
Appeal Decisions

Site visit made on 3 December 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2025

Appeal A Ref: APP/T5150/C/23/3314227

25 Lechmere Road, London NW2 5DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Joseph Adler of TDSL Investments Limited against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 9 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey extension at the rear of the premises and without planning permission, the material change of use of the premises to four flats.
 - The requirements of the notice are to:
 - STEP 1 Cease the use of the premises as flats.
 - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use from the premises, including the removal of all fixtures and fittings of each flat such as kitchens, en-suite bathrooms/shower rooms, and toilets.
 - STEP 3 Demolish the single storey extension at the rear of the premises.
 - STEP 4 Remove all debris, materials and items, arising from compliance with the above STEPS, from the premises.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
-

Appeal B Ref: APP/T5150/W/23/3328751

25 Lechmere Road, Brent, London NW2 5DA

- 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 Joseph Adler of TDSL Investments Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref is 23/2213.
 - The development proposed is demolition of ground floor rear/side extension and the erection of ground floor rear and side extension, a rear roof dormer and roof terrace, and front roof lights, in association with the conversion of the property to two self-contained flats.
-

Decisions

1. It is directed that the enforcement notice is varied by the deletion of six (6) months as the time for compliance in schedule six of the enforcement notice and the substitution with eight (8) months.
2. Subject to the variation, Appeal A is dismissed, and the enforcement notice is upheld.
3. Appeal B is dismissed.

Appeal A - APP/T5150/C/23/3314227

Preliminary Matter

4. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
5. The appellant has not sought to demonstrate that the extension was substantially completed more than four years before, nor that the use as four flats has taken place on a substantially uninterrupted basis for not less than four years before the material date, being the date of the issue of the notice. The appeal on ground (d) could not succeed.
6. The appellant's case on ground (d) is that the lawful use of the property is as two flats and there is therefore a right of resumption to that use following compliance with the enforcement notice. This is an argument more pertinent to an appeal on ground (f) and I have considered the appeal on this basis.

The appeal on ground (f)

7. 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)).
8. Since the notice requires the use as flats to cease, all associated fixtures and fittings to be removed and the extension to be demolished, I find its purpose is to remedy the breach of planning control.
9. The appellant's case is that it is excessive to require the use as flats to cease since they consider the lawful use of the property is as two flats.
10. Section 57(4) of the Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out.
11. Accordingly, if the property was lawfully in use as two flats immediately prior to the use as four flats, then there would have been a right to revert to use as two flats, following compliance with the enforcement notice in respect of the use as four flats. However, section 57(4) does not provide for resumption of a past lawful use when there has been one or more intervening unlawful uses between that and the current unlawful use. The land may then have a nil use.
12. The property was marketed for sale in December 2018 as a three-bedroom terrace house (single dwellinghouse). It was stated in the sales particulars that the property was currently laid out as two one-bedroom flats, but the property had only one title and was being sold as a single dwelling. The images in the sales particulars show the layout as two flats. The appellant purchased the property in around May 2019 and Land Registry details show there was a single title for the property.
13. It is evident that when the appellant purchased the property it was laid out as two flats and based on the images in the sales particulars, appeared to have been for some time. However, the critical question is whether the property was used as two flats continuously for a period of four or more years, prior to the use subject of the

notice, not whether the property was continuously fitted out or intended for use as two flats.

14. The appellant provided Council Tax bills from former occupants of the first-floor flat which cover four years over the period of April 2006 – March 2019 and a letter from the Council's Council Tax department dated 4 October 2019. The letter confirmed that there are two properties at 25 Lechmere Road - Flat 1, a ground floor flat and Flat 2, a first floor flat. It is stated that 'These flats have been separate on Brent Council Tax system since 1992 functioning separately. Each flat has separate tenants and separate Council Tax bills.'
15. Although limited, the appellant's evidence indicates that the first floor flat was occupied for a period of more than four years, albeit there is little evidence about what the flat consisted of. The floor plans submitted with the appellant's application to the Council for a Lawful Development Certificate (LDC)¹ show the first floor flat to consist of three bedrooms over the first and second floors and the ground floor flat to have two bedrooms. However, the sales particulars refer to two one-bedroom flats.
16. Moreover, whilst it seems unlikely that the previous owner would have fitted out the property as two flats, and not used one of those flats, throughout the approximately 26-year period they were registered for the purposes of Council Tax, the appellant has provided no evidence of actual use.
17. In any event, the Council referred to and the appellant acknowledged that there was a period when the managing agent let out part of flat A to a separate tenant and then did the same with flat B.
18. Accordingly, it seems the property was used as three flats and then later as four. I have little detail or explanation about what the use as three flats consisted of and in relation to how long that use took place. However, the appellant has not sought to demonstrate that the use as three flats did not constitute a material change of use and I see no reason to conclude otherwise.
19. Therefore, even if the use as two flats was lawful in the past, since it appears there has been an intervening unlawful use, as three flats, there is no right of resumption. Similarly, even if the appellant had demonstrated the lawful use was as a single flat, there would have been more than one intervening unlawful use, as two and then three flats.
20. As such, based on my conclusions, it may be that the property would have a nil use, but this is not a matter for me to determine in this appeal. It would be open to the appellant to apply for an LDC or submit a planning application to the Council.
21. Since the appellant has failed to establish that the lawful use of the property is as flat/s it is not excessive to require the use as flats to cease and the associated fixtures and fittings to be removed. The appeal on ground (f) therefore fails.

The appeal on ground (g)

22. 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 10 months based on the

¹ Reference 19/3553

time needed to secure a builder, for the tenants to find alternative accommodation and to submit an alternative proposal to the Council.

23. Whilst I 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, I have no doubt that compliance with the requirements of the enforcement notice would, at the very least, represent a significant inconvenience to the tenants.
24. Moreover, there will be a reasonable amount of work required to comply with the requirements and given my findings under ground (f) it is likely that the appellant will need to submit an alternative proposal/s to the Council.
25. Having regard to these circumstances, even if account is taken of the need to remedy the harm, the notice does not afford the appellant reasonable time to comply with the requirements. Looking at the case in the round, the requirements to undertake all the works within six months would place a disproportionate burden on the occupants and appellant.
26. I conclude that the period for compliance should be extended to eight months. A period of eight months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the occupants and appellant. To this extent, the appeal on ground (g) succeeds.

Appeal B - APP/T5150/W/23/3328751

Preliminary Matter

27. The Council identified inconsistencies in the proposed site and floor plans. The appellant therefore submitted a revised site plan to address this. Given that this does not materially alter or advance the proposal, there is no injustice in considering the appeal based on this plan.

Application for costs

28. An application for costs was made by Mr Joseph Adler of TDSL Investments Limited against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Main issues

29. The main issues are (i) whether the proposed flats would provide acceptable living conditions for occupiers, with particular regard to the size of the ground floor flat and ceiling heights of the first floor flat, and (ii) the effect of the proposed roof terrace on the character and appearance of the property and area generally.

Reasons

Living conditions

30. Policy D6 of The London Plan 2021 relates to housing quality and standards. The notes to Policy D6 set out that new dwelling in the context of the standards, includes new build, conversions and changes of use.
31. Policy D6 requires a three-bedroom four person flat to provide a minimum gross internal floor area (GIA) of 74sqm with 2.5sqm of built in storage.

32. The appellant stated and the floor plans indicate that the ground floor flat has a proposed GIA of around 74.3sqm. In the absence of substantive contrary evidence or explanation from the Council, I am satisfied that the ground floor flat would achieve the relevant standard set out in Policy D6 of the London Plan 2021.
33. Policy D6 requires that the minimum floor to ceiling height must be 2.5m for at least 75% of the GIA of each dwelling. This is so that new housing is of adequate quality, especially in terms of daylight penetration, ventilation and cooling, and sense of space.
34. Notwithstanding the previous London Plan (2016) requirements, the standards are minimum standards to be achieved and which the London Plan 2021 encourages applicants to exceed.
35. The proposed first floor flat has a GIA of 79.8sqm. The appellant stated that the proposal includes 56sqm at a height of 2.75m, which would be equivalent to around 70% of the GIA and 24sqm at a height of 2.425m.
36. However, the proposed floor plans indicate that the first floor would have a GIA of 55.4sqm and the loft floor 24.4 sqm. Given that 55.4sqm of the GIA is at first floor level and the plans indicate that the kitchen, and presumably the bathroom which is on the same level, would not exceed 2.4m in height, and apart from the small ridge section, the proposed loft level would not exceed 2.425m, it seems that the shortfall is greater than suggested by the appellant. Accordingly, I am not certain that the proposed revised ceiling heights would address the shortfall.
37. Even if I am wrong about the extent of the shortfall, there is no dispute that the proposed first floor flat would not achieve the current standard. Whilst the Council identified no harm in respect of daylight matters, I consider there would be an unacceptable impact in terms of sense of space, and the proposed flat would fail to provide appropriate living conditions for future occupiers.
38. The proposed development would therefore be contrary to Policy DMP1 of the Local Plan² and Policy D6 of the London Plan 2021 which together require that development provides high levels of internal and external amenity, high-quality design, and adequately sized rooms. It would also conflict with the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing and future users of buildings.

Character and appearance

39. The appeal property is a traditional mid-terrace property. To the rear, apart from the neighbouring 23 Lechmere Road which is a more recent development, dwellings in this and immediately surrounding terraces retain traditional two storey outriggers with pitched roofs.
40. Extensions over outriggers are not characteristic of this context. Nevertheless, the proposed roof terrace would be set well back from the outer edges of the outrigger and would have a modest area of around 6sqm. Whilst the overall height of the glazing would be around 1.7metres it would project above the ridge and parapet by a modest amount. Consequently, the proposed terrace would appear subservient, and the overall visual integrity of the appeal property would remain discernible.

² London Borough of Brent Local Plan 2019-2041 Adopted February 2022

41. For the reasons given, the proposed terrace would cause no material harm to the appearance of the property or area generally, in accordance with Policy DMP1 of the Local Plan which requires development to be of a detailing and design that complements the locality. There is also no conflict with the overall design aims of the SPD which sets out that dormer extensions over rear projections will not normally be permitted.

Other matters

42. The proposed development would make a very modest contribution to the supply of homes which would not outweigh the identified harm in respect of the standard of accommodation. Moreover, the conflict with the development plan means the development does not represent sustainable development for which the Framework presumes in favour.
43. Since the appellant has failed to establish that the lawful use of the property is as two flats, this does not therefore represent a fallback and is a matter of little weight.
44. The Council referred to Policy BH11 of the Local Plan in the first reason for refusal, which requires the provision of a three-bedroom dwelling, preferably with direct access to a garden/amenity space; and it is within an area of PTAL 3 or above. However, the Council did not seek to demonstrate that the proposal does not accord with, nor do I find, conflict with this policy.
45. I have had regard to the planning permissions referred to in respect of similar developments on Lechmere Road. However, there are no details in respect of ceiling heights, and they are therefore not comparable. Their existence is therefore a matter of little weight.

Conclusions

46. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with a variation.
47. Appeal B is dismissed. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

Felicity Thompson

INSPECTOR