



Appeal Decisions

Site visit made on 18 September 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Appeal A Ref: APP/T5150/C/23/3314137

36 Spencer Road, Wembley HA0 3SF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Fredon Raei against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 28 November 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 a flat.
- The requirements of the notice are to:
 - STEP 1 Cease the use of the premises as flats.
 - STEP 2 Cease the use of the premises as a House in Multiple Occupation (HMO).
 - STEP 3 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets.
 - STEP 4 Restore the internal configuration so it consists of a family dwellinghouse with the original layout before the unauthorised change of use took place.
- The period for compliance with the requirements is six 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).

Appeal B Ref: APP/T5150/W/22/3307190

36 Spencer Road, Wembley, Brent HA0 3SF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Ms Raei against the decision of the Council of the London Borough of Brent.
- The application Ref is 22/2345.
- The development proposed is removal of studio flat to create HMO.

Decision

1. It is directed that the enforcement notice is varied by:
 - 1) The deletion of the word *flats* and the substitution with the words *a flat* in STEP 1.
 - 2) The deletion of STEP 3 and STEP 4 and their replacement with the following: *STEP 3 Remove all internal partitions, items, materials, and debris associated with the unauthorised change of use and restore the internal configuration to the original layout before the unauthorised change of use took place.*
2. Subject to the variations, Appeal A 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.

3. Appeal B is dismissed.

Preliminary Matters

4. There is only one flat, I have therefore varied STEP 1 to reflect that.
5. In respect of Appeal A, the terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice.
6. Appeal B proposes the removal of the flat and the use of the property as a six-bedroom HMO. However, since the considerations in Appeal A are essentially the same as for Appeal B I have considered the appeals together.

Appeal A on ground (a) the deemed planning application and Appeal B

Main issues

7. The main issues are the effect on (i) the supply of housing in the borough (ii) the living conditions of occupants with regard to the standard of accommodation (iii) the living conditions of neighbouring occupants with particular regard to noise and disturbance (iv) accessibility (v) fire safety.

Housing supply

8. Policy BH10 of the Local Plan¹ states that development resulting in the net loss of residential dwellings will be supported only in exceptional circumstances including where it provides social or physical infrastructure to meet an identified local need which could otherwise not exist. The justification states that as identified in the SHMA and Policy BH6 Housing Size Mix, provision of family accommodation (3 bed or more dwellings) to meet Brent's needs is a priority.
9. Policy BH7 of the Local Plan sets out that proposals for student accommodation, non-self-contained or self-contained residential accommodation with shared facilities or on-site support/care to assist residents in their daily lives will be supported subject to several criteria, including where there is a demonstrable *specific Brent need* [my emphasis], or in the case of purpose-built student accommodation a London need, for the particular use.
10. It is recognised in the Local Plan, that changes in demographics, welfare and lifestyle choices mean that there will be increased demand for these types of accommodation and that these types of uses make a significant contribution to meeting local and in the case of students, London needs.
11. However, it is also stated that the cost, limited availability of housing and flexibility of development rights has resulted in many Brent homes becoming houses in multiple occupation.
12. The justification at 6.2.68 explains that Brent is an area with lower property values than some parts of London, particularly inner London. Pressure created by welfare reform and support agency budgets to reduce costs might provide drivers for relocation to Brent. For the reasons identified in relation to potential adverse factors identified above in relation to concentration, Brent is reluctant to encourage such a move. Consequently, it will seek to ensure that with the

¹ London Borough of Brent Brent Local Plan 2019-2041 Adopted February 2022

exception of students, the accommodation proposed is addressing a Brent population specific need.

13. Despite reference to the accommodation being occupied, the appellants have provided no evidence to demonstrate that there is a specific Brent need for the HMO. Consequently, I find that the development as existing and proposed is and would be, contrary to Policies BH7 and BH10 of the Local Plan and there is no evidence before me which would justify setting the requirements of those policies aside.

Standard of accommodation

14. All but one of the bedrooms in the HMO which has access to a separate bathroom, is en-suite and the rooms include a small countertop with fridge, microwave, and toaster. There is a relatively narrow galley style kitchen on the ground floor with a small seating area, as such, occupants would have somewhere to eat a meal, however not all occupants would be able to do so at one time. Moreover, there are no amenity areas, such as a lounge or dining room and in the absence of alternative amenity space, occupants would spend a reasonable amount of time in their bedrooms.
15. All but one of the bedrooms has a window on an external wall and provide good levels of light and outlook. Whilst one of the second-floor rooms is served by a rooflight, this provides an acceptable level of light. However, the lack of adequately sized, usable communal areas results in unduly oppressive and restrictive living space for occupants of the HMO and therefore the development does not provide acceptable living conditions. This would not be improved by the loss of the flat and addition of a bedroom.
16. The property has an HMO licence however, licensing serves a different purpose, namely ensuring accommodation meets a minimum standard for human habitation. This is therefore a matter of little weight.
17. The flat consists of a multi-purpose space which includes a kitchen/living/sleeping area with an en-suite. It is accessed at the rear of the house via a side gate. The glazed entrance doors overlook a decked area and the rear garden.
18. Policy D6 of The London Plan 2021 requires a one-bedroom, one-person, single storey dwelling to provide a minimum gross internal floor area of 37sqm where the dwelling has a shower room instead of a bathroom, as in this case. At around 30sqm this is a significant shortfall and combined with my observations, the flat does not provide adequately sized accommodation for occupants, resulting in inappropriate residential quality.
19. There is a relatively large garden to the rear which if the occupants of the HMO have access to, would comply with Policy BH13 of the Local Plan. However, it is not clear whether the occupants have access to the garden. If they do, this will compromise the privacy of the occupants of the flat and the proposed bedroom.
20. Overall, the accommodation does and would not provide satisfactory living conditions for occupants contrary to policies BH7 and DMP1 which together require development to be of an acceptable quality and provide high levels of internal amenity. It also conflicts with the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing

and future users of buildings and the amenity protection aims of the Council's SPD².

Living conditions of neighbouring residents

21. As already stated, in the absence of alternative amenity space such as lounge areas, occupants would spend a reasonable amount of time in their bedrooms. The result would be a number of individuals carrying out tasks and spending time in bedrooms that would normally be associated with a ground floor living space. This is a very different pattern to that of a family, or possibly a household with a more generous and functional communal space.
22. Furthermore, the use would result in an increase in comings and goings due to the movements generated by a collection of individuals occupying the property, rather than a single family, due to different timetables, working and socialising patterns. Indeed, representations from a neighbouring resident highlight issues including late night comings and goings, noise and disturbance and overflowing bins.
23. I acknowledge that additional bin storage could be provided within the site, a matter which could be secured by condition. However, the use has and would result in harmful levels of noise and disturbance to neighbouring residents.
24. The existing and proposed development therefore conflict with Policy DMP1 of the Local Plan in so far as it aims to protect living conditions, and the amenity protection aims of the Framework.

Accessibility

25. The property is located within an area with a PTAL rating of 2 (poor). However, considering the type of accommodation, which the justification to Policy BH7 states is likely to be aimed at people with limited accessibility to personal transport, and since it is a short walking distance, around 350m from South Kenton station and around 450m from bus stops on Windermere Avenue, where there are also several small convenience stores, I consider this reduces the desire to own a car.
26. Accordingly, there is no conflict with the aims of Policy BT2 or Policy BH7 of the Local Plan which requires that development is located in an area with good access to public transport and other amenities, including shops (normally within 400m).
27. There is adequate room within the site to provide cycle parking which could be secured by condition, in accordance with Policy T5 of the London Plan 2021.

Fire safety

28. Policy D12 of The London Plan 2021 states that all development proposals must achieve the highest standards of fire safety. As the appellants stated, access would be available from Spencer Road for emergency vehicles and there is sufficient space to the front to use as an evacuation assembly point.
29. They also stated that the property benefits from a fire detection and alarm system which it appears from the certificate in the submissions, covers each of the floors and is maintained and inspected every six months. There is also a

² Brent Design Guide SPD 1 Nov 2018

fire extinguisher in the kitchen. However, there are no details or explanation of the means of escape and associated evacuation strategy for all building users – in particular, occupants of the second floor. Accordingly, the existing and proposed development are contrary to Policy D12 of The London Plan 2021.

Other matters

30. That the property could be returned to use as a single dwellinghouse is a neutral matter which does not alter my view on the planning merits.
31. The Council referred to Policy BH4 of the Local Plan in respect of the development proposed in Appeal B. It appears to me that this relates to new housing development (delivering a net addition of self-contained dwellings) and in the absence of substantive explanation is not directly relevant. Even if I am wrong, as the appellant stated, the site has a long rear garden which comprises of a decked area, paving, lawn and mature trees and shrubbery which would remain unaltered.
32. Policy BH11 relates to the conversion of family sized dwellings into two or more other dwellings. Whilst an HMO is a form of residential accommodation, I do not consider this policy is directly relevant and weighs neither for, nor against the developments.

Conclusion on Appeal A on ground (a) and Appeal B

33. The HMO and flat are in an area with reasonable access to public transport and other amenities and there is no evidence that the existing or proposed HMO would lead to an over-concentration of the type of accommodation in the area. However, these considerations do not outweigh the conflict with policies DMP1 and BH7 of the Local Plan in respect of the harm to the living conditions of occupants and neighbours, Policy D12 of the London Plan in respect of fire safety, and policies BH7 and BH10 of the Local Plan, in so far as it has not been demonstrated that there is a specific Brent need for the HMO.
34. As such, the use as an HMO and a flat, and the proposed HMO is and would be contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeals should be determined other than in accordance with the development plan.

Appeal A on ground (f)

35. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). The appellant acknowledged and the purpose of the notice is to remedy the breach of planning control.
36. I have considered the appellant's case regarding the proposed use as an HMO above.
37. It is a well-established principle that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use.
38. In order to return the building to its previous lawful state and remedy the breach of planning control, the necessary requirements are to cease the use as

an HMO and a flat, as well as to remove those items associated with the unauthorised change of use so that the layout of the property is returned to the position which it was before the unauthorised change of use took place.

39. It seems to me, in the absence of evidence to the contrary, that the number of bathrooms, kitchens and the layout have facilitated the unauthorised use. However, the property as a single dwellinghouse would have had at least one kitchen and bathroom.
40. Consequently, it is excessive to require all kitchens and bathrooms to be removed. Since it is sufficient to require that the layout of the property is restored to its previous condition, and the landowner should have the best knowledge of what that condition was, I shall vary the requirements accordingly. To this limited extent the appeal on ground (f) succeeds.

Appeal A on ground (g)

41. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of nine months.
42. Whilst I am mindful that the property is occupied, I have no details about the occupants' circumstances, for example I have not been provided with copies of tenancy agreements held by the tenants or details in relation to any such agreements. I therefore have no substantive details of the terms of the tenancies held by any current occupants, particularly in relation to matters such as the notice periods required by either side.
43. I cannot therefore be certain, that a period longer than six months is necessary to secure compliance with the notice, or that the period of six months specified in the notice is not proportionate to the breach of planning control that has occurred.
44. Additionally, the Council also referred to their powers under s173A(1)(b) to extend any period for compliance, if necessary, a matter which is entirely at their discretion, without prejudicing their right to take further action.
45. Accordingly, the appeal on ground (g) fails.

Conclusion

46. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).
47. For the reasons given above Appeal B should be dismissed.

Felicity Thompson

INSPECTOR