



Appeal Decision

Site visit made on 8 October 2024

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/T5150/C/24/3348827

60 The Ridgeway, London NW9 0UA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by RSM Property Investments Limited against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 17 June 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to flats and without planning permission, the erection of a two storey side and rear extension, alterations to the roof form, erection of a rear dormer window, and installation of rooflights to the front of the premises.
 - The requirements of the notice are:
 - Step 1 Cease the use of the premises as flats.
 - Step 2 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.
 - Step 3 Remove all bathrooms and bathroom facilities, except TWO, from the premises and removal all associated items, debris and materials, arising from this removal, from the premises.
 - Step 4 Demolish the two storey side and rear extensions, demolish the rear dormer window and remove the unauthorised roof. Alter the roof form so that it represents the roof form which existed prior to the unauthorised change of use and development commencing.
 - Step 5 Remove all internal partition walls, facilitating the unauthorised change of use, from the premises.
 - Step 6 Remove all associated items, debris and materials, arising from the compliance with the above steps, from the premises, so that the premises and the internal layout is returned back to a single family dwellinghouse as existed prior to the unauthorised use and development commencing.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f), (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. 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.

Applications for costs

2. An application for costs was made by the London Borough of Brent against RSM Property Investments Ltd. This application is the subject of a separate Decision.

Preliminary Matters

3. An application for planning permission¹ was approved in June 2019 to demolish an attached garage to the side of the property and erect a single and two storey side and rear extension, with a rear dormer window and four rooflights to convert the loft into a habitable space.
4. The extension that has been built differs from the approved scheme in several ways. The hipped roof of the main house has been extended into a gable end with a hipped two storey side extension, resulting in a larger loft space. The number and arrangements of windows on the side elevation have been altered and an additional door is added to the front elevation.
5. A certificate of lawfulness² was granted in 2018 for a proposed L-shaped dormer on the rear and side with a skylight to the front elevation. This pre-dates the extensions that are the subject of the enforcement notice and has not been built.
6. In October 2023 planning permission was refused for a proposed conversion of a single-family dwellinghouse (use class C3) into a House in Multiple Occupation (use class C4) (HMO)³.

The appeal on ground (b)

7. The ground of appeal is that the matters alleged in the notice have not occurred. This ground of appeal relates to the use and not to the operational development. In legal grounds of appeal, the burden of proof lies with the appellant and the standard of proof is the balance of probabilities.
8. The appellant asserts that the change of use to self-contained flats has not taken place, and that it was always intended that the property would be used as an HMO. For there to be success on this ground, the appellant would need to show, on the balance of probabilities and with sufficiently precise and unambiguous evidence, that the premises were not being used as flats.
9. A flat is a normally considered to be a dwellinghouse for the purposes of the Act. Case law has established that the distinctive characteristic of a dwellinghouse is its ability to afford to those who used it the facilities required for day-to-day private domestic existence. This differs from an HMO, where two or more of the households must share one or more basic amenities, or the living accommodation lacks one or more basic amenities.
10. The appellant states that there are no separate water or gas meters, and there is no separate council tax for the flats. They assert that it was laid out in accordance with the floor plans accompanying the refused 2023 planning application for the use of the property as an HMO. The appellant has not provided any other evidence that supports their case. The appellant has not clarified the reasons why they consider it has not been divided into flats. Nor have they responded to the evidence provided by the Council.
11. An Energy Performance Certificate (EPC) surveyor assessed 5 dwellings at the site on 12 September 2023 and the Council has provided copies of the certificates.

¹ Ref 18/1414

² Ref 18/3466

³ Ref 23/2837

12. The Council undertook a site visit in relation to the HMO planning application on 26 October 2023. The planning officer observed that the property was not in use as a single dwellinghouse as stated on the application form but had been converted into self-contained flats. No basic facilities such as kitchens, bathrooms or toilets were shared between the five households occupying the five flats. Photographs taken at that time indicate five front doorbells and five electricity meters. Photographs of the interior of units 3 and 4 indicate a kitchen with washing machine, sink and cooker with four hobs and an oven, a bedroom and shower/WC. Photographs of doors with the numbers 1 and 2 are also shown.
13. The appellant completed a Planning Contravention Notice (PCN), signed and dated by the appellant on 7 May 2024. As there are penalties for recipients who provide false information, I afford the appellant's responses to the PCN substantial weight. In response to the PCN, the appellant stated that the premises was a single dwellinghouse from when it was purchased in 2001 to 2023. Its current use was stated to be self-contained flats. In the PCN the appellant stated that there are five self-contained flats, but also 5 rooms used as part of the HMO, with a total number of 8 occupants. It is stated that the use started on 25 September 2024, although that postdates the date of the PCN and is presumably meant to read 25 September 2023. Floor plans were included with the PCN indicating 5 self-contained one-bedroom units, each with a kitchen, bedroom and bathroom. The layout shown on the floor plans was broadly similar to what I saw on site.
14. Photographs taken on 9 May 2024 indicate five electricity meters and five doorbells by the front door, indicating that each flat has a separate meter. A photograph of a sign to tenants refers to 'flat'. A photograph of the room within the loft indicates that it had a cooker with four hob rings and an oven and a sink. The Council states that the property was in use as five self-contained flats at this time, with no basic facilities shared between the five households.
15. At the time of my site visit the property was still largely divided into five self-contained flats. The two ground floor units had signs on their doors to indicate that they were communal spaces. However, one of them appeared to be occupied by a household and contained a kitchen, lounge and bedroom. Full access was not available to the other one, so that only the kitchen/living area was visible. The area shown as a bedroom on the floor plan was not available. The units on the first and second floor all appeared to be occupied as separate self-contained units. While they did not contain the cookers shown in the Council's photographs, these could easily have been removed since the notice was issued. The lack of full cooking facilities at the time of my visit does not indicate that, in the period leading to the notice being issued, there were not five self-contained flats.
16. While I accept that the appellant may intend that the premises are used as an HMO, as shown on the 2023 application drawings, the evidence indicates that the property was in use as five self-contained flats when the notice was issued. The lack of council tax payments for the five separate flats indicates only that they have not been registered as such, not that the use has not occurred.

17. The appellant's evidence falls well short of discharging the burden of proof. Rather than being precise and unambiguous, the appellant contradicts the information provided in response to the PCN and the evidence provided by the Council. The appeal on ground (b) fails.

The appeal on ground (a) and the deemed planning application

18. The appellant states that they wish to regularise the present position of the property as a HMO. However, the allegation in the enforcement notice refers to the use of the property as flats. I could grant planning permission for the whole or part of the development alleged in the notice. The use as an HMO is a different use and does not form part of the matters alleged in the notice. It is not therefore open to the appellant to seek planning permission for the use of the property as an HMO through the appeal on ground (a).
19. Having regard to the reasons for issuing the notice, the main issues are:
- The effect of the change of use on the stock of family housing in the area,
 - The effect of the development on the character and appearance of the area,
 - Whether the change of use provides adequate living conditions for the occupiers, with regard to internal space standards, outdoor amenity space, and noise and disturbance,
 - The effect of the development on the living conditions of neighbouring occupiers with regard to noise, disturbance, odours and the availability of on-street parking,

Family housing

20. Policy DMP1 of the Brent Local Plan Adopted 2022 (BLP) sets out that development will be acceptable where it does not result in the loss of land or buildings for which there is an identified need. BLP Policy BH11 states that in order to maintain family size housing, conversion of a family sized home (3 bedrooms or more) to two or more dwellings will only be allowed where three criteria are all met. Family housing to meet local needs is identified as a priority in the Borough.
21. The creation of the five flats has resulted in the loss of a single-family dwelling, which reduces the stock of such dwellings. The appellant has not argued that any of the three criteria in BLP Policy BH11 are met. The development has not resulted in the provision of a 3-bedroom dwelling, and therefore conflicts with criterion b). It is in an area of Public Transport Accessibility Level (PTAL) 2 which is relatively low and does not meet criterion c), which requires PTAL level of 3 as a minimum.
22. The circumstances in which the loss of family sized dwellings is justified do not therefore apply. The development is therefore harmful to the stock of family housing and conflicts with BLP Policies DMP1 and BH11, insofar as they seek to control the loss of buildings for which there is an identified need and maintain family size housing. It is also in conflict with the provisions of the National Planning Policy Framework (NPPF) which seeks to ensure that the needs of groups with specific housing requirements are addressed.

23. While the planning officer report for application ref 23/2837 found that the location was acceptable for an HMO, that assessment was in relation to BLP Policy BH7 criterion a) which sets out the approach to proposals such as HMOs. It is not appropriate to apply Policy BH7 to the appeal development which is for flats. In any event, Policy BH7 criterion a) requires that HMO development has good accessibility to public transport and other amenities, including shops. The planning officer found that the PTAL 2 location was close to a PTAL 3 location and was a 15-minute walk to Colindale Underground Station and 150 metres from Colindale town centre. The site is close to the A5 with its bus routes, but the planning officer recognised that the location was 'slightly compromised' and gave weight to the proposal being of a very high quality. The appellant has not put forward any evidence to show that similar considerations should apply in this case. Furthermore, there are concerns with the quality of the flatted accommodation in terms of living conditions for occupiers. The officer report for the 2023 application does not therefore indicate that the development is acceptable.

Character and appearance

24. The site is within a residential area, of predominantly terraced and semi-detached dwellings. Many have been extended or altered, with both hipped roofs and gable ends visible in the area. Some have large dormer windows on the rear elevation and have been extended to the side. Prior to the extensions being built, the appeal property had a hipped roof. It is visible in the street scene from The Ridgeway, on the outside of a bend in the road. It is also prominent in views from Hay Lane to the rear and the footpath to the side, as it is set on higher ground. Most dwellings in the vicinity of the site appeared to be in use as single dwellinghouses. The planning officer's report for the 2023 application identified that there is only one HMO in the nearest ten properties to the site.
25. The extensions that have been built differ from those which were permitted in 2019. As a result, the distinctive hipped roof has been replaced with a gable end. While the two-storey side extension is subservient to the extended roof of the main house, it has an awkward appearance as the pitch is excessively steep when compared with the hipped roofs in the vicinity of the site. The rear dormer extension completely dominates the roof slope, appearing from the rear as a bulky three-storey elevation with a flat roof. This is apparent in views from Hay Lane. The large roof of the side extension and the bulky dormer extension do not respect the distinctive character of the pre-existing house and are visually jarring. Although some properties have large rear dormer extensions, I did not see any in the vicinity of the site that are as prominent in public views. The extensions are visually intrusive due to their size, siting and design.
26. The Residential Extensions and Alterations Supplementary Planning Document No.2 2018 (SPD) gives guidance on rear dormer windows. It states that they can be the full width of the original roof plane. In this case, the dormer is the width of the roof as extended. It also states that dormer window should not project over a rear projection, but in this case the dormer has been built onto the roof of the two-storey side extension that extends beyond the rear of the pre-existing rear elevation of the house.

27. The extensions that have been built appear bulkier and visually obtrusive than the extensions that were permitted in 2019 and I do not agree that they are largely the same. The dormer extension is not a modest addition, as it is substantially wider and taller than the dormer window permitted in 2019. It has not been argued that the rear dormer that was determined to be lawful in the 2018 lawful development certificate could still be built, given that further extensions have been added since then. The lawful development certificate does not therefore indicate that there is a fallback position that would be more harmful than the development that has been built.
28. The subdivision of the single-family dwelling has resulted in a much more intensive use of the property. The comings and goings of five different households could lead to a greater level of activity at the site than would occur if it were occupied by one household as a single dwellinghouse, causing in a change in the character of the property that detracts from the character of the area.
29. Table 3.2 of the LP sets out that dwellings should have sufficient levels of secure, covered and conveniently located externally accessible storage for recycling and waste disposal. It also sets out the requirements for the design of external amenity spaces. It would be expected that adequate cycle parking would also be provided and provision for the maintenance of the communal gardens. The additional requirements for bin and possibly cycle storage to the front of the property all contribute to a change in character, that is at odds with the levels of activity associated with single family dwellings. Furthermore, the communal use of the front garden could result in a less cared for appearance, that would detract from the street scene. The bin and cycle storage and garden maintenance could be controlled by a suitable management plan if I were minded to allow the appeal, which could be secured through a condition. However, this would not overcome the harm to the character and appearance of the area caused by the more intensive use of the property as flats.
30. I therefore conclude that the development is harmful to the character and appearance of the site and surrounding area. It is therefore in conflict with BLP Policies DMP1 and BD1 which seek, amongst other things, to ensure that new development is of high architectural and urban design quality of a scale and design that complements the locality, provides high levels of external amenity, making adequate and easily accessible storage space. It is also in conflict with the SPD.

Living conditions of occupiers

31. London Plan 2021 (LP) Policy D6 sets out that housing development should provide adequately sized rooms with comfortable and functional layouts. The policy refers to the minimum gross internal floor areas and storage set out in Table 3.1. A 1 bedroom 2 person dwelling should have a minimum gross internal floor area of 50 square metres, with 1.5 square metres of built-in storage. The EPC assessor identified that each flat was approximately 25 square metres and I have no reason to disagree. The flats are therefore substantially below the minimum internal space standards and no justification has been put forward for this.
32. Only the second floor flat has space shown as being for storage, but this was being used as a playroom and study when I visited. While the flats had

portable wardrobes there was no specific internal storage space, as required by part F 7) of LP Policy D6.

33. LP Policy D6 requires that private outside space should be provided for each dwelling. BLP Policy BH13 sets out that new dwellings should have 20 square metres external private amenity space. The site has a rear garden which is stated to have an area of 57.29 square metres. It is accessible from the two ground floor flats. Although these were both labelled as 'common areas' at my site visit, I have found that they were occupied as flats in the period prior to the notice being issued. The two ground floor flats therefore have access to a shared outdoor space, while the first and second floor flats do not have access to any private external amenity space at all. The requirements of the relevant policies are not therefore met.
34. LP Policy D6 part B refers to Table 3.2 which sets out the qualitative aspects that should be addressed in the design of housing developments. Requirement iii of Table 3.2 sets out that development should help reduce noise from common areas to individual dwellings. It has not been shown that this has been achieved, so that the living conditions of occupiers are of an adequate standard to minimise noise and disturbance from common areas.
35. I therefore find that the development does not provide adequate living conditions for the occupiers, with regard to internal space standards, outdoor amenity space, and noise and disturbance. The development is therefore in conflict with LP Policy D6 and BLP Policy BH13, insofar as they seek to ensure that development is of high-quality design that provides adequate internal space and external amenity space. It is also in conflict with the NPPF, which seeks the creation of high-quality buildings and places.

Living conditions of neighbouring occupiers

36. Due to the overly intensive use of the property in an area dominated by relatively close-knit single-family houses, there is a likelihood that the increased level of activity associated with five flats results in additional noise and disturbance to neighbouring occupiers with resulting harm to their living conditions.
37. Parking standards are set out in LP Policy T6, table 10.3. Within a PTAL 2 area, 0.75 spaces per dwelling should be provided. This equates to a maximum of 4 spaces. There is one off street parking space at the front of the property. The residential road has unrestricted on-street parking on both sides and at the time of my visit, around noon on a weekday, there were few vacant spaces. It would be reasonable to expect that there would even fewer opportunities for on-street parking during the evenings and weekends. In view of the relatively poor accessibility of the site, the creation of five flats is likely to give rise to greater demand for parking spaces, with less potential for shared trips between household members than would occur with a single dwellinghouse.
38. The additional pressure on on-street parking spaces is likely to cause inconvenience and frustration for neighbouring occupiers, who may have to spend considerable time finding a parking space close to their homes. This is likely to adversely effect the quality of life of neighbouring occupiers. While a car free development was indicated to be appropriate for an HMO in the planning officer's report for the 2023 application, this development is for flats.

39. The lack of a dedicated bin storage at the front of the property means there is a potential for odours which is likely to cause a nuisance to neighbouring occupiers. It seems likely that if appropriately stored and managed, excessive odours could be avoided and a waste management plan could be secured through a planning condition, if I were minded to allow the appeal.
40. For these reasons, the development is harmful to the living conditions of neighbouring occupiers, with regard to noise, disturbance, and the availability of on-street parking. It is therefore in conflict with LP Policies T6, T6.1 and D6, BLP Policies DMP1 and BT2, insofar as they require that appropriate levels of parking are provided, housing is of high quality and design that provides adequate waste storage space, and the use provides high levels of external amenity and does not unacceptably increase exposure to noise, smells, waste and general disturbance. It is also in conflict with the NPPF in relation to the provision of well-designed places.

Planning balance and conclusion

41. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan the determination must be made in accordance with the plan unless material considerations indicate otherwise.
42. There is conflict with the development plan as a whole in terms of the stock of family dwellings, the character and appearance of the area, the living conditions of occupiers of the development, the living conditions of neighbouring occupiers, and the provision for waste disposal, garden maintenance, bin and cycle storage.
43. The appellant suggests that development of an HMO would comply with the objectives of the NPPF as it would support the development of underutilised brownfield land. The appeal is for flats however, which would provide additional dwellings on a brownfield site, but would result in the loss of family dwellings, for which there is an identified need. Moreover, the provision of additional dwellings does not override the other harm that I have identified, which relate to the social and environmental objectives of the NPPF.
44. For the reasons set out above, the appeal on ground (a) fails and I shall refuse planning permission for the deemed application.

The appeal on ground (f)

45. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused. The notice requires the use to cease, items that facilitate the use to be removed, and for the extensions to be removed. The purpose of the notice is therefore to remedy the breach of planning control, and there are no lesser steps that would achieve this.
46. The appellant has not argued that it is excessive to require the use to cease or the extensions to be removed. I note that planning permission was granted in 2019 for extensions to the property. Although not argued by the appellant, I have considered whether I could vary the requirements to give the appellant the option of altering the extensions to comply with the terms of the 2019 planning permission. However, I have seen no evidence that the 2019 permission is capable of implementation.

47. The appellant states that it is excessive to require that all of the bathroom facilities except two should be removed. This is on the grounds that they wish to use the property as an HMO. However, there is no planning permission for it to be used as an HMO and there is no obvious alternative that would achieve the purposes of the notice with less cost and disruption.

48. The appeal on ground (f) therefore fails.

The appeal on ground (g)

49. The ground of appeal is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed. The period for compliance is six months.

50. The appellant explains that nine months is reasonable to give sufficient time to make the internal changes and remove the extensions and dormer. The appellant will need to seek tenders and appoint a contractor. The availability of a contractor is beyond the control of the appellant and the works that need to be carried out are extensive.

51. It seems to me that six months strikes a reasonable balance between the interests of the appellant and the need to bring the breach of planning control to a timely resolution. The appeal on ground (g) therefore fails.

Conclusion

52. For the reasons given above, I 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 1990 Act as amended.

N Thomas

INSPECTOR