



Appeal Decision

Site visit made on 3 April 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2024

Appeal Ref: APP/R5510/C/23/3321857

78 Floriston Avenue, Uxbridge UB10 9EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Rajwinder Braich against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The notice was issued on 31 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a single-family dwelling house into two separate self-contained residential units ('the breach').
 - The requirements of the notice are: (i) Cease the use of the property as two (2) separate self-contained residential units. (ii) Remove all but one kitchen from the dwellinghouse to include oven, hob, extractor unit, sink, worksurfaces and kitchen style cupboards. Disconnect from source hot and cold-water supply, gas and foul waste drainage and remove all redundant pipework. (iii) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the dismantling works listed in (ii) above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.
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Decision

1. It is directed that the enforcement notice be varied by in paragraph 5, step (i) deleting 'two (2)' and in paragraph 6 substituting '3 months' with '6 months' as the period for compliance. Subject to these variations 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.

Preliminary Matters

2. The allegation in the enforcement notice specifies the precise number of self-contained units of residential living accommodation comprised in the unauthorised use. Therefore, also referring to the number of units in step (i) of the requirements is unnecessary. It is sufficient for the step to require the use as self-contained residential units to cease. Reference to ceasing the use as two self-contained residential units may also lead to uncertainty as to what the notice actually requires, for example in the event of a future unauthorised use as three or more self-contained residential units. Therefore, I shall vary the notice to delete reference to the number of units in step (i). In doing so, I am satisfied that there would be no injustice to the appellant or the Council.

3. The revised National Planning Policy Framework (the Framework), published on 19 December 2023, has been taken into account in my Decision.

Ground (a) appeal

Main Issues

4. The main issues in this ground of appeal are:
- Whether suitable living conditions are provided for existing and future occupiers of the additional self-contained residential unit, having regard to internal floorspace and private outdoor amenity space.
 - The effect on the character and appearance of the surrounding area.
 - The effect on highway safety, having regard to the provision made for off-street vehicle parking.

Reasons

Living conditions

5. The appeal property contains an enlarged mid-terrace residential building, in which the living accommodation is arranged over three floor levels. On the ground floor is a self-contained unit of accommodation which includes a living/dining room, kitchen, shower room and two bedrooms. The additional unit of self-contained accommodation is on the first and second floors. The additional unit has two bedrooms as well as a shower room and a box room on the first floor, with a combined lounge/dining and kitchen area together with a WC and utility room on the second floor. Both units are accessed via a communal hallway.
6. The combined lounge/dining and kitchen area in the additional unit is of modest dimensions. When I visited, a dining table, some chairs, a cupboard and clothes dryer together with an upright fridge freezer took up a considerable portion of the floorspace in this area. There was limited space left in which to accommodate the furniture and other everyday items normally associated with a lounge, such as a sofa and TV, along with household goods and personal effects. Accommodating such items would leave little space for circulation. The awkward plan shape and sloping ceiling further reduces the useability of the floorspace in the lounge/dining area.
7. The kitchen area contains a range of facilities including a cooker, hob, sink, worktops and cabinets. There is relatively limited space in this area for more than one person to go about day-to-day activities, such as preparing food and washing clothes. Inward opening doors further restrict the amount of useable floorspace in both the lounge/dining and kitchen areas. In consequence, although other rooms in the additional unit are generally of a good size, in my view the occupiers are likely to experience an uncomfortably cramped and restrictive feel when using the lounge/dining area, for example when relaxing or taking meals, and whilst going about daily activities in the kitchen area.
8. At around 57m², the gross internal floor area (GIA) of the additional unit falls well short of the minimum internal space standard of 70m² for a two-storey, two-bedroomed dwelling, set out in Table 5.1 of the Hillingdon Local Plan Part 2: Development Management Policies (DMP) and in Table 3.1 of the London Plan (LP). The significant deficiency in GIA when assessed against the

minimum space standard set out in the Development Plan underpins my findings regarding the restrictive living space provided for existing and future occupiers of the additional unit.

9. Fitting out and finishing the accommodation to a high standard internally is of limited relevance in terms of whether there is sufficient living space provided for occupiers of the additional unit. Also, prospective occupiers are not a reliable indicator of the suitability of living space. Other factors such as affordability are often likely to take precedence, leaving prospective occupiers with limited practical choices when seeking to meet their accommodation needs. Moreover, if the suitability of living accommodation were left solely to the market to determine this would be highly likely to lead to further substandard provision.
10. DMP Policy DMHB 18 requires all new residential development and conversions to provide good quality and useable private outdoor amenity space in accordance with the standards set out in Table 5.3, which include in relation to a two-bedroom flat a minimum provision of 25m² of such space. In the absence of any private outdoor amenity space provision being made for the additional unit there is little opportunity for its occupiers to undertake a range of activities including informal recreation, children's outdoor play, drying washing or cultivating plants. The lack of such space reinforces the restrictive living environment experienced by occupiers of the additional unit.
11. Although not all occupiers are desirous of accessing private outdoor amenity space, that is not a good reason for failing to make such provision. I appreciate that expansive areas of public open space are a convenient walking distance from the property. However, such facilities are not an acceptable substitute for suitable private provision being made on site particularly where, as in this case, the unit is currently occupied by a young family and could conceivably continue to be so occupied in future. The level of outlook is of limited relevance in terms of whether there is sufficient private outdoor amenity space, as is the standard of the internal fitting out and finishes.
12. The appellant advanced an alternative scheme for the use of the property as two one-bedroom units. A bedroom in the ground floor unit would be used as a dining room and a bedroom on the first floor of the additional unit used as a lounge, with the lounge/dining area becoming solely a dining area.
13. As the number of units would be the same the alternative scheme would constitute a part of the development described in the notice, for which permission has been sought under the deemed planning application pursuant to ground (a). At s177(1)(a), the Act provides that planning permission may be granted in respect of the whole or part of the breach described in the notice. Therefore, whilst advanced as part of the ground (f) appeal it is appropriate to consider whether permission should be granted for the alternative scheme.
14. Be that as it may, the alternative scheme makes little difference in terms of whether suitable living conditions are provided for existing and future occupiers of the additional unit. The proposed 'lounge' would clearly be capable of use as a bedroom. In any event, there would still be no private outdoor amenity space provided for the additional unit. Therefore, the alternative scheme would not overcome the objections identified above.

15. Consequently, on account of the restrictive internal living space together with the absence of a private outdoor amenity area the additional unit does not provide suitable living conditions for its existing and future occupiers. The failure to meet the internal space standards in Table 5.1 and Table 3.1 conflicts with DMP Policy DMHB 16 and LP Policy D6 respectively, whilst the failure to provide private outdoor amenity space as required by Table 5.3 conflicts with DMP Policy DMHB 18.

Character and appearance

16. DMP Policy DMH 4 states that residential conversions and redevelopment of dwellings into flats will only be permitted where a number of criteria are met. This includes the original building to be converted having a floor area of at least 120m². The DMP supporting text explains that flat conversions can result in a range of problems, including the loss of front gardens and significant changes to the street scene. Even if the appellant's estimate is accurate, at 107m² the floor area of the original building falls significantly below the minimum size threshold for conversion to flats set out in the above policy.
17. The property is located in an established residential area, mostly comprising terraces or pairs of dwellings. To facilitate off-street parking for the additional unit, the front garden area at the property has been almost entirely covered with a hard surface accessed via a footway crossover. However, the front gardens of adjacent properties and most likely the majority of those in the immediate and wider area have been hard surfaced at some stage, to provide off-street parking. In the context of the prevailing pattern of local development, the hard surfacing of the relatively modest front garden area at the property has not resulted in an appreciably more harsh or greater built-up feel in the street scene. In any event, the notice does not require removal of the hard surface.
18. Therefore, although the additional unit does not comply with criteria in DMP Policy DMH 4, the off-street parking provision has not had a significant adverse effect on the street scene and there has been no unacceptable harm to the character and appearance of the surrounding area. The Council did not point to any other aspect of the development as having caused visual harm and there is no sound reason for me to do so. The visual problems associated with flat conversions identified in the DMP supporting text have not occurred in this instance.

Highway safety

19. In Appendix C, the DMP requires a maximum on-site parking provision of between 1 and 1.5 spaces for a two-bedroomed unit with additional on-site parking for visitors. The hard surfaced area at the front of the property is capable of accommodating a maximum of two motor vehicles.
20. There are some convenience shops, takeaway food outlets and other local services a short, level walk from the property. However, the nearest bus stop is at a considerable distance. The property is located in an area with a public transport accessibility level (PTAL) of 1a, meaning that there is relatively limited access to frequent public transport services.
21. Occupiers of the property are therefore likely to be reliant to a great extent on private motor vehicles to meet the majority of their day-to-day travel needs,

including accessing a wider range of shops, services and other facilities beyond a reasonable walking distance from the property. Taken together with the slight shortfall in the maximum number of on-site parking spaces required by the DMP, this makes it highly likely that some occupiers and visitors to the property have to park vehicles at the roadside.

22. Even so, during my visit I saw that restrictions on roadside parking in the vicinity are generally limited. Also, although there were many incidences of vehicles parked at the roadside in this and adjacent streets, there were also a good number of opportunities for accommodating such parking. Whilst there might be greater incidences of roadside parking at other times it is doubtful that this would exceed capacity, given that many properties in the locality have made provision for off-street parking.
23. Additionally, by and large the surrounding streets are of sufficient width for vehicles travelling in opposite directions to pass with ease, they are well-aligned, there is good visibility at junctions and vehicle speeds are relatively low. For the most part, incidences of roadside parking do not significantly impair the free flow of traffic or restrict forward visibility available to drivers, cyclists and pedestrians. This all indicates that there is capacity for safely absorbing any modest increase in roadside parking associated with the additional unit in this or the surrounding streets. Moreover, since it is unclear whether there was any convenient off-street parking provision at the property previously, it is entirely possible that occupiers and visitors of the single dwelling parked at the roadside.
24. As a result, the absence of a transport appraisal and travel plan notwithstanding, any increased demand for roadside parking following formation of the additional unit is unlikely to have led to a significant reduction in the vicinity of the carriageway width available for vehicles to pass freely, or to the forward visibility available to road users. Such demand is also unlikely to be significantly greater than that which would have occurred in relation to the use of the property as a single dwelling. Provision of secure cycle parking could have been secured by a planning condition, had I been minded to allow the appeal and grant permission for the additional unit.
25. For the above reasons, the additional unit has not adversely affected highway safety. There is no conflict with DMP Policy DMT 2, as safe and efficient vehicular access is provided and there is no deterioration in the safety of road users and residents. Also, in the absence of any deleterious impact on street parking provision or congestion there is no conflict with DMP Policy DMT 6.

Other Matters

26. I am given to understand that being in poor health, the occupier of the ground floor unit benefits from assistance in day-to-day tasks from the occupiers of the additional unit. Nevertheless, little weight can be afforded to this matter. Personal circumstances can change quickly, whilst the consequences of development can endure for a long time.

Planning Balance & Conclusion-Ground (a) appeal

27. Provision of the additional unit supports significantly boosting the supply of housing and contributes to making more efficient use of land as well as to providing a mix of housing types for the local community. Given the small scale

of the development, these factors carry modest weight. There has also been a small and time-limited economic benefit during the construction phase, which may have given rise to some additional short-term employment. On the other hand, the additional unit does not provide suitable living conditions for the existing and future occupiers. This carries significant weight and outweighs the above benefits. Therefore, the additional unit conflicts with the Development Plan and there are no other considerations, including the Framework, outweighing that conflict. It follows that the ground (a) appeal does not succeed.

Ground (f) appeal

28. The ground of appeal is that the requirements of the notice are excessive.
29. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or it can have the purpose of remedying any injury to amenity caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. By ceasing the unauthorised use as separate self-contained residential units and removing the works that facilitate such use, the property would be restored to its condition prior to the breach taking place.
30. The appellant's alternative scheme has been considered in the ground (a) appeal. In the context of ground (f), retaining the additional unit would sustain the breach and so would not achieve the purpose of the notice. No other alternative to the notice requirements was drawn to my attention. To my mind, there is no alternative to those requirements that would also remedy the breach.
31. Therefore, the notice requirements are not excessive and are proportionate, being the minimum necessary to remedy the breach and so achieve the purpose of the notice. The ground (f) appeal fails.

Ground (g) appeal

32. The ground of appeal is that the time allowed for complying with the notice requirements is too short.
33. The remedial works would be reasonably modest in scale, they are largely confined to the interior of the building and would not be particularly complex. In my estimation, such works are unlikely to take more than a few weeks at most to complete. I highly doubt that the works would involve use of any specialist plant or equipment. The works are likely to be a relatively straightforward job for a suitably experienced small building contractor. In all probability, there are a significant number of contractors with the relevant skills and expertise who could undertake the works and would be available to do so given a reasonable period of notice. There is little firm evidence before me of a significant shortage of contractors in the wider area or of there being unduly lengthy waiting times before works can commence. Similarly, there is little firm evidence of any shortages in building materials that would adversely affect the likely timescale for undertaking the works.
34. Even so, prior to the remedial works commencing the unauthorised use would have to cease. This would most certainly affect the occupiers of the additional unit but may also have implications for the occupier of the ground floor unit. I

am given to understand that the additional unit is currently occupied by a young family. In practice, a three-month compliance period would in all likelihood place the occupiers in the position of having to vacate one or both of the units no more than two months after the notice takes effect, to also allow sufficient time for the remedial works to be carried out. This would leave the occupiers with very little time in which to search for and secure alternative living accommodation. When taking into account the well-documented pressures on the rental property market in London generally, it is entirely possible that the occupiers would be placed at an increased risk of homelessness as a result.

35. Given the circumstances set out above, a compliance period of six months would afford the occupiers a more reasonable amount of time in which to find suitable alternative accommodation whilst remaining at their current address. This would strike a better balance between remedying the planning harm identified as soon as is practicable whilst also avoiding, so far as is possible, imposing a disproportionate burden on the appellant and the occupiers. There would be no injustice to the Council in varying the notice to extend the compliance period accordingly. Therefore, the ground (g) appeal succeeds to this limited extent.

Conclusion

36. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR