



Appeal Decision

Site visit made on 18 July 2024

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/T5150/C/24/3343734

67A Carlton Avenue East, Wembley, HA9 8LZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Medhi Ali against an enforcement notice issued by the Council of the London Borough of Brent ('the Notice').
 - The enforcement notice, numbered E/23/0453, was issued on 28 March 2024.
 - 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).
 - The requirements of the notice are STEP1 Cease the use of the premises as a House in Multiple Occupation (HMO); and STEP2 Remove all partition walls, fittings and fixtures, facilitating the unauthorised change of use from the premises, and remove all associated items, debris and materials, arising from this removal from the premises, so that the internal layout of the premises is returned back to that which existed prior to the unauthorised change of use took place.
 - The period for compliance with the requirements is 6 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 ('the Act').
-

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.

Preliminary Matters

2. On his appeal form, the Appellant set out that he intended to make a case under Grounds (b) and (d). He subsequently wrote to say that he would not be pursuing these grounds of appeal. Therefore, he acknowledges that the breach of planning control has occurred and that it has not occurred continuously for sufficient period to be immune from enforcement action.

Application for costs

3. An application for costs was made by the Council of the London Borough of Brent against Mr Medhi Ali. This application is the subject of a separate Decision.

Ground (a) The Deemed Planning Application

4. An appeal made under this ground is that planning permission should be granted for the breach of planning control alleged in the Notice.

5. Whilst there is no need to provide the full details of the planning history of the site for this appeal, I provide some of it to set the scene. Conditional planning permission (Council reference 15/3681) was granted in October 2016 for, amongst other things, the erection of a two-storey dwellinghouse with converted loft space on the land. Subsequently, in July 2023, conditional planning permission (Council reference 23/1367) was granted for the demolition of a garage and the erection of a single storey extension.
6. From what I saw at my visit, No 67A did not accord with the scheme approved under planning permission 15/3681. Amongst the differences were: the access door being on its front, rather than a side, elevation; changes to the internal layout; and the provision of a basement that appeared to run beneath the footprint of the building, save for that of the rear extension. That extension appeared largely complete externally, though not internally.
7. The Council received a complaint of “7 or 8 single men” occupying the property in September 2023 and, on 1 October 2023, it received an application for a licence for a 10-bedroom House in Multiple Occupation (HMO). I have not been told of the outcome of this application. I note that at the time of the application, the form set out that one person was occupying each of the 10 rooms.
8. At my site visit, I saw 10 en-suite bedrooms set over the four floors of accommodation, together with a kitchen and living room on the ground floor. In terms of the number of occupants, whilst I saw more than one person in several rooms and that most had double beds I could not, for the most part, be sure how many people were occupying the rooms at that time. However, one of the basement rooms was occupied by a couple with an infant child. Externally, to the rear, was a good-sized garden with outbuildings.

Main Issues

9. The Main Issues are:
 - 1) Whether the use of the property as a House in Multiple Occupancy (‘HMO’) has resulted in the loss of a family-sized dwelling;
 - 2) Whether the accommodation provided is of an appropriate standard;
 - 3) The effect of the development on the living conditions of residents of the area by way of its effect on-highway parking; and
 - 4) The effects of the development on the living conditions of both residents of the property and those in neighbouring properties having regard to noise and disturbance.

Reasons

10. The only comment made by the Appellant on his Ground (a) appeal was that “The appellant will seek to demonstrate that the development, the subject of the enforcement notice, would not conflict with the local and national development plan policies referenced within the notice and as such, planning permission ought to be granted”, in his Grounds of Appeal. At no point has he followed up on this.

Loss of a family sized dwelling

11. The Appellant does not dispute that the material change of use to a HMO has occurred. Therefore, the evidence shows that a single dwellinghouse has been lost. The supporting text to Policy BH11 of the Brent Local Plan 2021 (‘BLP’)

- sets out that whilst the sub-division of existing properties into smaller units plays a valuable role in the provision of housing across the Borough, the retention of family-sized dwellings is a priority.
12. This priority aim is reinforced by the Council's decision in February 2022 to make a Direction, under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('GPDO'). This Article 4 Direction withdrew permitted development rights conferred by Class L(b) of Part 3 to Schedule 2 of the GPDO to change the use of a Class C3 dwellinghouse to a Class C4 HMO.
 13. Whilst the Council did not provide any further detail on this matter in its submissions, those documents convey the gist of the problems and challenges that arise in the Borough from the change of use of dwellinghouses to HMOs.
 14. BLP Policy BH11 sets out those circumstances where the conversion of a family sized home (3 bedrooms or more) to two or more other dwellings will be allowed. It requires that the existing home is, or could be extended to be, 130sqm or more; that the sub-division would result in, at least, a 3-bedroom dwelling; and that it is sited in a location with a PTAL of 3 or above. The only cited exception to these requirements is where the amenity of the existing family sized home is so deficient that family occupation is unlikely and it could not reasonably be changed to overcome such deficiencies.
 15. The evidence before me, including that of my site visit, shows that the building has a floor area in excess of 130sqm. However, it does not contain a 3-bed dwelling. I have no evidence to show whether it is located within an area with a PTAL of 3 or above.
 16. Furthermore, I have not been given any evidence to show that the building was deficient in the manner of the exception to the requirements of BLP Policy BH11. Given that this is a recently erected building, there is no reason to suspect this was the case.
 17. As all of its criteria in BLP Policy BH11 have to be met, but are not, I find that the change of use is contrary to its terms. The loss of a single dwellinghouse causes significant harm, as it undermines the Council's priority policy aim to protect this form of housing.

Standard of accommodation

18. The Council did not set out reasons to substantiate its assertion that the accommodation was sub-standard. However, the Council's "Houses in Multiple Occupation" Supplementary Planning Document 2022 ('the SPD') sets out minimum floor area standards of 7.5sqm for a single room and 11.5sqm for a two-person room. Neither should include en-suite facilities in the measurement. It also contains minimum height of 2.5m in new builds.
19. The only evidence that I have in terms of the floor areas of the various rooms is that from the October 2023 HMO application form. The Council submitted this and did not challenge the figures it contained. Each room is given as measuring either 14sqm or 15sqm. Notwithstanding the lack of challenge from the Council, from the evidence of my site visit I doubt they are actually this uniform. However, none was so small as 7.5sqm and, though not measured, their heights did not make the rooms feel oppressive.

20. From the evidence before me, although the rooms appeared to be of an appropriate size for two people I could not be sure that they were. I could be sure, however, that they were appropriate for a single person. **Were I allowing the appeal, a suitably worded condition could be attached requiring accurate measurements for the rooms and restricting occupancy accordingly.**
21. The SPD requires each bedroom to have a window that provides adequate light, and a guide figure of 10% of the floor area of the room is given. The two bedrooms in the basement were each served by a small high-level window that, although I do not have measurements, was nowhere near the guide figure and was woefully inadequate. The rooms were gloomy and their occupants were totally reliant on electric light. Moreover, they did not provide suitable ventilation either, and both of these rooms had a very strong smell of damp. These rooms provided a very poor standard of accommodation for their occupants.
22. Given the lack of information on what the Council found to be sub-standard and the complete dearth of evidence from the Appellant, I can only rely on the evidence of my site visit in terms of the sizes of the kitchen, living room and external space that I saw. Each, to my mind, was large enough to serve, at least, the requirements of single person occupancy of the rooms.
23. On this matter, I find that, by reason of the use of the basement to provide rooms that are of a very poor standard, No 67A is being used in an over-intensive manner.
24. Support for the provision of bin and cycle storage and external amenity space is found in Chapter 8 of the Framework. Although I have no details before me, I saw that there is ample space on-site to provide the required bin and cycle storage facilities. In respect of external space, BLP Policy BH13, requires 50sqm for family housing but does not give a figure in terms of HMOs. Notwithstanding this, its overall requirement is that the space is of sufficient type and size to serve a property's occupants. Paragraph 5.30 of the SPD suggests a requirement of 40sqm for a HMO containing more than 10 people. Although I was not provided with details of the size of the rear garden, it appeared to me to meet that requirement. It is level and was of sufficient size to serve the HMO use. Therefore, I find that the development accords with the terms of Policy BH13, the SPD and the Framework, as well as that part of BLP Policy DMP1 that requires the provision of a high level of external amenity.
25. Amongst other things, paragraph 5.35 of the SPD sets out that the Council will seek agreement in relation to the management of the property, and, in paragraph 5.36, that it will ensure that there is a suitable management regime in place before an HMO is occupied. However, from the text of paragraph 5.32, I read these as being work that would be undertaken by the "Council's Private Rented Sector housing team". The areas that will be controlled under the terms of 5.35 b) appear to be matters controlled under other legislation. Furthermore, there is nothing in the policies cited in this regard, BLP Policies DMP1 or BH13, that requires a management plan to be submitted and approved.
26. On this main issue, I find that the HMO provides sufficient cycle and storage space and external amenity space and it has not been demonstrated that there is no planning requirement for a management plan. However, for the reasons

given above, No 67A is being used in an over-intensive manner contrary to BLP Policy DMP1.

Neighbours' Living Conditions – On-street parking

27. I have not been given any evidence relating to parking pressure in the area. However, at my visit I saw that many properties on Grasmere Avenue had formed off-street parking areas and that the highway crossovers formed to serve them reduced the amount of on-highway parking. The resultant on-street parking is in bays along the carriageway and has parking restrictions.
28. At the time of my visit there were some free spaces, though this was at a fairly quiet time of day. It is safe to assume that parking pressure would be considerably greater in the evenings. Although not all of the occupants of No 67A would have a car, it is quite possible that several would. I note that a single parking space was permitted by planning permission 15/3681, but I find that this would not be adequate to serve the HMO use.
29. In the circumstances, and given the lack of evidence to the contrary, I find that the development would be likely to lead to additional demand for on-street parking in an area where such parking is limited. This would adversely affect residents of the area, who would have greater difficulty finding parking near their homes. The development is, therefore, contrary to BLP Policy BT2 that states, amongst other things, that development should not have negative impacts on existing parking on heavily parked streets.

Noise and Disturbance – Neighbours to, and Residents of, No 67A

30. BLP Policy DMP1 requires high levels of internal and external amenity and that the development complements the locality.
31. From the evidence of my site visit, this is an area of single dwellinghouses and this gives the area its quiet character. The use of the property as a large HMO is at odds with this and it is easy to imagine how the comings and goings associated with this use would be at odds with this character and harmful to the living conditions of the occupants of neighbouring properties by reason of noise and general disturbance. In the absence of evidence to the contrary, for the above reasons, I find that the development would be harmful to the living conditions of the occupants of neighbouring dwellings contrary to the terms of BLP Policy DMP1.
32. The Council does not substantiate its claim of substandard construction leading to material harm to the living conditions of the occupiers of the premises alleged in the reasons for issuing the Notice. I saw nothing that was readily apparent in this regard at my site visit. In the circumstances, I have little alternative than to find that the nature of the development that has been undertaken would not be harmful to the living conditions of the occupants of No 67A.

Conclusion on Ground (a)

33. For the reasons given above, the Ground (a) fails and I shall not grant permission for the deemed application.

Ground (f)

34. An appeal made under Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the purpose of the Notice is to remedy the breach of planning control.
35. The Appellant provides no evidence as to why the requirements are excessive and what lesser steps might achieve the purpose of the Notice, and I can see none. Therefore, I dismiss the Ground (f) appeal.

Ground (g)

36. An appeal made under Ground (f) is that the time given for compliance with the Notice falls short of what should reasonably be allowed.
37. Again, the Appellant provides no evidence in support of his appeal.
38. From what I saw at my site visit, and in the absence of any case from the Appellant, I find that 6 months is sufficient time to comply with the Notice's requirements and I dismiss the Ground (g) appeal.

Conclusion

39. 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.

Roy Curnow

Inspector