



Appeal Decision

Site visit made on 18 November 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2024

Appeal Ref: APP/T5150/W/24/3345812

47 Kilburn High Road, Brent, London NW6 5SB

- 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 Mr A Sarian against the decision of the Council of the London Borough of Brent.
 - The application Ref is 24/0811.
 - The development is use of the property including basement as a mix of residential dwellings, commercial and HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal was submitted with pre-existing, existing and proposed plans. The pre-existing plans show alterations made to the internal layout of the property without planning permission. The proposal seeks to amend and 'regularise' the layout changes. During my site visit I saw that the majority of the proposal has been implemented including conversion of the basement floor to a studio, conversion of the pre-existing 3 bed flat on the third and fourth floor into one 2 bed flat and one studio flat and installation of kitchenettes to some of the rooms. These works are consistent with the proposed plans upon which my decision is based.
3. The approved use of the basement and ground floor is for a dentist surgery¹. However, according to the parties, this has not been implemented. No change is proposed to the ground floor and mezzanine floor of the appeal property, which is currently vacant. The pre-existing plans also show that there was a 1 bedroom self-contained flat on the first floor, a 1 bedroom flat on the second floor and a 3 bedroom flat over the third and fourth floors. No change is proposed to the pre-existing 1 bedroom self-contained flat on the lower first floor.
4. The pre-existing plans also show that there was a 1 bedroom self-contained flat on the first floor, a 1 bedroom flat on the second floor and a 3 bedroom flat over the third and fourth floors. No change is proposed to the pre-existing 1 bedroom self-contained flat on the lower first floor.
5. The National Planning Policy Framework (the Framework) was revised on 12 December 2024. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought submissions on

¹ 15/0289.

the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

6. The main issues are:

- whether the development results in the loss of a family home contrary to the development plan;
- whether or not the loss of the commercial floorspace at basement level is acceptable having regard to the development plan; and
- whether the development provide adequate living conditions for occupiers with particular regard to light, outlook and enclosure for the basement studio and internal living space for units B, B1, C and C1.

Reasons

Loss of a Family Sized Home

7. Policy BH11 of the Brent Local Plan 2019-2041 (February 2022) (the BLP) seeks to restrict the conversion of family sized dwellings into smaller dwellings unless the listed policy criteria or the exception are met. The exception is that the amenity of the existing home is so deficient that family occupation is unlikely and that this could not be reasonably changed to overcome the deficiencies. Paragraph 6.2.90 of the supporting text to Policy BH11 provides further details of what might constitute deficiency in the family accommodation.
8. The residential accommodation on the third and fourth floor does not benefit from any private outdoor amenity space. It is also above a retail parade in a large town centre facing Kilburn High Road which is a busy main public transport route. The units on either side of the appeal property comprise a 24 hour fitness centre and a hot food takeaway. While there is a degree of separation between the commercial use on the ground floor and the residential accommodation on the third and fourth floor, noise and disturbance caused by the neighbouring commercial units, particularly given their late-night operating hours, and any business on the ground floor of the appeal site, would have a cumulative adverse effect on the living conditions of occupant families.
9. Furthermore, the third and fourth floor, are distant from the main entrance with no lift access, making it unattractive to families with young children. There is a lift to the second floor so that only one flight of stairs would need to be climbed to access the third floor. The existing lift, however, is very small and only able to accommodate around 2 people comfortably, as experienced on my site visit. A family of two adults and two children with a pushchair, would not be able to occupy the lift together.
10. While the 3 bed flat would have provided adequate internal space in accordance with Policy D6 of the London Plan (March 2021) (the LP), other factors such as its location above a retail parade in a centre and the adverse associated impacts with regard to noise and disturbance, inconvenient access to the upper floors, as well as lack of outdoor amenity space, result in major 'deficiencies' (using the terminology of Policy BH11) of the flat for family accommodation which could not be reasonably changed to overcome. The

exception in Policy BH11 is therefore met and the loss of a family sized home is therefore acceptable and complies with the development plan, and in particular Policy BH11.

Loss of Commercial Space

11. The pre-existing plans show that the basement floor was a storage area, and the Officer Report indicates that this area was associated with the use of the ground floor as a shop. The ground and basement floors are connected via an internal staircase. The basement area was therefore historically connected to the ground floor premises. It was not, therefore, a separate commercial unit. Because the works involve the change of use of the basement level to a flat, they result in a reduction in commercial floorspace. However, they do not result in the loss of a commercial unit, because the ground floor space is retained.
12. The appeal site is within the secondary shopping frontage of Kilburn Town Centre. Policy BE4, amongst other matters, promotes 'unviable secondary frontages' for workspace, social infrastructure and residential uses. Policy BE4 specifically refers to paragraph 6.4.33 of the supporting text which states that "Developers will be required to demonstrate that the unit is unviable by providing evidence." There would be no loss of a commercial unit. For the reasons given, I conclude that the loss of the commercial basement is acceptable having regard to the development plan. Hence, it would comply with policy BE4 of the BLP which seeks to support strong centres.

Living Conditions

Basement Studio

13. The basement studio receives limited natural light as its only window is obstructed by a lightwell staircase. The proposal seeks to enlarge the existing window and install an additional window on the front elevation of the basement. However, due to the subterranean location of the studio and its considerable depth, combined with the limited size of the lightwell, the studio would still receive a poor amount of natural light. In particular, the rear sections of the studio, being farther away from the windows due to its significant depth, would remain in darkness or shadow.
14. The outlook from the existing obscurely glazed window is obstructed by the staircase directly in front of it. The proposed additional window would not have any obstructions, but the outlook would substantially comprise of the dark vault directly opposite the window. As such, the outlook from the basement studio would be very poor due to the limited visibility beyond the dark vault.
15. The height of the basement ceiling has not been confirmed. Even if, the ceiling heights were to meet the required standard set out in Policy D6 of the LP, the lack of natural light would, nevertheless, increase the perception of enclosure and confinement.
16. The basement accommodation approved² at No 45 is materially different to the appeal proposal. Firstly, the basement accommodation forms part of a House in Multiple Occupation (HMO) across the whole property (excluding the commercial ground floor) with a large communal space on the third floor. The

² 22/1167.

basement level accommodates activities such as laundry, storage and cooking. Secondly, while there is one bedroom located at basement level, removal of the lightwell staircase and additional glazing to that property has improved the level of light to and outlook from that room.

Units B, B1, C and C1

17. Based on the submitted plans and my observations on site, there are no existing or proposed shared facilities. Each of the 4 rooms on the first and second floor has its own bathroom, sink and basic cooking facilities.
18. As such, this accommodation does not meet the definition of an HMO as set out in the Housing Act 2004, which indicates an HMO is a property rented out by at least 3 people who are not from one 'household' and share facilities like a bathroom and kitchen. The accommodation fails to comply with the definition of an HMO, as set out in the Housing Act 2004, because there are no shared facilities.
19. Nor does it meet the definition in the Use Classes Order 1987 (as amended) which classifies HMOs under Class C4 (properties occupied by 3-6 individuals who share facilities) and Sui Generis Use (properties occupied by 7 or more individuals sharing facilities) due to the absence of shared facilities.
20. Measuring approximately 20 sq.m. each, the units on the first and second floors are effectively under-sized self-contained studios. Whilst the rooms can physically provide sleeping and living space with storage and basic cooking facilities, they fall significantly short of the internal space standards required for self-contained dwellings under Policy D6 of the LP.
21. The appellant contends that female occupants from more conservative religious backgrounds do not find it comfortable to share cooking spaces with men or other occupants who drink alcohol and therefore appreciate more private spaces. However, if the intention is to create self-contained dwellings, they would each need to be of a sufficient size, in line with policies in the development plan.
22. The size of each of the units on the first and second floor is larger than the bedrooms at No 45. However, the 'HMO' at the appeal site would not be comparable to No 45 because it does not contain shared facilities while No 45 does.

Overall

23. For the reasons given, I conclude that the development does not provide adequate living conditions for the occupiers of the basement studio with regard to light, outlook and enclosure. Also, it does not provide adequate living conditions for the occupiers of units B, B1, C and C1 with regard to internal living space due to the absence of adequate shared facilities. Consequently, this would conflict with Policy D6 of the LP and Policy DMP1 of the BLP insofar as they require housing development to be of a high quality design, provide adequately sized rooms, high levels of internal amenity and sufficient daylight.

Other Matters

24. The appeal building is within the South Kilburn Conservation Area (the CA). Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. The appeal building is a Local Heritage Asset. However, the only external alteration proposed is the relatively minor enlargement of an existing basement window and an additional front basement window. The Council considers that the new basement windows would not harm the significance of the heritage assets as they would not be particularly visible due to their proposed location. I agree.
25. A portion of the CA encompasses part of Kilburn Town Centre, contributing to its character. Given that the uses at the appeal property are main town centre uses, the proposal would not harm the character of the CA either. Therefore, the proposal would preserve the character and appearance of the CA, in accordance with the LBCA.

Planning Balance

26. The compliance of the development with regard to the conservation of heritage assets, parking and the amenity of neighbouring occupiers weighs neither for nor against it. These factors are therefore neutral in the planning balance.
27. The proposal optimises the residential capacity of the site in a location which is highly accessible by public transport and to a wide range of shops and services. These are positive benefits, however, given the small scale of the development these benefits would be modest and carry moderate weight in favour of the proposal.
28. In terms of harm, the proposal does not provide adequate living conditions for occupiers of the basement studio due to poor light, outlook and a sense of enclosure. In addition, it does not provide adequate living conditions for occupiers of units B, B1, C and C1 with regard to internal living space due to the absence of adequate shared facilities. I place significant weight on these harms and they outweigh the benefits identified. Overall, therefore, the development conflicts with the development plan as a whole. There are no material considerations which indicate that the appeal should be decided other than in accordance with it.

Conclusion

29. For the reasons given above the appeal should be dismissed.

U P Han

INSPECTOR