of planning control.

Conclusion

42. For the reasons given above I conclude that the appeals on grounds (a) and (f) should succeed in part and that the appeals on grounds (b) and (c) should fail. I will grant planning permission for the erection of the single-storey extension to the rear of the premises, but otherwise I will uphold the notice with variations and refuse to grant planning permission in respect of the material change of use to an HMO and flats and the erection of the canopy extension.

Formal Decision

43. It is directed that the enforcement notice is varied in Schedule 4 by:
- The deletion of the words "except TWO" and the substitution of the words "except THREE, including the bathroom in the outbuilding at the foot of the back garden" in step 3; and
 - The deletion of the words "Demolish the single storey rear extension and remove all associated items, debris and materials arising from this demolition from the premises" (step 5).
44. Subject to the variations the appeal is allowed insofar as it relates to the single-storey extension. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the erection of the single-storey extension to the rear of the premises at 6 Logan Road, Wembley, HA9 8PX.
45. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the material change of use of the premises to an HMO and flats and the operational development of the erection of a canopy extension to the rear of the premises.

Mark Harbottle

INSPECTOR