



Appeal Decisions

Site visit made on 25 March 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 09 May 2025

Appeal A Ref: APP/N5090/C/23/3325400

Land at 27 Cleveland Gardens, London NW2 1EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Dr Atul Mehta against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 16 June 2023.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of a single family dwelling as a result of its sub-division into two self-contained flats.
- The requirements of the notice are to:
 1. Cease the use of the property as two self-contained flats.
 2. Remove all but one kitchen from the property, the removal to include ovens, hobs, extractor units, sinks, work surfaces, kitchen style cupboards, hot and cold water supply and foul waste drainage pipework.
 3. Remove all internal partitions, including doors, which enable the subdivision of the property as self-contained dwelling units in order to allow free internal passage to all areas.
- The period for compliance with the requirements is: six (6) months
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and variations.

Appeal B Ref: APP/N5090/W/23/3323954

27 Cleveland Gardens, Cricklewood, Barnet, London NW2 1EA

- 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 Dr Atul Mehta against the decision of the Council of the London Borough of Barnet.
- The application Ref is 23/1132/RCU.
- The development proposed is the conversion of the existing dwelling into 2no. self-contained flats, a new front vehicular access and associated refuse/recycling and cycle store.

Summary Decision: The appeal is dismissed.

Matters Concerning the Enforcement Notice

1. In paragraph 3, delete the words 'making of a'. The order of the words makes the allegation confusing. Deleting the words 'making of a' will make the allegation clearer without altering its nature or resulting in any prejudice to either party.
2. In paragraph 5, step 1, the Enforcement Notice (Notice) requires the use as two self-contained flats to cease. Although this mirrors the wording of the allegation, the risk of requiring the use of 'two' self-contained flats to cease is that compliance could be achieved by using the building as three self-contained flats. To avoid this issue, and without causing prejudice to either party, it is sufficient to require the use as self-

contained flats to cease. Consequently, the Notice can be varied by deleting the word 'two' from the requirement.

Preliminary Matters

3. During the course of the appeal, the revised National Planning Policy Framework, December 2024 (the Framework) was published. There are no substantive changes relevant to the appeal before me, and therefore, neither party would be prejudiced by my consideration of the 2024 version of the Framework.
4. Since the original decision was made on the planning application and the Notice was served, the Barnet Local Plan 2021-2036 was adopted by the Council in March 2025 (Local Plan). This replaces the previous Local Plan (2012) (comprising the Core Strategy (CS) and Development Management (DM) Policies Development Plan Documents), such that the policies cited on the Notice (Appeal A) and Decision Notice (Appeal B) are no longer part of the development plan and have no weight. The main parties were given time to provide observations on the changes, and I have considered the relevant replacement policies set out within the recently adopted Barnet Local Plan.
5. For Appeal B, I have used the description of development from the Council's Decision Notice because it provides a more accurate representation than what was included in the original planning application form. I am satisfied that the use of this description does not cause any prejudice. Although Appeal B features a layout that includes a larger, accessible bedroom and bathroom on the ground floor, as well as vehicle access to the front, the developments and main issues in both appeals are the same. Therefore, to avoid repetition, I have considered them together.

The Ground (a) Appeal and the Deemed Planning Application and Appeal B

6. The **main issues** are
 - The effect of the development on local housing needs and the stock of family sized homes.
 - Whether the developments provide adequate accommodation for its occupants, with regard to the standard of accommodation and privacy.

Reasons

Local Housing Needs and the Stock of Family Sized Homes

7. Due to the change in the adopted plan, I consider it useful to set out the policy context for the development. Policy HOU02 of the Barnet Local Plan states that it will support proposals that provide a mix of housing types and sizes to meet current and future housing needs. All housing schemes are expected to include a proportion of family-sized homes and reflect the plan's dwelling size priorities. For market housing, the highest priority is 4-bedroom properties, followed by 3- and 2-bedroom dwellings.
8. Policy HOU03 of the Barnet Local Plan outlines that it will optimise the potential for housing delivery through residential conversions subject to criteria. This includes a minimum level of accessibility for the site, the development proposal providing at least one family-sized home with three bedrooms that is capable of four bed spaces with access to a dedicated private garden; a minimum gross internal floor area of 135m² for two flats and the development should meet the space standards set out in

Policy D6 of the London Plan 2021 (London Plan) and Policy CDH01 of the Barnet Local Plan. The developments should also not have an unacceptable impact on the character of the area; provide a good standard of living conditions for the occupiers of the units and appropriate provision for car and cycle parking on site. It is indicated that proposals for residential conversions and re-development of larger homes seek the provision of a minimum of one three-bedroom with four-bed space unit to prioritise delivery of family homes from the existing housing stock.

9. The Council does not appear to have any substantial concerns regarding the impact of the appeal scheme on the area's character. In fact, they acknowledge that the principle of converting properties into flats has been established, and several residential properties have been successfully converted without any negative effects on the character of the area. However, the appeals involve the conversion of a property into 2 No two-bedroom flats. While the two flats have access to a garden and off-road parking, they result in the loss of a five-bedroom family home, and the scheme does not include a three bedroom unit (or greater) as part of the scheme.
10. The appellant indicates the policy attached to the previously adopted plan does not place a presumption against the loss of family-sized dwellings, but this no longer carries any weight. The relevant policy for the conversion of dwellings in the Local Plan does require, at least, a proportion of the conversion to include a family dwelling of at least three bedrooms. Also, no substantial evidence has been provided to demonstrate that the two-bedroom units are justified in terms of need or that the location complies with the specific accessibility requirements set out in Policy HOU03 of the Local Plan.
11. Given the above, the development is not compliant with the highest priority housing needs for the area and leads to the loss of a family-sized home, which is contrary to the objectives of Policies HOU02 and HOU03 of the Barnet Local Plan, as well as Policy H10 of the London Plan. These policies, among other things, require a mix of housing that aligns with the area's identified needs and mandate that a proportion of residential conversions include a family home with a minimum of three bedrooms that has good accessibility to public transport, services, and facilities.

Living Conditions of Occupants

12. The ground-floor flat, referred to as Flat A, has a bedroom window facing a pathway to the side of the house. This pathway, which belongs to the property, provides access to the rear garden for the upper-floor flat (Flat B). The pathway is approximately one metre wide and is flanked by a boundary fence and the neighbour's side wall. The window serves one of the two bedrooms in Flat A. The Council has expressed concerns that this window is significantly overlooked by the occupants of Flat B when they access the private garden. This issue is the same in regard to both appeals and their respective layouts.
13. I have considered the Council's concerns; however, the pathway is key-locked and accessible to only a limited number of individuals, specifically the occupants of Flat B and any visitors they allow access. Given that the pathway is narrow, it is unlikely to be used for extended periods or accommodate small gatherings. As such, any impact on privacy is limited to infrequent use by a small number of people. Therefore, in my judgement, the privacy of the occupants of Flat A would not be significantly harmed by the occasional use of the pathway to access the garden.

14. The Council also contends that Flat B offers poor quality accommodation for its occupants due to the floor-to-ceiling height being below the minimum 2.5 metres (m) set out in Policy D6 of the London Plan. Policy HOU02 of the Local Plan reinforces the space standards specified in Policy D6 of the London Plan and Policy CDH01 of the Barnet Local Plan. The Residential Design Guidance Supplementary Planning Document 2016 (Residential Design SPD) and the Sustainable Design and Construction Supplementary Planning Document 2016 (Sustainable Design SPD) indicate that 2.3m is the minimum height required, but 2.5m is strongly encouraged.
15. During my site visit, I examined all the rooms of Flat B, which were consistent with the existing layout on the provided floor plan. The submitted plans for Appeal B do not propose any change regarding floor-to-ceiling heights. The floor-to-ceiling height in Flat B is indicated to be 2.45m, which meets both SPD requirements but falls short of the height specified in the London Plan.
16. However, the shortfall in height is not significant, and based on my observations, the rooms in Flat B were adequately sized double rooms with sufficient light and ventilation. Moreover, Flat B occupants have access to a garden, along with designated external space for the storage of bins and bicycles. Despite the minor deviation from the standards, I found no harm regarding the acceptability of the occupants' living accommodation. Given the size of the rooms, along with adequate light, ventilation, and access to a garden and external storage, the standard of accommodation in Flat B is deemed to be acceptable for its occupants.
17. Accordingly, the standard of accommodation and levels of privacy for the occupants is acceptable, complying with the aims and objectives of Policies CDH01 and HOU03 of the Barnet Local Plan, Policy D6 of the London Plan, and the guidance contained in the Residential Design Guidance SPD and the Sustainable Design SPD. These policies, and guidelines, aim to ensure developments have high standard of accommodation space and privacy for the occupants.

Planning Balance and Conclusions on Ground (a) and the Deemed Planning Application and Appeal B

18. The appellant has indicated that the Council have not met its housing delivery targets (HDT). However, there is limited evidence before me to demonstrate a shortfall in delivery. The Council has very recently adopted its Local Plan with relevant development plan policies and contends that the most recent HDT shows the Council had exceeded its targets for housing delivery. As such, based on the evidence before me, Paragraph 11d of the Framework is not engaged.
19. Nonetheless, the contribution that an additional dwelling makes to the local housing stock is a benefit, albeit limited due to the small scale of the development. I also note that there would be some limited social and economic benefits, in terms of additional expenditure in the local economy from the occupants. The living conditions of the occupants are considered acceptable, but this is the expected standard, and I do not regard this as a benefit. However, the benefit outlined do not outweigh the harm I have identified to the conflict with the Local Plan policies seeking to prioritise local housing needs and the stock of family sized homes within the locality.
20. For the reasons given above, the development conflicts with the development plan as a whole and there are no material considerations sufficient to indicate that planning permission should otherwise be granted. I conclude that Appeal A on

ground (a) should not succeed, and I shall uphold the enforcement notice with a correction and variations.

21. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that Appeal B should be dismissed.

Appeal A on ground (g)

22. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed. The period for compliance with the requirements is within six months of the Notice taking effect. The appellant contends that additional time is required to allow the occupiers of the self-contained flats sufficient time to relocate, and the works to remove services and facilities. Consequently, a period of twelve months is requested to comply with the requirements of the Notice.
23. When considering the appeal on this ground, I have had regard to the rights conveyed within the Human Rights Act (1998), which refers to the peaceful enjoyment of property. Having regard to the loss of the tenant's homes, and the fact that steps two and three would have to be undertaken following their departure, extending the time for compliance would be appropriate. However, extending the period of compliance to 12 months is excessive, particularly given the Notice does not require extensive internal work to remedy the breach of planning control.
24. In my judgement, a nine month period to cease the use and to carry out the remedial works and remove the waste would be acceptable. It would strike an appropriate balance between the harms resulting from the development, the tenant's human rights and allowing sufficient time to comply with the requirements of the Notice.
25. To this limited extent, Appeal A on ground (g) succeeds, and I shall vary the terms of the Notice accordingly.

Formal Decisions

Appeal A Ref: APP/N5090/C/23/3325400

26. It is directed that the enforcement notice is corrected and varied by:

In paragraph 3, delete the words 'making of a.'

In paragraph 5, step 1, delete the word 'two.'

In paragraph 6, delete the word 'six' and substitute it with the word 'nine'

27. The appeal succeeds on ground (g) only and, subject to the correction and variations, 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.

Appeal B Ref: APP/N5090/W/23/3323954

28. The appeal is dismissed.

M. P. Howell

INSPECTOR