



Appeal Decision

Site visit made on 24 April 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09th May 2024

Appeal Ref: APP/T5150/C/22/3309707

18 Cranhurst Road, London NW2 4LN

- 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 Malik Saleem against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 16 September 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and one flat. ("the unauthorised change of use") AND Without planning permission, the erection of an outbuilding in the rear garden of the premises. ("the unauthorised development").
- The requirements of the notice are: STEP 1 Cease the use of the premises as a house in multiple occupation (HMO) and one flat, and cease its occupation by more than ONE household. STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, except ONE, and all bathrooms, except THREE, from the premises. STEP 3 Demolish the unauthorised outbuilding in the rear garden and remove all items, materials and debris, arising from that demolition, from the premises.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), and (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.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Ground (c)

1. The appellant's submissions under this ground of appeal relate solely to the outbuilding. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the outbuilding is not in breach of planning control.
2. There is no dispute that the erection of the outbuilding comprised development requiring planning permission, with regard to sections 55 and 57 of the Act. Article 3(1) and Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) set out that the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development, subject to limitations. Article 2(1) of the GPDO clarifies, with regard to Class E, 'dwellinghouse' does not include a building containing one or more flats, or a flat contained within such a building.

3. It is not disputed that the house is in use as an HMO and one flat. The house is not therefore in use as a dwellinghouse, with regard to Class E of the GPDO. No evidence has been provided to suggest that the house was in use as a dwellinghouse when the outbuilding was erected, or that the outbuilding was required for a purpose incidental to the enjoyment of a dwellinghouse. It has not been demonstrated, on the balance of probabilities, that the outbuilding benefits from any form of planning permission, including that granted by the GPDO. The outbuilding is in breach of planning control.
4. The appeal under ground (c) must therefore fail.

Ground (a) and the deemed application for planning permission

5. The appeal under this ground is that planning permission should be granted for the material change of use of the house to an HMO and one flat (the MCU) and the erection of the outbuilding. The main issues are:
 - The effect of the MCU on the provision of family size accommodation within the borough;
 - Whether the MCU provides acceptable living conditions for occupants of the house, with particular regard to internal and external space, and noise and disturbance;
 - The effect of the MCU on the character and appearance of the area and the living conditions of neighbouring residents, with particular regard to noise and disturbance, refuse and bicycle storage facilities, and on-street parking provision; and
 - The effect of the outbuilding on the character and appearance of the area and the living conditions of neighbouring residents, with particular regard to outlook.

Family Size Accommodation

6. The house is a large building with accommodation over 3 levels. It previously comprised a single dwellinghouse occupied by 1 household.
7. Policy BH11 of the Brent Local Plan 2019-2041 (2022) (BLP) seeks to protect family size housing by stipulating that its conversion to 2 or more dwellings will only be allowed where 3 criteria are met, unless if the amenity of the existing family size home is so deficient that family occupation is unlikely and could not reasonably be changed. The second criterion is that the conversion must result in at least a 3-bedroom dwelling.
8. The material change of use has resulted in the conversion of family size housing to a 7-bedroom HMO and a single room flat. The second criterion of Policy BH11 has not been met. The material change of use has resulted in the loss of family size accommodation within the borough and fails to accord with Policy BH11 of the BLP.

Living Conditions of Occupants

9. I noted that some of the bedrooms had double beds, but I do not know how many people occupy each room. There is limited internal communal space at ground floor level, comprising narrow kitchen space with extensive cooking and washing areas, but very little dining space. There is a large outside area which

can be accessed through the kitchen, which abuts a window serving Bedroom 3. There is a single shower room with toilet at ground floor level and 2 shower rooms with toilets at second floor level. Bedroom 3 has a shower room with a toilet as an en-suite.

10. The flat is located in the roof space, at second floor level. A cot and a double bed were present in the flat, which comprised a space with restricted headroom used as combined living, dining and sleeping space, with small separate rooms for the kitchen and shower room with toilet.
11. I have not been provided with information confirming the number of people who live in the HMO or the flat. The Council has advised that a licence was sought for 12 people to occupy the property and at least 10 people were found living in the HMO and 4 people were found living in the flat in March 2020. The Council also advises that the flat has a floor area of less than 35 square metres. None of this is disputed by the appellant and no alternative figures have been presented.
12. It has been suggested that the flat offers acceptable living conditions for a single person, but it is evidently being occupied by a family living in cramped conditions. In any case, there is no evidence to convince me that the flat provides the minimum internal space standards for a single occupancy flat, as set out in the Government's technical housing standards¹.
13. No figures have been provided to confirm the sizes of bedrooms and communal spaces within the HMO. Although bedroom sizes appeared adequate for single person occupancy, the kitchen and dining areas did not provide sufficient communal space for 7 people. I am also mindful that the undisputed evidence points to more than 1 person occupying at least some of the bedrooms.
14. There is a sizeable outside communal area, but its use as such has the potential to cause unacceptable noise and disruption to occupants of Bedroom 3, which faces onto it. No suggestions have been made as to how this could be addressed. Furthermore, I do not see how any of this outside space could be made into a private amenity space to serve the flat, which is likely to be occupied separate to the HMO, even though it relies on communal access through the building.
15. There is no information before me as to whether any acoustic insulation has been installed to any living space. It is inevitable that there would be potential for noise and disturbance to be caused to occupants of the house by their various comings and goings. This would be on account of the layout of the house and the high number of occupants. Occupants of Bedrooms 1 to 3 in particular would be likely to experience unacceptable noise and disturbance due to their proximity to external doors, internal and external communal space, and the stairs. Residents of HMOs may expect to experience high levels of noise, but that does not justify the unacceptable living conditions created.
16. Overall, I consider the quality of living space offered by the HMO and the flat to be very poor, notwithstanding the clean and modern finishes throughout. The HMO fails to provide enough internal communal space and it has not been demonstrated that measures have been, or could be, implemented to prevent occupants from being adversely affected by noise and disturbance caused by

¹ Nationally described space standard, March 2015

other residents of the building. The flat fails to provide enough internal space and is not served by any private external amenity space. I am aware that the Council has granted an HMO licence for the property, but this does not convince me that the HMO or the flat provide acceptable living conditions for their occupants.

17. The MCU is therefore contrary to Policies DMP1, BH7 and BH13 of the BLP and Policy D6 of the London Plan (2021) (LP). Policy DMP1 requires development to be of a use, concentration, layout, scale, type and design that provides high levels of internal and external amenity. Policy BH7 requires accommodation with shared facilities to meet various criteria including requirements to demonstrate a specific Brent need for the accommodation, the provision of appropriate standards, facilities and management arrangements for the needs of occupants, and to avoid over-concentrations of such accommodation. Policy BH13 requires all new dwellings to have private external amenity space of a sufficient size to satisfy its residents' needs. Policy D6 specifies housing quality and standards, including minimum internal space standards for new dwellings.

Character and Appearance and Living Conditions of Neighbours: MCU

18. The house is a semi-detached 2 storey building with extended roof space. The surrounding area is made up of properties of a similar style and size, set back from the highway. There are narrow gaps between the pairs of semi-detached houses, offering very restricted views of large rear gardens. Notwithstanding the spacious rear gardens, the locality can reasonably be described as a densely populated area.
19. I have not been referred to any designated refuse or bicycle storage areas, but there is sufficient space within kitchens for refuse to be collected and external space at the front of the house for refuse to be stored in the many bins I have seen. A large number of bins are necessary to store the amount of waste associated with the HMO and flat, but they form an unsightly collection at the front of the house. I can see how easily those bins may become disorganised and more unpleasant, as described by neighbouring residents. There are no details before me to suggest there is any form of waste management plan in place. These would be necessary in this case to protect the character and appearance of the area and the living conditions of neighbouring residents, where such a large number of people are living in what was originally designed as accommodation for a single household.
20. I do not see how bicycles could be securely and conveniently stored at ground floor level anywhere at the property. Policy T5 of the LP sets minimum bicycle parking standards for residential development. There are no details before me as to how the necessary minimum bicycle storage space could be provided without creating further uncharacteristic clutter to the front of the site, harmful to the character and appearance of the area.
21. An allegation that excessive noise is associated with the MCU has not been explained or substantiated in any detail. There will inevitably be more comings and goings associated with the use of the house as an HMO and 1 flat rather than it being occupied by 1 household, but I have also been referred to other HMOs close to the appeal site on Cranhurst Road. This, together with the dense nature of residential development in the area, convinces me that the MCU is unlikely to have resulted in noise and disturbance causing unacceptable harm to the living conditions of neighbouring residents.

22. The MCU is likely to have resulted in more people occupying the house. However, it has not been shown that the local area is unable to accommodate any associated increase in on-street parking demand without adversely affecting unspecified residential amenities. HMOs tend to provide lower cost accommodation and are often occupied by people on lower incomes. The appeal site is located close to public transport links along Walm Lane, including an underground station. All of this leads me to find it unlikely that many of the occupants would own a car. Indeed, I am advised that none of the current occupants of the HMO have use of a car. I do not therefore find that the MCU leads to an unacceptable increase in demand for on-street parking.
23. In conclusion on the third main issue, I find that the MCU harms the character and appearance of the area on account of the refuse and bicycle storage facilities needed to support the use of the house as an HMO and 1 flat. I do not find any harm is caused to the living conditions of neighbouring residents by the MCU.
24. The MCU is therefore in conflict with Policy DMP1 of the BLP and Policy T5 of the LP. Policy T5 sets minimum bicycle parking standards for residential development. Policy DMP1 requires, amongst other things, development to be of a location, use, concentration, and type that complements the locality, and to be satisfactory in terms of means of access for all servicing.
25. The material change of use is not in conflict with Policy BT2 of the BLP and Policy T6.1 of the LP. These seek to manage the impact of car parking and set maximum car parking standards.

Character and Appearance and Living Conditions of Neighbours: Outbuilding

26. The outbuilding cannot be clearly seen from the street, but it is visible from the rear of neighbouring properties. It is large in size and is positioned at the end of the rear garden, directly adjacent to rear and side boundary walls. There is no dispute that the outbuilding is under 2.5 metres in height, and it is not much taller than the rear garden boundary walls.
27. As it is located at the end of a sizeable garden and is surrounded by other similarly sized gardens, it is not seen as an excessively large, obtrusive or overbearing feature. Its design, size and appearance are typical of many residential outbuildings, and it does not appear out of place.
28. The outbuilding does not therefore cause any harm to the character and appearance of the area, restrict the outlook of any neighbouring residents, or otherwise harm their living conditions. The outbuilding does not conflict with Policy DMP1 of the BLP or the advice in the Council's Supplementary Planning Document 'Residential Extensions and Alterations' (2018). These seek to ensure development is of a design which complements the locality and provides high levels of external amenity, amongst other things.

Other Matters

29. The notice refers to Policies BH10 and BH12 of the BLP, but neither of these are relevant to the development, on the evidence provided. This is because there has been no net loss of residential dwellings and there is insufficient evidence that the outbuilding is used as residential accommodation or supports the increased occupation of a dwelling. I have not been provided with evidence

which shows that substandard construction methods are associated with the breaches of planning control either.

30. A condition could prevent the outbuilding from being used as primary living accommodation to ensure it would continue to accord with Policy BH12. Further enforcement action could be taken if the outbuilding is used for any purposes which result in an unauthorised material change of use.
31. I have been invited to consider granting planning permission for the HMO alone, with the kitchen to the flat removed. For the reasons set out above, the HMO fails to accord with the development plan and the removal of the kitchen to the flat, or any other suggested alterations, would not address the planning harms associated with the HMO. The vague possibility that the house could be occupied by a large number of adults as a single household does not convince me planning permission should be granted for the HMO and/or the flat either.

Conclusion on Ground (a) and the Deemed Application for Planning Permission

32. The MCU has resulted in the loss of family size accommodation and the creation of an HMO and a flat which provide unacceptable living conditions for their occupants. I have also found that the MCU causes harm to the character and appearance of the area. It is in conflict with the development plan taken as a whole and there are no material considerations which indicate planning permission should be granted for the HMO and/or the flat.
33. The outbuilding does not harm the character and appearance of the area or the living conditions of any neighbouring residents. Subject to a condition, it is in accordance with the development plan as a whole and there are no material considerations which indicate it should not be granted planning permission.
34. Under the provisions of section 177 of the Act I am able to grant planning permission for part of the breach of planning control stated in the notice. I shall make a split decision on the appeal under ground (a) and the deemed application for planning permission.
35. The appeal under ground (a) therefore succeeds in part, insofar as it relates to the outbuilding, and planning permission is granted subject to a condition for that part of the development. The appeal under ground (a) fails in respect of the MCU and planning permission is refused for that part of the development.

Ground (f)

36. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. There is no need for me to consider this ground of appeal with respect to the outbuilding, as I will be granting planning permission for that development.
37. The notice requires the cessation of the use of the premises as an HMO and one flat and the cessation of its occupation by more than 1 household, along with the removal of internal partitions, items, material and debris associated with the MCU. This includes the removal of all but 1 kitchen and all but 3 bathrooms. The purpose of the notice is to remedy the breach of planning control, rather than any injury to amenity.

38. Caselaw has found that it is appropriate to consider whether there are any lesser steps which would achieve the purpose of the notice with less cost and disruption, and that the requirements should be proportionate in that sense. It is unclear to me what partitions, items, materials and debris may be associated with the MCU, but these should be reasonably clear to the appellant. It appears that some rooms may have been subdivided to create bedrooms and/or shower rooms, which would be inconsistent, to some extent at least, with the lawful use of the house. The same can be said for beds and fridge/freezers within bedrooms. It is therefore not unreasonable, excessive or ambiguous for the notice to require the removal of those partitions, items, materials and debris. This avoids the need to specify how many bathrooms need to be removed.
39. It is reasonable for all but 1 kitchen to be removed from the building, because additional kitchen space is fundamental to the MCU. Furthermore, there is no evidence that more than 1 kitchen would be necessary for a single household in this case. It is not necessary to identify which kitchens should be removed as the direction to remove all kitchens except 1 is unambiguous.
40. The appeal under ground (f) therefore succeeds in part, insofar as I shall vary the steps required by deleting the need to remove bathrooms.

Ground (g)

41. To succeed under this ground of appeal the appellant would need to demonstrate that 6 months falls short of what should reasonably be allowed for the notice to be complied with.
42. Occupants of the property are claimed to have tenancy agreements and the right to 2 months' written notice of the termination of those contracts. No copies of tenancy agreements have been provided and it remains unclear how many people occupy the property.
43. On the evidence provided, 6 months is a reasonable period for existing tenants to vacate the property and for the necessary remedial works to be completed.
44. The appeal under ground (g) therefore fails.

Conclusion

45. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the outbuilding subject to a condition, but otherwise I will uphold the notice with a variation and refuse to grant planning permission in respect of the MCU. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

Formal Decision

46. It is directed that the enforcement notice is varied by the deletion of the text 'and all bathrooms, except THREE,' at Schedule 4 of the enforcement notice. Subject to the variation, the appeal is allowed insofar as it relates to the outbuilding and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the erection of an outbuilding in the rear garden of the premises at 18 Cranhurst Road, London NW2 4LN subject to the following condition:

(i) The outbuilding hereby permitted shall not be used to provide bedroom, kitchen, bathroom, toilet, or any other living space.

47. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the material change of use and planning permission is refused in respect of the material change of use of the premises to a House in Multiple Occupation and one flat at 18 Cranhurst Road, London NW2 4LN on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR