Planning Inspectorate

Appeal Decision

Site visit made on 28 May 2025

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2025

Appeal Ref: APP/A5270/C/23/3318597
91 York Road, Acton, London W3 6TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Don Stewart against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 15 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to five flats and the construction of a part single storey part two storey rear extension.
- The requirements of the notice are: 1.Cease the use of the property as flats; 2. Remove all kitchen facilities and associated drainage connection and water supply integral to, and facilitating the material change of use; 3. Remove all bathroom facilities and associated drainage connection and water supply integral to, and facilitating the material change of use; 4. Remove all fixtures, fittings, doors, and internal dividing walls integral to, and facilitating the material change of use; 5. Demolish the part single, part two storey rear extension and restore the external walls of the building to its former state using materials to match the existing building; and 6. Remove all resultant debris..
- The period for compliance with the requirements is six 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). 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.

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 Matter

2. My decision takes into account the revised National Planning Policy Framework, which came into force during the course of the appeal.

Ground (a) appeal

Main Issues

3. The appeal property contains a substantial mid-terrace residential building, with living accommodation arranged over three floor levels. The enforcement notice attacks the use of the property as five flats, along with a part single storey, part two storey extension erected at the rear of the building. There are two self-contained units on the ground floor, one of which is a studio flat, the other unit having two bedrooms. There are two self-contained one-bedroomed units on the first floor, one of which is also a studio flat. There is a further self-contained, one-bedroomed flat on the second floor. Therefore, the main issues in this ground of appeal are:

    - Whether suitable living conditions are provided for the existing and future occupiers of the flats, having regard to internal floorspace and private outdoor amenity space.

- Whether the use as five flats supports sustainable transport objectives in the Development Plan, having regard to the parking of vehicles and the provision made for cycle parking and storage.
- The effect of the part single storey, part two storey rear extension on the character and appearance of the building and the surrounding area.
- The effect of the extension on the living conditions of occupiers of neighbouring residential property, having regard to outlook.

Reasons

Living conditions-existing and future occupiers of the flats

4. Both studio flats have a relatively modest floor area. In the ground floor studio, there is limited circulation space following the provision of some basic items of furniture, including a sofa bed, a table and chairs along with some shelves. Everyday household items and personal possessions further reduce the amount of floor area available. In the kitchen, little circulation space remains after the work top, cooker, hob, sink and drainer, upright fridge/freezer and cupboard units have been fitted. This all creates the sense of an uncomfortably cramped and congested living space for the occupiers of the flat. The first-floor studio flat is currently vacant. Even so, being significantly smaller than the ground floor studio the occupiers are likely to experience a similarly restrictive living space.

5. The other first-floor flat is largely unfurnished. However, having regard to its modest floor area this flat is unlikely to be capable of accommodating more than perhaps a few basic items of furniture, for example a couple of lounge chairs and a table, without leaving limited circulation space in the combined living and kitchen area. The bedroom seems particularly small; I am doubtful whether a double bed could be accommodated with ease and there would be limited circulation space or room for storing everyday items such as personal possessions, clothing and footwear.

6. The other ground floor flat has two good-sized double bedrooms. Even so, given that this flat could potentially be occupied by more than two people, the living and kitchen area seems somewhat constrained in size. Accommodating the likely additional furniture along with everyday household items and personal possessions associated with occupation by a family with small children for example, would leave the living and kitchen area feeling uncomfortably cramped and congested. The flat is also awkwardly shaped, being relatively lengthy and narrow with a significant amount of floorspace taken up by a corridor.

7. The second floor flat on the other hand is of a size capable of comfortably accommodating some furniture including a double bed whilst providing sufficient circulation space, along with room for storing everyday household items and personal possessions. The reducing ceiling height at the front and rear due to the slope of the roof does not adversely affect the sense of spaciousness in the flat. Nevertheless, this makes little difference to the restrictive floorspace provided in the other flats.

8. Based on the Council's figures, the ground floor studio flat has a gross internal floor area (GIA) of around 30m^2 and the other ground floor flat a GIA of around 57.5m^2. On the first floor, the flats have a GIA of around 34m^2 and 21m^2, the second floor flat having a GIA of around 57m^2. There is no sound reason why I should question the accuracy of the above figures. Accordingly, the ground floor studio flat and the first-floor flats fall well below the 50m^2 GIA minimum private internal space required for new one-bedroom, two-person flats in Table 3.1 to Policy D6 of the London Plan (LP). Furthermore, the other ground floor flat falls well below the minimum 70m^2 GIA required for a new two-bedroom, four-person flat in Table 3.1. These minimum space standards reflect the Technical housing standards-nationally described

space standard[1] and the Mayor of London's Housing Supplementary Planning Guidance (SPG). Adherence to the minimum space standards is also required by Policy 3.5F of the Ealing Development Management Development Plan Document (DPD). The significant deficiencies in GIA when assessed against the minimum space standards reinforces my findings concerning the restrictive floor areas of most of the flats.

9. The rear garden of the property largely consists of a patio and an area of grass at the rear of and alongside the extension, together with a small courtyard area. The Council estimated the rear garden as having an area of around 30m^2. There is little before me to suggest that the rear garden is any larger; it may well be that the actual size is somewhat smaller, as a portion of the land at the rear of the property seems to have been incorporated into a neighbouring garden at some stage. In addition, the rear garden is irregularly shaped, being of limited width in part alongside the extension, it is difficult to access from most of the flats and is also directly overlooked by one of the ground floor flats.

10. Given the above factors, the rear garden offers little opportunity for the occupiers of the flats to undertake activities that might typically be associated with a private outdoor amenity space, including informal relaxation, cultivating plants and drying washing. Those factors also mean that the rear garden is awkward to use and is likely to feel congested when more than a couple of people are present in the space at any one time. The lack at the property of a private outdoor space of suitable dimensions in which to undertake the above or similar activities adds to the sense of a restrictive living environment for the occupiers of the flats.

11. The above does not reflect guidance in the Ealing Planning New Garden Space Supplementary Planning Document, which concerns the qualitative aspects of outdoor amenity space provision. Moreover, DPD Table 7D.2 typically requires an area equating to 15m^2 private garden space to be provided for each new flat. This includes the baseline requirement of 5m^2 private outdoor space provision for one to two person dwellings derived from the SPG. Accordingly, the rear garden is substantially smaller than the size of private outdoor amenity space typically required by the DPD for five flats. This significant inadequacy in size having regard to the typical DPD requirement, along with the local deficiency in public open space, underpins my grave reservations concerning the suitability of the rear garden as a private outdoor amenity space for the flats.

12. Therefore, suitable living conditions are not provided for the existing and future occupiers of the flats. This is in conflict with criterion in LP Policy D3 which requires new development to achieve indoor and outdoor environments that are comfortable and inviting for people to use. It is also in conflict with criteria in LP Policy D6, which require new development to provide comfortable and functional layouts which are fit for purpose, with dwellings having at least the GIA required in Table 3.1. There is conflict with DPD Policy 3.5F, which requires new development to meet similar minimum space standards. Additionally, there is conflict with criterion in DPD Policy 7B, which requires new development to achieve a high standard of amenity for users, including by ensuring appropriate levels of development on site. Furthermore, by not providing garden space which is fit for purpose and genuinely private and which meets the size requirements set out in Table 7D.2, amplified in the supporting text, there is conflict with criterion in DPD Policy 7D.

Sustainable transport objectives

13. The property has a Public Transport Accessibility Level (PTAL) of 5, reflecting the relatively good local access to public transport services. The maximum parking standards set out in Table 10.3 to LP Policy T6.1 require residential development in such areas to be car-free. However, the hardstanding in front of the building is

[1] MHCLG 2015

capable of accommodating around two vehicles. Moreover, in the absence of any evidence to the contrary it is not unreasonable to assume that a number of the occupiers of the flats have access to private vehicles to meet their day-to-day travel needs. Given that there are five flats, some or all of which could be occupied by more than one person at times, the likely level of associated vehicle parking considerably exceeds the number of off-street spaces available at the property, in turn leading to increased demand for parking on the street.

14. Vehicle parking in this and the neighbouring streets is restricted by a Controlled Parking Zone. Even so, there is little to suggest that the occupiers of the flats are prevented from applying for a parking permit. Whilst there might be a number of on-street parking spaces available during the day, it is likely that most of the spaces will be occupied at other times, such as in the evenings and at weekends. The demand for additional vehicle parking in this and in the neighbouring streets, where levels of parking are probably at or around their maximum capacity at times, is likely to have exacerbated parking congestion and led to incidences of obstruction to the free flow of traffic; there is little to suggest otherwise. In addition, limited provision is made for the secure parking and storage of cycles at the property.

15. Therefore, the use as five flats does not support sustainable transport objectives. This is in conflict with LP Policy T5, which requires new developments to help remove barriers to cycling and create a healthy environment in which people choose to cycle, including by the provision of appropriate levels of cycle parking which should be fit for purpose, secure, well-located and at least in accordance with the minimum standards set out in Table 10.2. It is also in conflict with criterion in LP Policy T6.1, which requires new residential development to not exceed the maximum parking standards set out in Table 10.3.

Extension-character and appearance

16. The property is located in an established residential area. The proportions and general appearance of the building echoes that of many residential buildings in the vicinity. In general, the local buildings exhibit significant similarities in terms of their age, scale, appearance and external materials and they are arranged in terraces fronting onto tree-lined streets. Also, the buildings often occupy rectilinear plots and have good-sized rear gardens containing maturing planting. Although larger scale residential and commercial development and a busy main road also form part of the immediate and wider setting, the foregoing factors contribute significantly to the pleasant and reasonably coherent urban residential qualities of the locality.

17. The extension has a considerable size and bulk. It is significantly and appreciably larger in scale compared to the relatively modest proportions and much shallower overall depth of the pre-existing two storey outrigger and single storey rear extension to the building. The two-storey part of the extension protrudes several metres beyond the rear elevation of the original building, the single storey part protruding several metres further into the rear garden. The overall depth of the extension is considerably in excess of that of the original building. In addition, a significant portion of the extension spans almost the whole width of the building.

18. The highest part of the roof of the two-storey part of the extension sits well below the main eaves line of the building. Also, this part of the extension is positioned away from the boundary with the neighbouring residential property at 89 York Road (No 89). Even so, these factors do little to offset the substantial overall scale of the extension. Neither do the shallow angled, asymmetrical mono pitch roof form, which fails to reflect the conventional dual pitched main roof, nor the external finishes which differ markedly from those found on the main walls and roof, assist in successfully integrating the extension with the building. As a result, the extension visually dominates the rear elevation of the building. It is viewed as a large scale, somewhat clumsy, alien addition and fails to reflect the Council's 'Residential Extensions' Supplementary Planning Document (SPD), which amongst other things

advises that rear extensions should be subordinate to the building, respecting its original form, being a logical extension to its shape and using matching materials. Although there are limited public views, the sheer scale of the extension is readily apparent from neighbouring residential property.

19. Few terraced properties in the vicinity have outriggers or extensions of similar size, bulk and overall depth, particularly at first floor level. There are also few instances of the built footprint of later enlargements occupying such a considerable portion of rear gardens. The attached part single storey, part two storey rear enlargement at 93 York Road (No 93) is similar in terms of its scale and appearance to the appeal extension. However, the neighbouring enlargement is subject to an enforcement notice upheld at appeal in July 2022[2]. The planning permission granted in respect of No 93 in October 2021[3] includes a much smaller first floor enlargement. In any event, in the absence of information to suggest otherwise that permission has since expired. Accordingly, the extension is also entirely at odds with the prevailing pattern of local development and it contributes to an appreciably more built-up feel at the rear of the property and in neighbouring rear gardens.

20. For the reasons set out above, the extension causes unacceptable harm to the character and appearance of the building and the surrounding area. This is in conflict with criteria in LP Policy D3, which require new developments to enhance the local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape and to be of high quality, with architecture that pays attention to detail and uses attractive, robust materials. It also conflicts with DPD Policy 7.4, which requires new developments in existing built areas to complement their street sequence, building pattern, scale, materials and detailing. Furthermore, there is conflict with DPD Policy 7B, which requires development to achieve a high standard of amenity for users, including by ensuring high quality architecture with a positive visual impact and with external finishes which complement the building and context.

Extension-living conditions of occupiers of neighbouring residential property

21. Windows in the rear and side elevations of No 89 are close to the boundary with the property. Given its overall height and depth and the corresponding bulk in proximity to the boundary, the extension is perceived as a dominant built feature in outward views from some habitable rooms at the rear of No 89. This has given rise to the occupiers of that property experiencing a significantly greater and somewhat oppressive sense of enclosure by built form, compared to before the extension was erected. The likely intrusion into the 45-degree angle line taken from nearby windows in the rear elevation at No 89 provides further support for the extension having significantly eroded the level of outlook previously enjoyed by the occupiers of that property. This fails to reflect advice in the SPD, which requires development to provide good living conditions for residents and for rear extensions to be designed to avoid problems including dominance or an overbearing appearance.

22. Therefore, the extension has also caused unacceptable harm to the living conditions of occupiers of neighbouring residential property. This is in conflict with criteria in LP Policy D3, which requires new developments to deliver appropriate outlook and amenity. It also conflicts with DPD Policy 7B, which requires new development to achieve a high standard of amenity for adjacent uses, including by ensuring appropriate levels of site development and positive visual impact.

Conclusion-Ground (a) appeal

23. Suitable living conditions are not provided for the existing and future occupiers of the flats, which also do not support sustainable transport objectives. Furthermore, the extension harms the character and appearance of the building and the

.[2] Appeal Ref: APP/A5270/C/21/3283496
[3] Council Ref: 214698FUL

surrounding area, as well as the living conditions of neighbouring occupiers. This is all in conflict with the Development Plan, taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

24. The ground of appeal is that the notice requirements are excessive.

25. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place and/or it can have the purpose of remedying any injury to amenity caused by the breach. Amongst other things, the notice requires the unauthorised use of the property as flats to cease and the unauthorised extension to be demolished. Therefore, the purpose of the notice must be to remedy the breach by restoring the property to its condition before the breach took place. This is also made clear in the final reason for issuing the notice in paragraph 4.

26. Relevant case law confirms that consideration should be given to any obvious alternative to the notice requirements that would overcome the planning difficulties at less cost and disruption[4]. The planning merits of the unauthorised development, including the unauthorised extension, have been dealt with in the ground (a) appeal. In the context of the ground (f) appeal, anything less than cessation of the unauthorised use along with the demolition of the unauthorised extension would sustain the breach. This would lead to the property not being restored to its condition before the breach took place and the purpose of the notice would not be achieved. It follows that varying the notice so that the extension remains does not represent an obvious alternative to the notice requirements. No other alternative to those requirements was suggested and nothing else would remedy the breach.

27. Therefore, the notice requirements are reasonable and not excessive; they provide a proportionate remedy, being the minimum steps necessary to restore the property to its condition before the breach took place. The ground (f) appeal fails.

Ground (g) appeal

28. The ground of appeal is that the time allowed for complying with the notice requirements is too short.

29. The remedial works would be a relatively small-scale and straightforward task for a suitably experienced small building contractor. It is highly unlikely that the works would require the use of specialist plant or equipment. There are probably a significant number of suitable contracting firms who would be available to undertake the works, given a reasonable period of notice. There is little firm evidence to suggest that complex detailed drawings would need to be prepared in advance of the works. In my estimation, the works are unlikely to take more than a couple of months at most to complete.

30. Few details of the length and terms of any tenancies or of notice periods required to be given were supplied. There is little firm evidence to indicate that the tenants would experience difficulty in searching for and securing suitable alternative living accommodation. Furthermore, there is little before me concerning any alternative scheme that might conceivably overcome the objections to the unauthorised development, should a planning application be submitted to the Council.

31. Accordingly, in my estimation the six-month compliance period specified in the notice is reasonable and not too short. Sufficient time would be afforded for tenants to search for and secure alternative accommodation and for the subsequent carrying out of the works. There is an appropriate balance struck between remedying the breach as soon as practicable, whilst not placing a

[4] *Ahmed v SSCLG & Hackney LBC* [2014] EWCA 566

disproportionate burden on the appellant or their tenants. Extending the compliance period on the other hand would do little more than perpetuate the breach. The ground (g) appeal also fails.

Conclusion

32. 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).

Stephen Hawkins

INSPECTOR