



Appeal Decisions

Inquiry held on 23 January 2024

Site visit made on 23 January 2024

by Graham Dudley BA (Hons) Arch Dip Cons AA

an Inspector appointed by the Secretary of State

Decision date: 22 February 2024

Appeal A Ref: APP/T5150/C/23/3321125

Appeal B Ref APP/T5150/C/23/3321126

59 and 63 Fernbank Avenue, WEMBLEY, HA0 2TT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Vardaan 4 Properties Ltd against an enforcement notice issued by London Borough of Brent.
 - The notices were issued on 20 March 2023.
 - The breach of planning control as alleged in the notices is:
 - Without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO).
 - Without planning permission, the material change of use of the premises to short term lettings.
 - Without planning permission, the material change of use of the premises to flats ("the unauthorised change of use").
 - The requirements of the notices are 1. Cease the use of the premises as a House in Multiple Occupation. 2. Cease the use of the premises for short term lettings. 3. Cease the use of the premises as flats. 4. 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. 5. Remove all bathrooms/shower rooms and bathroom/shower room facilities, except two, from the premises and remove all associated items, debris and materials arising from the removal from the premises. 6. Remove all partition walls, fittings and fixtures facilitating the unauthorised change of use from the premises and remove all associated items, debris and materials, arising from this removal, from the premises, so that the layout of the premises is returned back to a single family dwellinghouse as existed prior to the unauthorised use commencing.
 - The period for compliance with the requirement is 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) and in addition (c) (for 63), of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an applications for planning permission are deemed to have been made under section 177(5) of the Act.
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Decisions

1. The appeals are dismissed and the enforcement notices upheld. Planning permission is granted to a limited extent on ground (a) for an HMO in number 59 for 8 persons and an HMO in number 63 for six persons, subject to the following conditions.
2. Notwithstanding the wording of the relevant HMO licence, the maximum number of occupants that are accommodated at 59 Fernbank Avenue at any one time shall not exceed eight, and at 63 Fernbank Avenue at any one time shall not exceed six.

3. The layout of the HMOs shall be in accordance with the submitted plans. For number 59, Drg no 641 0823JF 01 b (with the ground floor bathroom adjacent to the kitchen removed) and for number 63, Drg no 641 0823 JF 04 b, or for both properties in accordance with alternative plans that have been submitted to and approved in writing by the local planning authority. The use shall be carried out in accordance with the approved floor plans.
4. A management scheme shall be submitted to and approved in writing by the local planning authority, containing details of tenancy management including, relating to control of car ownership, measures to control any anti-social behaviour and upkeep of external areas.
5. The HMO use hereby permitted shall cease and all equipment, kitchens (apart from 1), bathrooms (apart from 2) and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in 5.1.1 to 5.1.4 below:
 - 5.1.1 Within 3 months of the date of this decision the layout shall be changed in accordance with the approved plans or any alternative plans for the HMO's permitted, and the management scheme shall have been submitted for the written approval of the local planning authority, and the management scheme shall include a timetable for its implementation.
 - 5.1.2 If within 6 months of the date of this decision the local planning authority refuse to approve the management scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the secretary of state.
 - 5.1.3 If an appeal is made in pursuance of 5.1.2 above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the secretary of state.
 - 5.1.4 The approved layout and scheme shall have been carried out and completed in accordance with the approved timetable.
6. Upon implementation of the approved layout and management scheme specified in this condition, that layout and management scheme shall thereafter remain in use.
7. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

8. An application for costs was made by the Council against the appellant which will be the subject of a separate decision.
9. Since the appeal was made, grounds (b), (c) and (d) have been withdrawn.
10. Immediately prior to the inquiry the appellant submitted floor plans of the two buildings showing a layout for a large HMO and a small HMO for each of the properties. The large HMO would be limited to 8 persons in each property. This was at a late stage, but the Council fairly accept that they would not object to

them being produced, providing that it was reasonable to do so in terms of the inquiry procedure.

11. These plans addressed many of the issues raised in objection to the HMO use. The Council's remaining concern related to the use of the outbuilding at 63 for amenity space, as it is the Council's view that this is an unlawful building, and without this, the adequacy of the amenity space would be in question. The other concern related to the loss of 3 bedroom dwellings.
12. The ground (a) appeal relates to the allegation in the enforcement notice. The appellant accepts the situation in relation to the flat and short term use and is not at issue. The enforcement notice will be upheld. The HMO use is part of the allegation and it is reasonable that this aspect is part of the ground (a) appeal. The Council has not specified whether it is large or small HMOs that are at issue, and that is understandable given the apparent fluidity of the use at the premises. Therefore, the ground (a) appeal can be in relation to either a large or small HMO and if permitted overrides the enforcement notice in respect of the HMOs.
13. I accept that plans have been submitted at a late stage, but these only show how the uses could occur. Notification has been made to those with and interest in the appeal, and therefore they would be well aware of the proposed use in the ground (a) appeal. I therefore do not consider that there is any prejudice or natural justice issues in considering these.

Reasons

Ground (a)

14. The ground (a) appeal relates to HMO use and is for that aspect of the allegation only and in the first instance relates to a large HMO in each property, but if that were found to be unacceptable, it would be for a small HMO in each property.
15. The main issues are the adequacy of amenity space in relation to 63 Fernbank Avenue and the other is the effect in relation to the loss of 3 bedroom dwellings.

Policy

16. The development plan includes the Brent Local Plan [BLP], the London Plan [LP] and the Houses in Multiple Occupation Supplementary Planning Document [SPD] to which I attach considerable weight.

Amenity Space 63 Fernbank Avenue

17. The SPD notes that providing sufficient communal amenity the HMO can better meet the needs of its occupants. It will provide space for them to congregate and spend time together. This will improve social integration. It will also reduce the need for occupants to congregate outside in the public realm, which may otherwise affect the amenity of neighbours. These spaces can be for kitchen, dining, living rooms, general recreation (games) and work space. Overall, including the minimum kitchen space set out above, it is expected that a minimum 5m² of internal communal amenity space will be provided per resident.

18. The appellants, noting the Council's concern relating to the outbuilding, decided to withdraw that part of the building from the appeal, leaving only about 30m² of floor area for internal amenity space. For an eight bedroom HMO the amenity space in the building should be about 40m², and for a seven person HMO about 35m².
19. Whilst the policy 'expects' this, it is very important that adequate provision be made for amenity space to ensure social problems and disturbance are kept to a minimum. In this case for eight persons there would be a 25% loss of amenity space and 12.5% loss for 7 persons. These are the minimum expectation, so not generous and I consider that to go below these would leave cramped conditions for 7 or 8 persons to live in the context of an HMO. I therefore consider that 63 Fernbank Avenue should be limited to 6 persons. Clearly, if the situation changes in relation to the provision of amenity space, an application to amend conditions can be made.

Loss of Three Bedroom Dwellings

20. At the inquiry the question was raised under which policy the loss of 3 bedroom houses is covered. The suggestion was that it was LP Policy BH11. However, it was also agreed in the statement of common ground that some policies, that include BH11, were only relevant in relation to self-contained dwellings. This was confirmed by the Council at the inquiry.
21. Brent Local Plan Policy BH7 deals with accommodation with shared facilities or additional support. This notes HMO applications will be supported when meeting the following criteria. The last of these (e) notes that it should not lead to an over-concentration... defined as where three or more of the ten nearest properties are HMOs. To my mind this is the policy dealing with the number of HMOs and whether there is an acceptable balance with surrounding properties. The parties both agree that this requirement is met for the appeal properties.
22. The SPD notes that HMOs perform an important part in housing people within the borough. Ideally, their need would be limited by an alternative availability of plentiful amounts of affordable self-contained dwellings for smaller households. In the short to medium term, however, this is unlikely to occur. On this basis, HMO accommodation that meets non-specialised needs (a range of which are addressed in Policy BH7), will not be expected to evidence a particular specific Brent need in association with any planning application.
23. The SPD goes on to note that nevertheless, HMO accommodation has historically and is still likely to compete for the same properties with families who also need 3 bedroom dwellings or larger. The need for this family accommodation (54% of all need for additional dwellings) is also significant within the borough. This unmet need for family homes within the borough will be balanced against the quality of the HMO being provided. Where the Council considers that this quality is not sufficiently high, through not complying with the requirements of this SPD, it is more likely to tilt the balance in favour of retaining the premises as a family dwelling.
24. I accept that there have been issues with these properties and the various uses and the Council has been rightly concerned over standards/use. However, for the plans provided and the limit on numbers to ensure adequacy of communal space, I consider that a good standard of accommodation would be provided by

the HMOs illustrated. I therefore consider that it is an acceptable use for the properties.

25. The appeal succeeds on ground (a) for an eight bedroom HMO in number 59 and a six bedroom HMO in number 63.

Ground (f)

26. The appellant acknowledges the need to remove all but one kitchen, so the appeal on ground (f) is now limited to the ground floor bathroom in number 59. I do not consider that an extra bathroom would be unacceptable in principle. However, access from the kitchen is not recommended and is a poor arrangement that would lower the standard of the accommodation. I therefore consider that if alternative access to the bathroom cannot be arranged it should be removed.

27. The appeal on ground (f) fails.

Ground (g)

28. *It was agreed at the inquiry that the time to complete the steps should be increased to 9 months. The appeal on ground (g) succeeds.*

Conditions

29. A number of conditions are proposed and generally agreed. The use of the premises should be limited to an HMO use by 8 persons in 59 and 6 persons in 63 and in accordance with either the plans provided, or in accordance with plans to be submitted to and approved in writing by the LPA. This is to ensure the amenity of neighbours is protected. The removal of bathrooms can be limited to the ground floor bathroom adjacent to the kitchen. I do not consider it would be appropriate or enforceable to have conditions to control furniture and its location. A management plan is reasonable to ensure the amenity of neighbours is maintained. And it is reasonable and necessary for the management plan to include the control of cycle parking, bin storage and landscaping and control measures for anti social behaviour, in the interest of character and appearance and the amenity of neighbours.

Conclusion

30. I shall uphold the enforcement notice, but also grant planning permission under ground (a) for a 8 bedroom HMO in number 59 and a 6 bedroom HMO in number 63. The planning permission granted will override the enforcement notice as far as it relates to what is permitted.

Graham Dudley

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/T5150/C/23/3321125	Vardaan 4 Properties Ltd
Appeal B	APP/T5150/C/23/3321126	Vardaan 4 Properties Ltd