



Appeal Decision

Site visit made on 12 January 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/T5150/C/22/3294431

33 Crummock Gardens, LONDON, NW9 0DE

- 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 Bedri Krasniqi against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/21/0046, was issued on 31 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 TWO flats and a House in Multiple Occupation (HMO).
 - The requirements of the notice are to: (1) Cease the use of the premises as flats; (2) Cease the use of the premises as a House in Multiple Occupation (HMO); (3) Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, ensuite bathrooms/shower rooms and toilets; (4) restore the internal configuration to the layout, which existed prior to the unauthorised change of use took place, as shown in Plan A attached to this notice.
 - The period for compliance with the requirements is: six months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (g) 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.
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Decision

1. 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 Act.

Preliminary Matter

2. Since the enforcement notice was issued, the Council have formally adopted the London Borough of Brent Local Plan 2019-2041 (the LP) in February 2022. The enforcement notice referred to the draft policies of the LP. These are not substantially different to the policies within the newly adopted LP and therefore it has not been necessary to revert to the parties on the application of those policies on the appeal scheme as they have already had the opportunity to comment upon them. I have therefore had regard to the policies of the LP in my determination of this appeal.

The appeal on ground (b)

3. In order to succeed on this ground the appellant must demonstrate on the balance of probabilities that the use of the land identified in the notice has not

changed to a use of the land as self-contained flats and a house in multiple occupation (HMO) on or before the date when the notice was issued.

4. It is the appellant's case that when the notice was served the property was a HMO. On this basis, the allegation of two self-contained flats and a HMO is said to be wrong. The matter at issue here is whether any of the units of accommodation were used as flats before the notice was issued.
5. The appellant has provided Drawing No 3014/E1 ("the Plan") as part of their appeal statement which shows the internal layout of the property. However, as the Plan was revised after the enforcement notice was issued and it is not clear to what extent the changes were made, I therefore attach little weight to this matter. In addition, I note that the layout of the property shown on the Plan differs from the current layout, and that the room labelled as 'Common Room' on the plan was set up and in use as a bedroom, whereas the room labelled 'Room 2' was set up as a common room.
6. At the time of my site visit, three of the units, labelled as 'Room 1', 'Room 3' and 'Room 6', on the Plan, are self-contained in that they each have their own double bed or twin single beds, toilet, shower and hand basin. Room 1 and 3 each have an area set out as a kitchen and Room 6 is set on split levels with a kitchen positioned on the first floor at the base of a set of stairs leading up to the sleeping and bathroom area within the second floor. These kitchens include a conventional oven, 4-ring hob, extractor hood, sink and drainer, a number of food storage cupboards, worktop, fridge, freezer and washing machine.
7. In addition, Rooms 1, 3 and 6 also contained a wardrobe, drawers, sofa or easy chair and coffee table. Room 3 also has direct access to the rear garden which is shared with the 'Common Room' and comprises a mix of lawn and patio. These rooms clearly contain the basic facilities referred to within section 254 of the Housing Act 2004.
8. However, it is put to me that by reason of the limited floorspace of each of the rooms, these are too small to accommodate independent living and thus fail to satisfy the *Gravesham*¹ test of 'facilities required for day to day private existence'. Whilst I acknowledge that the *Gravesham* test does not apply to rooms forming part of the HMO, it is reasonable to apply the test to rooms capable of use as self-contained flats. Notwithstanding their limited size, rooms 1, 3 and 6 each had a modest degree of circulation space. Moreover, their kitchen areas are reasonably large and of a more permanent type of installation and the cooking facilities are not basic such that it would be readily possible to undertake all the processes involved in making a meal, including preparing, chopping, washing and cooking food, which would not simply be restricted to the heating up of a meal. In my view, it would be possible to cook an entire meal over a number of hours. Large appliances such as the conventional oven, hob and extractor hoods are hard wired into the mains. Refrigeration and freezing facilities are ample in size to store a considerable volume of fresh food for several days and washing machines are included which enable occupants to wash their clothes within their rooms. To my mind, rooms 1, 3 and 6 each have an ample range of facilities that are not so basic so as to meet the *Gravesham* test.

¹ *Gravesham BC v SSE* (1984)

9. Whilst it is put to me that these kitchens, or a number of them have been installed at the request of the tenants, this does not alter their suitability for everyday use. Furthermore, the 'communal kitchens' are no better equipped than the private ones and their constrained size would make it difficult for two or more residents to prepare and cook a meal at any one time, nor do they offer space or dining facilities for a resident to consume a meal within.
10. The presence of a 'Common Room' is noted. However, with the exception of the ground floor 'communal kitchen', all other rooms, kitchens and common areas are located behind a single lockable door which could restrict other tenants from accessing these areas. There is no evidence before me that demonstrates that the occupiers of the rooms with their own kitchens have used the communal kitchen either in addition to their own facilities or as an alternative to using their own kitchen.
11. Taking everything into account, on the basis of my observations at the site visit, I consider that rooms 1, 3 and 6 have adequate facilities and are large enough to function adequately as a combined living room, dining room and bedroom. They have the characteristics of a dwelling in their own right and they would generally be considered by reasonable people to comprise a dwelling. All of these units were clearly in use when I saw them and to my mind, they all contain the facilities necessary for day to day private domestic existence without needing to use other facilities in the property. Notwithstanding this, for the purposes of this appeal, I am concerned with the situation that existed at the time of the issue of the notice and given the uncertainty regarding the revision of the appellant's drawing, this doesn't lead me to the view that there were three units of self-contained accommodation rather than two at the time the notice was issued.
12. A Planning Contravention Notice completed by the appellant in September 2021 confirmed the use of the property as two flats and a HMO that was in occupation by nine persons. It is put to me that the appellant completed the form without having obtained professional advice. However, the appellant, even though not professionally represented at the time, must have known how the property was laid out and the terms of the relevant tenancies. On this basis, the evidence leads me to the view that the property had been converted into a mixture of self-contained flats and a HMO at the time of issue of the enforcement notice.
13. Notwithstanding that I noted there were three self-contained units at the time of my site visit, the notice is drafted in terms of there being only two units of self-contained accommodation. The enforcement notice does not specify which of the rooms are believed to be 'self-contained'. However, the Council's evidence refers to one of the flats being located partly on the first floor and within the loft conversion and by reason of the layout of the property, I take the view that this reference is to the room labelled as 'Room 6' on the Plan. There is no photographic evidence of what was observed by the Council at the time of their visit in August 2021 as they were precluded from taking a photographic record. However, there is no clear evidence before me to show that a third self-contained unit was in existence at the time when the notice was issued. Nevertheless, the evidence leads me to the view that, on the balance of probabilities there were two self-contained flats within the appeal building at the time the notice was served.

14. For these reasons, having regard to the evidence before me, I consider that it has not been demonstrated that the matters stated in the notice, namely an unauthorised change of use to use of the premises to two flats and a HMO had not occurred. Therefore, the appeal on ground (b) fails.

The appeal on ground (a)

15. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Having regard to the reasons for issuing the notice, the main issues are:-
- i) the effect of the use on the living conditions of occupiers of the appeal property with regards to size of the dwelling, outdoor amenity space, personal, cycle and refuse storage and garden maintenance;
 - ii) the effect of the use on the living conditions of occupiers of the appeal property and neighbouring dwellings having particular regard to noise and disturbance and its effect upon the character of the area; and
 - iii) whether the use accords with development plan policies concerning the loss of a purpose built family dwelling.

Living conditions – size of dwelling, amenity space, storage and refuse

16. The deemed application for planning permission is for the change of use of the premises to a mix of two-self-contained flats and a HMO. The government's 'Technical Housing Standards – Nationally Described Space Standard' (NDSS) document sets out minimum gross internal floor areas (GIA) for different types of dwellings. For a 1-bedroom one person flat, inclusive of a shower, there is a minimum GIA requirement of 37 square metres, increasing to 50 square metres if it is occupied by two persons. For a dwelling set over two storeys, as in the case of 'Room 6', a minimum GIA requirement of 58 square metres is set. Similar requirements are set out within The London Plan (2021) at Table 3.1 to Policy D6. The Council's Design Guide Supplementary Planning Document (SPD1)(2018) endorses these technical housing standards and LP Policy DMP1 requires high levels of internal and external amenity.
17. The appellant advises that all units of accommodation do not exceed 23 square metres. As a result, the self-contained units are small and fall well below the space standards of the NDSS, the London Plan and the LP.
18. In addition, in respect of private outdoor amenity space, 'Room 3' and the 'Common Room', as labelled on the Plan, are the only rooms with direct access to the rear garden via external doors. By reason of the appeal property being a semi-detached property that is built up to the shared common boundary with the adjacent pair of semi-detached dwellings, there is no external route to the rear garden.
19. The only route of access to the garden for other occupants, with particular regard to the occupants of self-contained flat, 'Room 6', is via the 'Common Room'. However, this room is positioned behind a single lockable door and it is not clear whether unrestricted access is achievable. This route would not be suitable if the 'Common Room' were to be in private use, as was evident at the time of my site visit.

20. LP Policy BH13 stipulates that new dwellings will be required to have external private amenity space of a sufficient size which is normally in the region of 20 square metres per flat. Although the rear garden is a mix of lawn and seating areas and is not an unattractive environment to use, it is of limited size and it has not been shown to meet the area requirement of LP Policy BH13. Moreover, despite a fence delineating the boundary between the outdoor seating area of Room 3 and the Common Room, there is no effectual subdivision to the remainder of the garden to facilitate private use. Consequently, even if access could be gained, there would be no privacy at times when residents were to be utilising the area simultaneously. To my mind, setting aside the issue over access, this limits its quality and potential for use as an area of private outdoor amenity space.
21. As the front garden area is laid to hardstanding and directly adjoins the street, this area is not private and together with its use as a parking area, it is not suited to provide an adequate area of private amenity space.
22. The front garden area appears to be the only available space for the storage of cycles and refuse and recycling bins given the lack of external access to the rear of the property and the absence of designated space within the property. The waste receptacles are presently stored to the front of the property which is similar to other dwellings within the street. They were neatly arranged and the property had a tidy exterior with no evidence of littering or dumping of waste at the time of my visit. Adequate on-site space for the storage of refuse is therefore available.
23. Whilst the Council raises concerns regarding the absence of a management plan for waste disposal, in the event that these sort of issues were to arise, the Council has statutory powers to deal with this matter.
24. Similarly, by reason of the space available to the front of the appeal property, there would be sufficient space for the storage of bicycles, which would be capable of being controlled by an appropriately worded planning condition to secure its implementation and retention thereafter. Whilst the provision of cycle and refuse storage to the front of the property would reduce the amount of space available for the off-street parking of vehicles, I note that this matter did not form part of the Council's reasons for issuing the notice, albeit pressure on parking has been referred to within the Council's evidence. Nevertheless, I observed on-street parking to be unrestricted and whilst there was evidently some demand for it, the Council have not provided any compelling evidence to demonstrate that pressure for parking would be increased by a harmful extent as a result of the appeal scheme.
25. Accordingly, I conclude that the appeal scheme fails to achieve adequate living conditions in terms of floorspace for the occupants of the flats and the quantity and quality of private amenity space for all occupants of the property. It therefore conflicts with LP Policies DMP1, BH7 and BH13, together with Policy D6 of The London Plan (2021) and the guidance of SPD1 and NDSS. Among other things, these policies require proposals to be of an acceptable quality and meet appropriate standards for the needs of occupants including external amenity space. Similarly, it would fail to accord with the aims of the National Planning Policy Framework ("the Framework") which concern the creation of places with a high standard of amenity for existing and future users.

26. The Council's reasons for issuing the notice also cite a conflict with LP Policy BH10. However, this policy sets out the exceptional circumstances where development resulting in the net loss of residential dwellings will be supported. The Council have not explained the conflict with this policy and whilst the appeal scheme results in the loss of a family sized dwelling, the appeal scheme would create two self-contained flats and a HMO, and overall it has not been demonstrated that this causes a net loss overall. Thus, I find no conflict with LP Policy BH10.

Living conditions – noise and disturbance

27. The use of the property as flats and a HMO is a different type of occupation to the use as a single dwellinghouse. Although a large family dwelling has the potential to be occupied by a sizeable family including a number of adults, a building in use as a HMO and flats is used differently to a single family dwelling as occupants live separately whilst sharing common areas such as kitchens and living/dining areas. This results in a greater level of activity involved in travelling to work and for leisure and shopping purposes and, in my view, is substantially different to the trip patterns of those within a large single-household dwelling. In this instance, it is also compounded by the presence of two units of self-contained accommodation, whereby those occupants do not share facilities and therefore live separately to the rest.
28. The appeal property is one of a pair of semi-detached two-storey dwellings with accommodation within the roof space. It is located in a predominantly residential area and part way along Crummock Gardens where the layout of dwellings leads to a closely knit arrangement of properties. Consequently, there is the potential for occupants to experience some noise and disturbance due to the dense urban environment. However, the occupation of the property by some nine individuals, each leading their own lives, producing refuse and potentially having the need to park a vehicle or store a bicycle would be likely to generate a level of noise and disturbance that is far greater than a family dwelling. Taken together with the close proximity of other dwellings, noise could easily affect living conditions of neighbouring occupiers in another dwelling and occupiers within the appeal property itself, particularly those occupying rooms with windows facing the front area of hardstanding.
29. I have had regard to there being an absence of comments from third parties and note there is no evidence before me of complaints of noise nuisance or antisocial behaviour having arisen in the past. However, I also note that the property is currently being carefully managed by a person living nearby. There is no guarantee that the status quo will be maintained indefinitely and the existing situation could change in future together with the type of tenant living at the property.
30. Reference is made by the Council to 'substandard construction methods' and the consequent disturbance between units together with the character of the area being effected, however, little substantive reasoning or evidence has been put forward in support of these matters. Notwithstanding these findings, I nevertheless consider that the increased intensity of use described would materially compromise the living conditions of occupants of the appeal property and neighbouring dwellings.
31. Accordingly, for the reasons given above, I conclude that the appeal scheme fails to achieve satisfactory living conditions for occupiers of the appeal

property and neighbouring dwellings with regards to noise and disturbance. Thus, the scheme would conflict with LP Policy DMP1 insofar as this policy requires a high level of amenity and not to unacceptably increase exposure to noise. In addition, it would be contrary to the aims of the Framework insofar as it seeks to create places with a high standard of amenity for existing and future users.

Provision of family housing

32. LP Policy BH11 recognises that the conversion of the existing housing stock into smaller dwellings provides many additional homes across the borough. It allows for the efficient use of existing housing stock through the conversion of larger dwellings albeit it seeks to ensure continued provision of family sized housing of three bedrooms or more that are suitable for occupation by families to meet local need. It goes on to identify the circumstances and exceptions when loss of family housing consisting of three bedrooms or more, to two or more other dwellings is likely to be acceptable.
33. In this instance, in my view, the HMO could be viewed as a 3 or 4-bedroom dwelling as required by criterion b) of LP Policy BH11. As such, the unauthorised change of use has resulted in the provision of a three-bedroom dwelling being re-provided. Whilst the HMO does not have direct access to a garden/amenity space, this is not worded as a mandatory requirement of the policy. However, it has been put to me that the appeal site is located within an area with a PTAL 2 rating and therefore the appeal scheme fails to satisfy all of the circumstances and exceptions set out within LP Policy BH11 and to this extent, there is no adequate justification for the conversion of a family sized dwelling. The appeal scheme is therefore contrary to the requirements of LP Policy BH11, the aims and requirements of which are set out above. In addition, there would be conflict with the aims of the Framework insofar as it seeks to boost the supply of homes and requires the needs of groups with specific housing requirements to be addressed.
34. Reference is also made to there being a conflict with Policy CP21 of the Brent Core Strategy (2010)(CS). However, since the CS has been superseded since the EN was issued, I have determined the appeal before me on the basis of the current development plan.

Other Matters

35. Reference has been made with regards to several appeal decisions concerning applications for a similar change of use. However, the circumstances in those cases are not directly analogous to the appeal scheme and a comparison is of limited relevance in this instance. In the appeals at Bridge Road² and Clifford Way³ the units did not contain conventional ovens and washing machines and in the Prout Grove⁴ appeal evidence was available from a tenant about their use of the communal kitchen to prepare and cook meals, which is not the case here. Similarly, in the Tadworth Road⁵ appeal, the units did not contain the range of facilities present at the appeal property and as such, the Inspectors in deciding those appeals concluded that tenants were reliant on the communal areas to provide some of the facilities required for day to day existence. I have

² APP/T5150/C/20/3245508 – 2 Bridge Road, London

³ APP/T5150/C/20/3245322 – Flats 1-6, 16 Clifford Way, London

⁴ APP/T5150/C/20/3248089 – Flats 1-6, 45A Prout Grove, London

⁵ APP/T5150/C/19/3241370 – 70 Tadworth Road, London

taken into account the layout of the appeal property and the actual use of the rooms therein, thus determining the appeal scheme before me on its individual planning merits.

36. Other appeal decisions have also been cited, albeit those decision letters have not been reproduced as part of this appeal and no particular reference has been made to any specific part contained therein.
37. It has been suggested by the appellant that the appeal property could be converted to a six person HMO in accordance with Permitted Development Rights. However, where unauthorised changes have occurred, the appeal scheme would not benefit from this right and therefore this does not represent a valid fall back position. In any event, I consider that a six person HMO is materially different from the appeal scheme before me and it does not provide adequate justification for the appeal scheme.
38. Reference is made to the appeal site being "well located for shops, services and public transport". This matter is disputed by the Council, stating the appeal site is within an area with a PTAL 2 rating with limited access to public transport and a greater reliance on the use of private vehicles. However, it has not been necessary to form a view on this matter as it would not overcome the harm I have found above. Even if I were minded to agree with the appellant's view, the absence of harm in respect of the appeal site's location would be a neutral matter weighing neither for nor against the appeal scheme.
39. For these reasons, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (g)

40. In order for an appeal to succeed under this ground, I must be satisfied that the period for compliance specified in the notice, namely six months, falls short of what should be reasonably allowed.
41. The appellant states that, independently of the time required for the works necessary to restore the building to its former layout, that a period of nine months is required for the current tenants to be rehoused. Whilst reference is made to the disruption likely to be experienced by the tenants in finding alternative accommodation, there is little evidence before me concerning their tenancies and the length of notice period that needs to be provided to bring those tenancies to an end. In the absence of such information, I cannot be satisfied that six months is shorter than what is reasonably necessary to remedy the breach.
42. Furthermore, the Council have indicated their power to extend the period for compliance with the enforcement notice in the event of evidence being established to demonstrate a genuine incapability of compliance within the specified period.
43. For these reasons, the appeal on ground (g) should not succeed.

Conclusion

44. I have concluded that the unauthorised use causes unacceptable harm to the living conditions of occupiers of the appeal property with regards to the size of the dwelling and amenity space together with noise and disturbance for

neighbouring occupiers and residents of the appeal property. The appeal scheme also fails to accord with development plan policies concerning the loss of a purpose built family dwelling. In this instance, the appeal scheme conflicts with the development plan and I find there are no material considerations of sufficient weight, either individually or cumulatively, that justify a decision other than in accordance with the development plan.

45. I do not consider that the six month period for compliance falls short of being reasonable.
46. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

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INSPECTOR