
Appeal Decision

Inquiry Held on 17,18,19 and 26 October 2023

Site visits made on 17 & 19 October 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 December 2023

Appeal A Ref: APP/T5150/C/22/3304567

Appeal B Ref: APP/T5150/C/22/3304568

Land known as Basement Flats, Connaught House, 20 Acton Lane, London NW10 8TT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr A W Al-Amood and Appeal B by Basrah Development Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the formation of a basement and its use as three flats.
- The requirements of the notice are:
 - STEP 1 Cease the use of the basement as flats.
 - STEP 2 Remove the basement and backfill the basement so there is no space beneath the ground floor of the premises.
 - STEP 3 Remove all associated waste, items, debris and materials arising from compliance with the above steps, from the premises.
- The period for compliance with the requirements is 9 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) (d) and (f) 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 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (d) and (f).

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by:
 - the insertion of the word "residential" before the word "use" in Schedule 2;
 - the insertion of the word "residential" before the word "use" in STEP 1 of Schedule 4; and
 - the deletion of all the wording in STEP 2 of Schedule 4 and substitution of "Remove the basement and reinstate the ground to its previous condition."

2. Subject to these corrections 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.

Appeal B

3. It is directed that the enforcement notice be corrected by:
 - the insertion of the word “residential” before the word “use” in Schedule 2;
 - the insertion of the word “residential” before the word “use” in STEP 1 of Schedule 4; and
 - the deletion of all the wording in STEP 2 of Schedule 4 and substitution of “Remove the basement and reinstate the ground to its previous condition.”
4. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Applications for Costs

5. The Council and Appellant made applications for costs. It was agreed with the parties at the close of the Inquiry that those applications were to be by way of an exchange of written representations following a set timetable. The applications for costs are the subject of separate decisions.

Procedural and Preliminary Matters

6. The Inquiry opened on 17 October 2023 and I sat for three consecutive days. Evidence and submissions were heard face to face, save that, with the agreement of the parties, a third party provided evidence ‘virtually’. Closing submissions were also made through a ‘virtual’ session on Microsoft Teams, with interested parties able to observe. I conducted accompanied site inspections on 17 and 19 October 2023 where I was able to inspect all three basement flats, as well as Flat A on the ground floor of Connaught House, the communal entrance hall and its surroundings.
7. The appellant in Appeal A is Mr A W Al-Amood. Appeal B has been made by Basrah Developments Limited who is the registered proprietor of Connaught House. Mr A W Al-Amood is the sole Shareholder and Director of Basrah Developments Limited. Mr A W Al-Amood was the only person to give evidence on ground (d), and in respect of both appeals, I have thus referred to him as “the appellant”.
8. Appeal A was initially made on grounds (a), (b), (d) and (f) and Appeal B on grounds (b), (d) and (f). However, after further consideration by the appellant the appeals on ground (b) were withdrawn at the Inquiry. I have determined the appeals on that basis.
9. Evidence in relation to the legal matters was taken under solemn affirmation. However, it was agreed by the parties that it was not necessary for evidence on ground (a), given by the appellant’s professional planning witness, to be taken under oath.

10. I have been provided with a copy of an assessment undertaken by health professionals in relation to a medical condition of the appellant. The correspondence includes matters which relate to his protected characteristic. I do not need to refer to the details of the document. I am aware that the public sector equality duty (PSED) applies¹.

Enforcement Notice

11. The enforcement notice alleges, 'Without planning permission, the formation of a basement and its use as three flats.' It was agreed at the Inquiry that in the interests of precision the alleged breach should be corrected to specify the 'residential' use as three flats. This correction would also necessitate a correction to STEP 1 of the requirements set out in Schedule 4 of the notice to: 'Cease the 'residential' use of the basement as flats'. Both parties agreed that these corrections would not alter the purpose of the notice and would not result in any injustice to them.
12. In relation to STEP 2, it was accepted by the Council that prior to the formation of the basement the evidence suggests that there would have been some form of void beneath the ground floor of the property. Thus, in the interests of clarity, STEP 2 should be corrected to require the removal of the basement and the ground reinstated to its previous condition, as opposed to being backfilled so there is no space beneath the ground floor of the premises. It was agreed that this correction would not result in any injustice to either party.

Background and planning history.

13. The appeal has been made in respect of a basement which has been formed beneath a detached property known as Connaught House and its use as three basement residential flats known as B1, B2 and B3. The entrances to Flats B1 and B2 are from a subterranean corridor and external flight of steps constructed adjacent to the front façade of the property and beneath the ground floor veranda. Flat B3 takes access from the property's ground floor hallway via an internal flight of stairs. The ground and upper floors of Connaught House are in residential use as flats.
14. An enforcement notice, dated July 2017, is in force in relation to the unauthorised material change of use of the dwellinghouse to five self-contained flats (A-E) at Connaught House². Planning permission was subsequently granted in September 2018 for the conversion of Connaught House into 4 self-contained flats and works to include a single storey and two-storey side and rear extension, conversion of loft and rear roof extension, creation of amenity space, provision of car parking, cycle and refuse storage, new boundary wall and associated landscaping³. In addition, an application for a certificate of lawful use or development for the use of three residential units in basement of the property was refused by the Council in August 2020 and subsequently dismissed at appeal in May 2022⁴.

¹ Section 149 of the Equality Act 2010

² Appendix 10 LPA Proof of Evidence.

³ Appendix 14 LPA Proof of Evidence.

⁴ Appendix 22 LPA Proof of Evidence.

Appeals A and B on ground (d)

15. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In relation to a breach of planning control consisting of building operations no enforcement action may be taken after the end of the period of four years beginning when the development was substantially complete (s171B (1)). In relation to a breach of planning control consisting in the change of use of a building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach (s171B (2)).
16. There is no dispute between the parties that the claimed three basement flats met the *Gravesham* test⁵ and each have the distinctive characteristics of a dwellinghouse. Therefore, the main issue is whether the building operations to form the basement were substantially completed on or before 30 June 2018, and/or the use of the three self-contained flats took place before the 30 June 2018, continuing for at least four years thereafter without material interruption. The burden of proof in an appeal on this legal ground lies with the appellant and the test is the balance of probability. Should I find that the use of the flats has become lawful through the passage of time, it is the Council's case that the immunity provisions of the 1990 Act should not apply as the appellant had positively sought to deceive the local planning authority (*Welwyn Hatfield v SoS & Beesley* [2011] UKSC 15).

The appellant's case

17. The appellant maintains that the basement had been formed and converted to three flats by the beginning of 2016. It is further contended that Flats B2 and B3 have been occupied without significant interruption since January 2016, and Flat B1 since April 2016. The appellant told the Inquiry that he bought the property without viewing at auction in August 2016, based on a catalogue description which stated that the property was converted into five flats. It was not until he visited the property, after his purchase, that he discovered that it also had three flats within a basement and that they were all occupied.
18. It is thus the appellant's case that the works to form the basement and create the flats within it were undertaken by the previous owner and prior to him purchasing the property in August 2016. The flats in the basement have remained occupied since his purchase and he has only undertaken renovation work to them. Renovation works included new gas metres, two new boilers, replacement glass in existing windows in Flat B1, a new window opening in Flat B2, and two new high-level window openings in Flat B3. All the flats had new porcelain tiles laid on the floor, have been repainted and had new worktops. The renovation works were undertaken sometime during 2019/20. Around that time the access to Flats B1 and B2 was also improved by the appellant by the removal of part of the property's front veranda. During this period the approved rear two storey extension was also constructed, including some internal conversion work. However, the appellant explained that due to disruption caused by the COVID-19 pandemic, the 2018 approved extensions/conversion works have not been completed in full.

⁵ *Gravesham BC vs SSE and Another* [1984] 47p. & CR142.

19. In addition to the evidence he gave at the Inquiry, the appellant relies on the following documents:

- Various tenancy agreements for each flat;
- Rental Statement;
- Correspondence from letting agents;
- Various witness statements from existing and previous tenants;
- Correspondence from a solicitor who acted for the appellant in his purchase of the property;
- Invoices from contractors;
- HMO Licence;
- Council Tax records;
- Gas bills; and
- Various photographs.

The Council's case

20. The Council question much of the appellant's evidence and rely on the following documents:

- Statutory Declaration, Council Enforcement Officer.
- Various photographs and street view images;
- Planning site history with associated documents/drawings;
- Council Officer site records;
- Internal correspondence between Council departments;
- Records from housing benefit department;
- Council Tax records;
- Various correspondence to refute appellant's evidence/documents;
- Electrical safety and energy performance certificates;
- Land Registry records;
- Planning Contravention Notices served;
- Complaints from neighbouring residents;
- HMO Licence.

Assessment - formation of basement and use as three flats

21. In relation to the initial construction of the basement the appellant relies on the conclusions of a previous Inspector's decision in relation to a Certificate of Lawful Development or Use (LDC) in May 2022⁶. In that case the

⁶ APP/T5150/X/20/3259512.

Inspector dismissed an appeal for an LDC for the same three residential units in the basement of the appeal property. However, in his decision he found that the appellant had provided sufficient evidence that showed, on the balance of probability, that the flats were constructed before 16 June 2016, albeit he dismissed the appeal because the evidence did not show precisely and unambiguously that use of the flats had commenced on or before the 16 June 2016 and continued without any material interruption for four years thereafter.

22. In support of his LDC, and in relation to the construction of the basement, the appellant relied on an invoice from Fullers Construction addressed to the previous owner, dated 14 January 2016, for works described as conversion of basement to provide 3 no. self-contained units with kitchenette and bathroom facilities. In terms of occupancy, a letter from the London Consultancy Group Limited dated June 2020 advised that on 5 May 2016 they had been instructed to let properties at the appeal premises, namely Flats A to E and Flats B1 to B3. In addition, several Assured Shorthold Tenancy Agreements (AST) were submitted relating to the three flats.
23. The LDC appeal was determined by written representations and the Inspector did not therefore have the opportunity to test the evidence through cross examination. Furthermore, in this case the Council has provided additional evidence to support their case, and again there has been an opportunity to test the evidence through cross examination of all witnesses.
24. The appellant told the Inquiry that following his purchase of the property at auction, he visited the appeal site. He did not have the keys but recalls entering the site through the front gate and exploring its former garden area which lies to the east of the property. The garden retains a pedestrian access through the appeal site and via a gate in the common boundary. More recently this garden land has been redeveloped for residential flats. However, at the time of the appellant's purchase he believed he had bought the garden, later to discover that the garden land was in separate ownership, having been transferred to a former business partner of the previous owner of the appeal site. It was on exploring the garden that the appellant noticed a gate, beneath and to the rear of the property's front veranda. He told the Inquiry that he crawled through the gate and discovered a flight of stairs leading down to a basement corridor which provided access to basement Flats B1 and B2, which he found to be occupied. Despite the auction catalogue details making no reference to basement flats, the appellant told the Inquiry that he was presented with various STA for those flats as part of the conveyancing pack on purchase. A letter from the Solicitor, Mr Dave Singh Nandhra, who acted for the appellant in the purchase, states that he recalls that around May 2017, when the land was transferred to the appellant, the basement flats existed. The Solicitor also confirmed in that correspondence that he has never visited the property⁷.
25. On the other hand, the Council contend that the basement and Flats B1-B3 were not constructed until sometime after 30 June 2018, and probably in 2020, in conjunction with the erection of the 2-storey rear extension. It is

⁷ Proof of Evidence/Statement Mr Dave Singh Nandhra, dated 4 October 2023

their view that the physical constraints posed by the front veranda, which based on the appellant's evidence wasn't altered until 2019/20, would have meant that access to Flats B1 and B2 would have been severely restricted. A measurement taken on my accompanied site visit confirmed that the head height between the bottom of the veranda deck and top of the basement steps would have been restricted to 0.76m before the corner of the veranda was altered in 2019/20 and part of the deck removed by the appellant. Consequently, not only would constructing the basement and converting it to flats have been difficult with that height/access constraint, but the occupiers would have had to enter and leave their flats on their hands and knees, which the appellant himself said meant that he got dirty when he discovered the flats. Based on his evidence, the appellant continued to let those flats, which he also described at the Inquiry as being rat infested, for some three years before he considered it necessary to improve the means of access to them and provide additional window openings, new heating, flooring and new worktops.

26. In support of their case the Council has provided copies of plans drawn up by architects, appointed by the appellant, in relation to a retrospective planning application to retain the property as 5 flats within the ground/first floor and second floor of the premises dated 2 December 2016⁸ (LPA Ref:16/5220, refused March 2017). A different set of architects provided plans for the application to extend and convert the property for use as four flats, approved in September 2018⁹. Both sets of plans include detailed existing floor plans of the property, and in the case of the 2018 application, also included existing elevations. None of the drawings, application forms, nor the design and access statement indicate any basement accommodation in the property. The existing ground floor plans do not show the internal access to basement Flat B3, which the appellant stated has always been accessed from within the ground floor entrance lobby, and a solid wall is shown in the location of Flat B3's front door on both sets of drawings. Whilst I recognise that the applications were for the use of the ground, first and second floor only, it would be unusual for a professional architect and planning agent to omit the basement windows, external stairway and internal access/stairways from survey drawings and from the descriptions of existing and proposed accommodation. Furthermore, a Planning Officer considering those applications would more than likely have picked up on those inaccuracies in the drawings, if indeed they did exist.
27. Furthermore, a pre-application inquiry for extensions and conversion of the property into 5 flats from Knight Frank in 2017 included a proposal for accommodation at lower ground floor to be constructed as part of the proposed side extension. Again, the plans of that proposed lower ground floor basement did not show basement flats within the existing property, and the proposed basement was removed from the 2018 planning application on the advice of the planning officer¹⁰. Basement Flat B3 lies beneath and within the footprint of the more recently constructed two-storey rear extension (2019/2020) which replaced a smaller single storey extension in this location. The planning application drawings which accompanied and were approved for the extension in 2018 made no reference to the proposed

⁸ Local Planning Authority Proof of Evidence, Appendix 9.

⁹ Local Planning Authority Proof of Evidence, Appendix 14.

¹⁰ Local Planning Authority Proof of Evidence, Appendix 35.

extension being constructed directly above existing basement accommodation, which I find surprising if, as the appellant contends, there was basement accommodation below at that time.

28. The property was visited by the Council's Enforcement Officer in June 2016 to investigate the unauthorised use of the property as flats. His Statutory Declaration (SD), which forms part of the Council's appeal submission, includes site notes from that visit. He records in those notes five flats within the ground, first and second floor. His SD confirms that he saw no evidence of basement accommodation, no basement windows/doors, nor an internal door/stairway to Flat B3. A Planning Contravention Notice served in October 2016 was returned to the Council and not completed. The Council Enforcement Officer's site visit was one of investigation, and resulted in the service of the July 2017 enforcement notice which alleged the material change of use of a dwellinghouse to five self-contained flats. Considering the purpose of the Council Officer's site visit, to identify the uses taking place at the appeal site and establish if there was any breach of planning control, then, had tenants been residing in the basement, which the appellant claims to have had windows and take access from an external and internal stairway, the investigatory site visit would in my view, on the balance of probability, have identified such unauthorised development.
29. The appellant advised the previous Inspector, supported by an invoice dated August 2016, that a new intercom was installed in August 2016 on the front fence to replace the one by the front door. The new intercom was to combine Flats A-E with Flats B1-B3. However, photographs dated 4 March 2020 show the original intercom still in place by the front door. An undated image of the new intercom and a December 2020 google street view image, clearly show the installation was post March 2020, once the works to the veranda had been completed, and new front gates installed. This photographic evidence casts doubt on the authenticity of the invoice which supported the LDC appeal.
30. In support of the LDC appeal the appellant had also relied on an invoice dated 14 January 2016 from 'Fullers Construction' based in East London (E17) and addressed to the previous owner of the property. The invoice was in respect of works described as "Conversion of basement to provide 3 no. self-contained units with kitchenette and bathroom facilities". The appellant told the Inquiry that on acquiring the appeal property he had found the invoice in a plastic box in its hallway along with other correspondence. The Council question the veracity of this invoice, the original of which has not been provided. After the Inspector's dismissal of the LDC appeal, the Council contacted an established building contractor also based in East London (E17) known as "Fullers Builders". The company responded that they had traded in the area for 150years, and that this was the first time they had been advised of another builder trading under the 'Fuller' name locally¹¹. Furthermore, the address on the invoice, '67 High St, Walthamstow', related to a property which was trading as the Cock Tavern, not Fullers Construction on 14 January 2016. In the absence of any further evidence to corroborate the veracity of the invoice, the evidence produced by the Council casts some doubt on its authenticity.

¹¹ Local Planning Authority Proof of Evidence, Appendix 28.

31. A letter from London Consultancy Group Limited had been submitted in support of the LDC appeal which advised that on 5 May 2016 they were instructed to let properties located at the appeal premises, namely Flats A to E and Flat B1 to B3. As part of the current appeal submission the appellant produced a Rental Statement from 'Reids of Mayfair' detailing the rental for each basement flat during the period January 2016 through to December 2019. The appellant told the Inquiry that when he first acquired the property some of the tenants would pay him in cash, some rent came directly to him from the Council as housing benefit, but he was also aware that some tenants were still paying rent to the previous landlord. In cross examination he was unable to confirm who Reids of Mayfair were and why they had produced a Rental Statement. The appellant also advised that he had had his bank account closed, and for that reason he is unable to provide any records of rent taken for any of the Flats during his ownership. There are clearly some inconsistencies in relation to how and when rent has been collected and by whom. This matter was not fully explained by the appellant.
32. Works to extend the property which formed part of the 2018 planning approval were commenced in 2019/2020 by the appellant. The appellant told the Inquiry that, despite previous submissions made as part of his LDC appeal, which recorded that the basement windows had all been in place since 2016, some of those window openings were actually created when he was refurbishing the basement flats in 2019/20. That admission supports the evidence provided by the Council in their appeal documents, including photographs taken on 4 March 2020 during a Council site visit showing new window openings¹², which were clearly not evident on the 2018 street view image.
33. It was also during this period that complaints were received by the Council from local residents. In January 2020, local residents reported the removal of the ornate Victorian black metal awning that covered the veranda and the excavation of a basement under the property with a new entrance from the east elevation via steps down¹³. Correspondence from a neighbour submitted in response to this appeal describes large quantities of soil being extracted from underneath the property in January 2020 and expressed concern that there didn't appear to be adequate props to support the weight of the house during excavation. Moreover, a local resident appeared at the Inquiry and gave evidence stating that during early 2020 she and other residents witnessed the digging out of the basement. She told the Inquiry that the works went on for a long time, often during periods of darkness, in what she described as hazardous conditions. Large trucks blocking pavements and young adult boys digging and hauling out mud in wheelbarrows. She advised that the site frontage was open, and the basement excavation was evident from the street. It was the complaints received from local residents that first alerted the Council to the unauthorised basement flats.

¹² Local Planning Authority Proof of Evidence, Appendix 19.

¹³ Local Planning Authority Proof of Evidence, Appendix 18.

34. Despite the appellant's claim that the basement flats were created and have been continually occupied since early 2016, he only produced fire detection and alarm system certificates for Flats A-E in January 2018 and not for Flats B1-B3. In addition, the basement flats were not registered with the Valuation Office (VOA) until July 2020, with the first Energy Performance Certificates (EPC) also produced for the basement flats following an assessment in April 2020. Furthermore, the EPC for the ground floor flats which were assessed in November 2017 refer to the ground floor flats having a suspended floor with no insulation below. The EPCs do not record another dwelling below which would be normal practice if that had been the situation at that time. Whilst VOA extracts and EPC are not determinative of occupation, they can assist in understanding what has occurred over time. I have had regard to the appellant's response that the basement flats were not his priority, his focus initially was on getting permission for the extensions and converting the property above.
35. I have also had regard to the original gas pipe work which I was shown on my site visits, as well as an old-style gas metre and spotlight within the basement void directly beneath the ground floor. I have taken into consideration copies of gas bills for the property from southern electric, which are addressed to basement flats at the appeal property for the period of August 2016 through to September 2019. However, it is not clear from those bills as to what the charges relate to as all the pages of the bill have not been provided. In addition, it would not be unusual for a property of this age to have a gas meter and light originally in the void beneath the suspended ground floor and pipework in that location too. I therefore give this evidence only a small amount of positive weight.
36. In terms of occupancy the appellant has provided Assured Tenancy Agreements (AST) relating to the three basement flats. As concluded by the previous Inspector in relation to the LDC appeal, these show that agreements were entered into throughout the relevant period for the three flats, but without corroboratory evidence do not demonstrate continuous use.
37. In support of this appeal the appellant has provided 'witness statements' (WS) from a number of his tenants, past and present. The appellant told the Inquiry that the WS had been prepared by their previous solicitors, it was then the appellant who had visited each of the tenants/former tenants to gain their signatures. The WS are not in the form of a Statutory Declaration and do not therefore carry the weight that would be attributed to an SD or where evidence is given orally under oath.
38. I recognise that the WS are not proforma's and that each one is different, I have also had regard to the appellant's advocate's assertion that "imperfections reveal truthfulness". However, it was apparent on my questioning of the appellant during the Inquiry, that there were discrepancies in the facts of the WS. Although Collette Mossimi had signed her statement on 20 July 2022 stating that she currently resided in Flat A, and had done since August 2016, she had actually vacated the property in February 2022 and the appellant said he visited her at a new address. Furthermore, the attached AST, signed by JRM Mossimi with Collette named as an occupier, was in relation to the occupation of Flat B, and not Flat A.

39. Melon Dungulawala states that she resided in Flat B3 from January 2016 to December 2016. She states that the flat had a bathroom, kitchen and a double bedroom. She states further that there are high-level windows within the sitting/lounge area but also the bedroom, which provided natural light. However, the appellant told the Inquiry that those high-level window openings in the bedroom/living area of Flat B3 were only created by himself in 2019/2020.
40. Mr Ali Jaber also lived in Flat B3 and occupied it from January 2020 until June 2020. It was during that time that the two-storey rear extension was being constructed directly above him. Whilst he refers in his WS to the general comings and goings of other occupants in the basement, he makes no reference to the two-storey extension being constructed directly above his flat.
41. WS have not been provided for all the past and present occupiers of the Flats. From the evidence before me there are clearly some factual errors in those WS and the appellant confirmed during my questioning that they were not prepared by the occupiers themselves. Given the discrepancies highlighted above, I therefore find that this evidence cannot be wholly relied upon.
42. Correspondence from Mr Nandhra in support of the appellant is not in the form of a SD and he confirms what are his 'beliefs'. He also states that he had not visited the premises but does recall that when the property was transferred to the appellant there were copies of ASTs in the conveyancing pack. Mr Leonard Castro's correspondence is also not in the form of an SD and he only provides invoices for works undertaken in 2020. The works he undertook in 2017 were in relation to re-pointing, and it is unclear how he could verify the existence and occupation of the three basement flats.

Overall summary

43. Having regard to the totality of the evidence, including that heard and examined during the Inquiry, I am not persuaded that the basement was constructed more than for years before the notice was issued. Consequently, the residential use of Flats B1, B2 and B3 did also not commence before the notice was issued. This is because the appellant's evidence is not sufficiently precise and unambiguous for the reasons given above. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted, but the appellant's own evidence appears to be inconsistent with the Council's evidence and that of a third party. The appeals on ground (d) therefore fail.

Appeal A on ground (a), deemed planning application

Main Issue

44. The terms of the appeal on ground (a) are derived directly from the alleged breach of planning control. Thus, considering the proposed correction, planning permission is sought retrospectively for the formation of a basement and its use as three residential flats.
45. The main issue in this case is whether the development provides for acceptable living conditions for existing and future occupiers of the basement flats and for neighbouring residents in Connaught House.

Reasons

46. Connaught House is a substantial detached Victorian residential property. Prior to the construction of the basement flats it had accommodation within the ground, first and second floors. From the evidence before me it has been in use as self-contained flats and/or an HMO during recent years. The property most recently benefits from a planning permission for conversion into four self-contained flats and works to include a single storey and two-storey side and rear extension, conversion of loft and rear roof extension, creation of amenity space, provision of car parking, cycle and refuse storage, new boundary wall and associated landscaping.
47. The unauthorised development comprises a basement formed beneath the ground floor of Connaught House and beneath its two-storey rear extension. A new staircase has been constructed beneath the property's front veranda and this provides access to Flats B1 and B2. An internal stairway has also been constructed which leads from the ground floor entrance lobby and provides access to Flat B3.
48. The development plan comprises The London Plan, 2021 (LP) and Brent Local Plan 2019-2041, adopted February 2022 (BLP). Consistent with Policy D10 of the LP, which requires Boroughs to establish policies in their Development Plans to address the negative impacts of large-scale basement development beneath existing buildings, Policy BD3 of BLP deals with proposals for basement development of an existing property. That Policy does not make provision for habitable development within basements unless it is ancillary accommodation to a dwelling above. The three basement flats are all self-contained and the use of the basement is therefore in conflict with the provisions of Policy BD3 and Brent's Basement Supplementary Planning Document, adopted June 2017 (SPD) which similarly resists the use of basements as independent living accommodation.
49. Furthermore, it is common ground that none of the three basement flats meet nationally described space standards¹⁴ (NDSS). In accordance with the National Planning Policy Framework (the Framework), Policy D6 of the LP requires housing development to be of a high-quality design and provide adequately sized rooms with comfortable and functional layouts. New dwellings should meet the gross internal floor area (GIA) and built-in storage space standards set out in Table 3.1 of the Policy D6. Policy D6 also requires, amongst other criteria, a minimum floor to ceiling height of 2.5m for at least 75 per cent of the GIA of each dwelling.
50. For a one bedroom, one person studio/flat with a shower, the minimum internal space standard is 37m². Flat B1 has a GIA of 25m², Flat B2 a GIA of 26.5m², and in Flat B3 the GIA is 29.5m². Thus, even if self-contained habitable accommodation was acceptable in principle within the basement, the dwellings are not of an adequate size to provide functional or comfortable layouts. Moreover, none of the dwellings have a floor to ceiling height greater than 2.15m. Given their basement form, with few high level windows, the dwellings have a restricted outlook, very little natural light, and as such the accommodation is oppressive.

¹⁴ Technical housing standards – nationally described space standard.

51. The Council has also expressed concern that there is an absence of designated amenity space for occupiers of the property, suitable refuse disposal and cycle storage facilities. From observations on my site visit, the existing basement accommodation does not have access to any designated outdoor amenity space. Taking into consideration the character of the appeal site and the lawful use of Connaught House, I would concur with the Council that the additional accommodation within the basement does not have dedicated outdoor amenity space, and that the basement flats create an additional need for outdoor space, refuse and cycle storage which is not available within the site. As such the quality of the existing amenity space available for other residents occupying Connaught House is diminished.
52. I recognise that there is likely to be a shortage of low cost housing in the area, and that the location of the site is suitable for residential use in terms of accessibility to services and public transport routes. I have also had regard to the need to make effective use of land. However, both the Framework and the development plan make it clear that new development should promote health and well-being, with a high standard of amenity for existing and future users¹⁵. For the reasons set out above, the accommodation provided by the basement flats does not provide a high standard of amenity for existing or future occupiers.

Conclusion

53. For the reasons given above, the development does not provide for acceptable living conditions for existing and future occupiers of the basement flats and for neighbouring residents. There is conflict with the development plan when considered as a whole, and in particular with Policy BD3 of the BLP and D6 of the LP. I also find conflict with the SPD and the Framework.
54. Section 177(1) (a) of the Act allows permission to be given under the appeal on ground (a) to any part of the matters alleged in the notice. To that end, the appellant has advanced, alternative schemes to that subject of the notice.

Alternative - a single flat

55. Firstly, the appellant advances, largely under the appeal on ground (f), that alterations could be made to the layout of the basement to convert it either into a single one, or two bedroomed flat. It is argued that those alterations would ensure that the accommodation meets the NDSS and would contribute to the much-needed housing supply in the Borough.
56. However, although it may be possible to revise the layout of the basement in the manner described and provide a single flat which would meet the NDSS in respect of providing adequate GIA, the accommodation would remain constrained in terms of floor to ceiling height, and extremely limited in terms of the amount of natural light, or natural ventilation available to penetrate the rooms within the Flat. In addition, outlook for future residents and available outdoor amenity space would remain constrained. In addition, there would remain conflict with Policy BD3 of the BLP and the SPD which resists self-contained living accommodation within basements.

¹⁵ Paragraph 130(f) National Planning Policy Framework.

57. I conclude, therefore, that the alternative would not overcome the harm that I have identified in respect of living conditions and would conflict with the development plan.

Alternative – retention of basement (ancillary use)

58. The appellant advances, largely under the appeal on ground (f), that the basement could be retained and utilised for storage in association with the residential properties above in Connaught House. It seems to me that the basement itself would form part of the matters stated in the notice and it is therefore open to me to grant planning permission for it under the ground (a) appeal.
59. However, from the evidence before me the basement would not be within the same planning unit as the residential accommodation above it. I have not been provided with any information as to how the basement would serve those individual dwellings/property above, nor who would manage or utilise the basement space and for what purpose. In addition, there is no evidence to demonstrate that the basement has incorporated sustainable design standards that are integral to the proposal, including its construction and operation. Nor, how it would be protected from sewer flooding. Moreover, there is no mechanism available to me by which any suggested storage use and its management for the occupiers of those properties above could be secured.
60. I conclude, therefore, that for the reasons given above, the retention of the basement would not be for a use that could be secured as ancillary to an existing property and there would be conflict with Policy BD3 of BLP.
61. I have had due regard to the PSED which sets out the need to eliminate unlawful discrimination, harassment, and victimisation and to advance equal opportunity for those persons with a protected characteristic, including fostering good relations between them and others. The appellant was professionally represented and had the opportunity to ensure that he was supported to produce and present his evidence having due regard to his protected characteristic. Consideration was given at the Inquiry to his protected characteristic, breaks were permitted and consultation with counsel where necessary. For these reasons and those set out above I therefore conclude that it is proportionate and necessary to dismiss this appeal.

Conclusion

62. For the reasons given above, and taking into account all other matters raised, the appeal on ground (a) fails.

Appeals A and B on ground (f)

63. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
64. Section 173 of the Act indicates that there are two purposes which the requirement of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. The

purpose of the notice in this case is to remedy the breach of planning control.

65. The appellant considers that the requirements are excessive and that instead the basement should be retained for use ancillary to the residential occupiers of the ground, first and second floors of Connaught House above.
66. It can be seen by my decision on ground (a), that I have found that the retention of the basement should not be granted planning permission and thus is unlawful. The breach of planning control can therefore only be remedied by the cessation of the use and the removal of the basement and reinstatement of the ground to its previous condition, as required by the notice, as corrected. There are no lesser steps that would achieve the statutory purpose behind the notice.
67. The appeals on ground (f) must fail.

Human Rights

68. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the most fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that the dismissal of the appeal would interfere with the occupiers' rights under Article 8 and the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified in the notice the action is in accordance with the law and pursues legitimate aims regulating land use in the public interest and is necessary and proportionate to the situation.

Conclusion

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

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Christian Zwart of counsel, instructed by Mohaned Salah,
Allied Goodwin Solicitors.

He called:

Mr A W Al-Amood.

Steven Bainbridge, Chapman Lily Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wickes BTP, Dip Law, MRPTI

INTERESTED PARTIES

Ms Elizabeth Arata

Documents submitted at the Inquiry:

- 1) Appellant's Case law Bundle.
- 2) Existing Basement Floor Plan Ref: C-10.10.23.
- 3) Basement Supplementary Planning Document, July 2017.
- 4) Details of current application for 2 basement flats. LPA Ref 23/2881.
- 5) Written Statement, Ms Arata.
- 6) Council's Suggested Conditions.
- 7) Exhibit ED1..
- 8) *Muorah v SSLUHC* CA2023-001338.
- 9) *Bank St Petersburg PJSC v Arkhangelsky* [2020] 4 WLR 55.
- 10) Confidential Psychological Assessment Report, ARK Associates 2015.