



Appeal Decision

Site visit made on 26 March 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date:

10th April 2024

Appeal Ref: APP/T5150/C/23/3319040

18C High Road, London NW10 2QD

- 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 Mohammed Raza against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 15 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of part of the ground floor of the premises to residential use. ("the unauthorised change of use") and without planning permission, the installation of an air handling unit to the rear of the premises. ('the unauthorised development')
 - The requirements of the notice are: STEP 1 Cease the residential use on the ground floor of the premises. STEP 2 Remove all items associated with the residential use from the ground floor of the premises, including all fixtures and fittings such as kitchens, bathrooms and partition walls. STEP 3 Remove the air handling unit from the rear of the premises. STEP 4 Remove all items, materials and debris, arising from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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. The appellant has put forward a proposed alternative scheme¹ which would necessitate alterations to the exterior of the building to install a pair of glazed bi-fold doors and internal alterations to move the kitchen and bathroom to the rear of the flat. This would create what is referred to as a proposed single aspect 2-person bedsit/flat. Minimal details have been provided in these regards, but it is clear that the proposed alternative scheme would require significant external and internal works.
3. Section 177(1)(a) of the Act provides me with the power to grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Caselaw² directs that, so long as there is an appeal

¹ Drawing No. 001 dated 2023 by Kticic Architects

² Ahmed v SSCLG & Hackney LBC [2014] EWCA Civ 566

under ground (a), I must consider whether the proposed alternative scheme would be 'part of the matters' stated in the enforcement notice as constituting a breach of planning control and whether it should be permitted. Whether or not the proposed alternative scheme amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker³.

4. Caselaw⁴ has recognised that virtually any alternative scheme is likely to involve at least some element of new work. However, the extent of works proposed in this case would significantly exceed those associated with the breaches of planning control referred to by the notice. The proposed alternative scheme is not within the scope of the matters stated in the enforcement notice and I have no power to grant planning permission for that development.

Main Issues

5. The main issues are whether the material change of use of part of the ground floor to residential use provides acceptable living conditions for the occupants of that part of the building; and the effect of the air handling unit on the living conditions of neighbouring residents and the character and appearance of the area, with particular regard to the Willesden Green Conservation Area (CA).

Reasons

Living Conditions: Occupants

6. The material change of use has created a flat comprising a bathroom, kitchen, and 3 other rooms which could be utilised as bedrooms or other living space. One small window serves the bathroom. There are no other windows serving the flat, which provides an extremely poor standard of living accommodation on account of the lack of ventilation and access to natural light.
7. It is claimed that the flat provides 46 square metres (sq.m.) of internal living space. This is some way short of the minimum gross internal floor areas specified for 1-bedroom 2-person, 2-bedroom, and 3-bedroom dwellings (50 sq.m., 61 – 70 sq.m., and 74 – 95 sq.m. respectively) by Policy D6 of the London Plan (2021). The flat is not served by any external amenity space.
8. Steps provide access to the entrance door of the flat, leading from a goods yard and parking area which serves commercial units, where commercial waste appears to be stored. There are clear safety concerns associated with direct access to the residential unit from this vehicle and waste dominated space. It is entirely inappropriate for a residential flat to open out into this active commercial area.
9. The flat provides an unacceptable standard of living conditions for its occupants on account of the lack of sufficient internal and external space, ventilation, access to natural light, and poor access arrangements. The material change of use is therefore contrary to Policies DMP1 and BH13 of the Brent Local Plan 2019-2041 (2022) (BLP) and Policy D6 of the London Plan (2021). These require, amongst other things, new dwellings to be of high quality design which provides a high standard of internal and external amenity, and at least 20sq.m. external amenity space, in addition to the minimum gross internal floor areas referred to above.

³ R (oao Banghard) v Bedford BC [2017] EWHC 2391 (Admin)

⁴ Bhandal v SSHCLG & Bromsgrove DC [2020] EWHC 2724 (Admin)

Living Conditions: Neighbouring Residents

10. The air handling unit is positioned on the exterior of the appeal building, facing into the goods yard and parking area. A number of other air handling units face into this commercial space. Residential properties are located above and to the north.
11. The air handling unit appears to be close enough to neighbouring residential properties to have the potential to harm the living conditions of neighbouring residents on account of the noise it is likely to emit, especially if it is not appropriately maintained. No evidence, such as a technical noise survey, has been provided to suggest otherwise. In the absence of such evidence, I cannot be sure that the noise emitted by the air handling unit could be controlled through the use of planning conditions to protect the living conditions of neighbouring residents.
12. Other air handling units could be capable of emitting louder noise than that which is the subject of the notice, and commercial uses may already affect the living conditions of neighbouring residents. However, on the evidence provided, I am unconvinced that the air handling unit the subject of the notice would not exacerbate any existing harm which may already be caused to the living conditions of neighbouring residents by way of noise and disturbance.
13. Based on everything I have read and seen, it is likely that noise emitted by the air handling unit harms, or is at least capable of harming, the living conditions of nearby residents. That harm and potential harm could not be avoided with reasonable certainty through the use of planning conditions. The air handling unit is therefore contrary to Policy DMP1 of the BLP, which requires, amongst other things, development to not unacceptably increase noise and disturbance.

Character and Appearance

14. The appeal site is located within the CA. So far as relevant to this appeal, the significance of the CA appears to rely on a mix of historic buildings forming a vibrant commercial high street. The appeal site is part of a more modern development in comparison to much of the rest of the CA. The rear of the building does not make a positive contribution to the significance of the CA.
15. The air handling unit is positioned at ground floor level on a rear elevation wall, facing into the goods yard/parking area. It cannot be seen from High Road or Park Avenue, where the wider positive characteristics of the CA are more readily apparent. Moreover, it can only be seen alongside many other wall-mounted air handling units and ventilation systems. Some or all of those may have been installed without planning permission and may be unlawful, but I have not been provided with evidence to show this is the case. Indeed, the Council accepts that some of them are lawful. The presence of other plant, and the state and purpose of the goods yard/parking area heavily influence the context in which the air handling unit is experienced. It is the type of setting where commercial plant is expected to be seen.
16. Considering its position within a secluded commercial goods yard/parking area, amongst other wall-mounted plant, the air handling unit causes no harm to the character or appearance of the area. It preserves the character of the CA, does not cause any harm to its significance, and does not affect the heritage asset. With regard to its very specific immediate surroundings and its effect on the

character and appearance of the area and the significance of the CA, the air handling unit does not conflict with the aims of Policies BHC1 and BD1 of the BLP. These seek to avoid harm to heritage assets and the character and appearance of the area, amongst other things.

Conclusion

17. For the reasons set out above, the material change of use of part of the ground floor to residential use fails to provide acceptable living conditions for occupants and the air handling unit is capable of harming the living conditions of nearby residents. The air handling unit preserves the character of the CA, but in the absence of evidence to show otherwise, any harm and potential harm caused by the air handling unit to the living conditions of nearby residents cannot be avoided with reasonable certainty through the use of planning conditions. The material change of use and the air handling unit are therefore contrary to the development plan as a whole and there are no material considerations which indicate planning permission should be granted for either form of development.
18. I therefore conclude that the appeal should not succeed. 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.

L Douglas

INSPECTOR