



Appeal Decision

Site visit made on 30 April 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2025

Appeal Ref: APP/N5090/C/23/3318730

174 Cricklewood Broadway, London NW2 3EB

- 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 Perry Sampson on behalf of NSV Management Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 9 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the making of a material change of use of the property as a result of its sub-division into three self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as three 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.
 4. Remove all but one bathroom from the property, the removal to include toilets, hand wash basins, showers and shower cubicles, and baths.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) 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. It is directed that the enforcement notice is:
 - corrected by deleting the allegation within section 3 of the enforcement notice (the matters which appear to constitute a breach in planning control) and its replacement with "without planning permission, the material change of use of the first, second and third floors, as a result of its sub-division into three self-contained flats".
 - corrected by deleting the existing first requirement, under section 5 (what you are required to do) and replacing it with "1. Cease the use of the first, second and third floors as more than one residential unit."
2. Subject to this variation, the appeal is dismissed, and 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.

Procedural Matters

3. During the course of this appeal, the Barnet Local Plan 2012 (LP), and policies contained within it, has been replaced with the Barnet Local Plan, adopted in March 2025 (BLP). This must now be given full weight in the decision-making process. Both parties have been given the opportunity to comment on the new Local Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded LP.
4. The allegation in the Enforcement Notice is poorly worded, in so far as it refers to the material change of use of the 'property,' whereas the change of use relates to the upper floors only and the ground floor comprising a commercial unit, fronting Cricklewood Broadway, remains completely separate and unaffected by these unauthorised works. However, the appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is necessary however to correct the allegation. This would not cause injustice, and I can therefore use my powers under the provisions of s176(1)(a) of the Act to make this correction.
5. The requirements of the notice, under section 5 (What you are required to do) is also poorly worded, in so far as requirement 1 states "*Cease the use of the property as three self-contained flats*". However, it would be better if the notice did not require the use as x number of self-contained flats to cease, because that does not prevent the use for x-1 number self-contained flats to remain. It should therefore state "*Cease the use of the first, second and third floor as more than one residential unit.*" My understanding of the notice is not affected by this minor error, and nothing within the appellant's submission indicates to me that it has been misunderstood by her as a result. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

Appeal on Ground (a) appeal and the Deemed Planning Application (DPA)

Main Issues

6. The main issues are:
 - whether the occupiers of the flats enjoy satisfactory living conditions, having regard to the layout and floor space; and
 - whether the development is acceptable, having regard to car parking and cycle parking.

Reasons

Living conditions for occupiers of the flats – layout and floorspace

7. The appeal site relates to the first, second and third floors of a mid-terraced property which has been converted to three self-contained flats. Access to the upper floors is provided to the rear of the site.
8. To ensure that new housing development provides an acceptable level of residential quality and amenity, Policy D6 of the London Plan 2021 and Policies HOU03 and CDH01 of the BLP require compliance with the minimum space standards in Tables 8 and 9 of the BLP, and Table 3.1 and Policy D6 of the London Plan 2021 (London Plan). Policy D6, Table 3.1 of the London Plan and Table 8 of the BLP requires a minimum gross internal floor areas of 37sq.m for

- 1 bedroom 1 person dwellings and 61sq.m required for 2 bedroom 3-person dwelling.
9. However, contrary to these policies and standards, the first and second floor flats (which are identical in layout) each provide a two-bedroom three-person unit of only 36.5sq.m and the third-floor provides a self-contained studio of only 27.5sq.m¹, well below the required minimum space standards.
10. Furthermore, Table 9 of the BLP states that single bedrooms should be at least 7.5sqm in area and at least 2.15m wide. Double/twin bedroom should be a minimum area of 11.5sqm and minimum width of 2.75m. However, the single room of both the first and second floor flats has a floor area of approximately 6 sq.m and the double bedroom for both of these flats is approximately 8sq.m in area, well below the minimum standards. I also observed that both main living areas and bedrooms within all of the flats appeared cramped with a clear lack of built in storage and circulation space for occupiers.
11. I appreciate that the flats are either dual or triple aspect and receive acceptable levels of light and outlook for current occupiers. Nevertheless, all of the flats fail to provide a satisfactory living environment in terms of layout and floorspace, which feels cramped, claustrophobic and oppressive for occupiers of these units.
12. I therefore conclude that the unauthorised use harms the living conditions for the occupiers of the flats, with particular regard to the internal layout and floorspace, in conflict with Policy D6 of the London Plan, and Policies HOU03 and CDH01 of the BLP. Amongst other things these require that new housing to be of high-quality design and provide adequately-sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures

Car parking and cycle parking

13. The site lies within a public transport accessibility level rating (PTAL) of 6a which represents an excellent level of public transport accessibility. The site is within an area of Controlled Parking Zone (CPZ) restrictions.
14. In relation to car parking, Policy TRC03, Table 20 of the BLP and Policy T6, T6.1 and Table 10.3 of the London Plan requires sites in PTAL 6 to be car free, with the exception of disabled persons parking. This is to ensure that residential developments do not adversely impact the highway network and promote the use of more sustainable forms of transport in areas well served by public transport.
15. To secure the car free development a mechanism is required to ensure that anyone living at the appeal site, other than a Blue Badge holder, would not be eligible to apply for a resident's parking permit. However, access to parking permits is not something that can be directly controlled through planning legislation. The issue of permits is the responsibility of highway authorities and subject to Traffic Management Orders (TMO) in London. It will be the TMO within a CPZ that specify which properties/streets/ areas are eligible to apply for permits.

¹ All flat sizes provided by the appellant as shown on the proposed plans, dated March 2022.

16. The Appellant agrees to the principle of the development being car free and considers that this could be dealt with by condition. However, the Council's Highways Team have been consulted and states that the current TMO needs to be modified to prevent existing and future occupiers of these flats from obtaining a Council parking permit. The Highways Team recommends that this needs to be delivered via a Section 106 or Unilateral Undertaking Agreement to secure the financial contribution needed to amend the TMO. Indeed, this is supported by Paragraph 11.12.4 of the BLP, which states that "Where necessary within CPZs the Council will restrict new residential occupiers from obtaining car parking permits through a planning obligation in a legal agreement."
17. Given that a financial contribution is required to amend the TMO, I agree that a planning obligation is necessary to secure the necessary changes. However, since no planning obligation has been provided as part of this appeal, there is no suitable mechanism before me to ensure that the development will be car permit free.
18. Turning to cycle parking, Policy TRC03, Policy T5 and Table 10.2 of the London Plan requires a total of 5 cycle parking space for the appeal development (1 space for the studio and 4 spaces for the 2 x two-bedroom flats). Given the constraints of the site, located on the upper floors of this building, no cycle parking facilities are provided for the development and no details of cycle parking have been proposed to accommodate the required 5 spaces for this proposal.
19. Part E of Policy T5 of the London Plan states where it is not possible to provide adequate cycle parking within residential developments, boroughs must work with developers to propose alternative solutions which meet the objectives of the standards. These may include options such as providing spaces in secure, conveniently-located, on-street parking facilities such as bicycle hangers. The Policy also states that in town centres, adding the required provision to general town centre cycle parking is also acceptable. In such cases, a commuted sum should be paid to the local authority to secure provision. Again, a legal agreement is required to secure the payment of funds to the Council and a condition would not be appropriate in these circumstances.
20. In the absence of an appropriate mechanism to make the development acceptable in planning terms, with regard to securing the car free development and cycle parking spaces required, the development fails to accord with the above-mentioned parking and cycle parking policies.
21. I therefore conclude that the development is unacceptable, having regard to both car parking and cycle parking, in conflict with Policies HOU03 and TRC03 of the BLP and policies T5 and T6.1 of the London Plan, which seek the aforementioned aims.

Other matters

22. The development provides a net gain of two additional dwellings and a mix of studio and two-bedroom units which contributes to the Council's housing targets set out in the BLP. However, given that these are small units with insufficient floorspace, the benefits in this regard are very modest.

Conclusion on Ground (a) and the DPA

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The unauthorised development provides unacceptable living conditions for occupiers of the appeal site and is unacceptable with regard to car parking and cycle parking, in conflict with the development plan taken as a whole. None of the other matters raised, including the benefits of providing two additional sub-standard dwellings outweighs the harms identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
24. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the DPA should be refused.

The appeal on Ground (f)

25. The appeal on this ground 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 (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
26. The enforcement notice requires: the use as three separate self-contained flats to cease; the removal of all but one kitchen and one bathroom from the property; and the removal of all internal works which facilitate the sub-division of the property as self-contained flats. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
27. The appellant considers that the three flats could be converted into two flats, with the first floor flat becoming a studio with a shower room, and the second and third floors could be combined to create a one-bedroom dwelling. However no proposed plans have been submitted showing the proposed layouts of this alternative scheme or demonstrating compliance with the necessary floorspace and room standards sizes of the BLP and the London Plan policies. Furthermore, this would not address the issue raised above regarding the lack of a legal agreement to secure the necessary car permit free agreement and cycle parking spaces on the Highway. Indeed, it is open to the appellant to submit a further planning application to the Council for this revised scheme if they so wish.
28. The appellant also states the requirements of the notice which require the removal of more than one bathroom, and the removal of all internal works which facilitates the creation of self-contained flats is excessive. However, it is clear that the additional bathrooms and the current internal sub-division have sustained the unlawful use of the property as three flats. These facilities are part and parcel of the unauthorised use and should not be viewed in isolation as has been suggested by the appellant.
29. Furthermore, no further evidence has been presented to demonstrate that the additional bathrooms and the current layout of the property existed before the unauthorised change of use took place. Notwithstanding that these facilities may not require planning permission in their own right, a notice directed at a

material change of use, as is the case here, may require their removal. I am therefore satisfied the requirements of the notice do not exceed what is necessary to remedy the breach of planning control.

30. On this basis, the Ground (f) appeal fails.

Conclusion

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR