Planning Inspectorate

Appeal Decision

Site visit made on 10 December 2025

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2026

Appeal Ref: APP/P4605/C/24/3338305
65 Church Road, Moseley, Birmingham B13 9EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by NSH Properties Limited against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 11 January 2024.
- The breach of planning control as alleged in the notice is *without planning permission, the unauthorised change of use to 8 self contained flats in the approximate position marked in green on the attached plan.*
- The requirements of the notice are:
  i. Cease the use of the Premises as self contained flats
  ii. Remove any fixtures and fittings associated with the unauthorised use of the Premises
- The period for compliance with the requirements is: *6 months after this enforcement notice takes effect.*
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the 1990 Act (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.

Formal 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 Matters

2. During the site visit I was only able to gain internal access to one flat on the second floor of the appeal property (Flat 8). However, I was able to gain access to the appeal site itself and was able to observe the internal layout and the positions of each of the flats inside the property, which assisted me in determining the appeal. I have informed both parties of my intention to determine the appeal based on the information supplied and the site visit as detailed above, and neither have indicated that this is unacceptable. As such, I am satisfied that neither party has been prejudiced by my approach.

Appeal on ground (a), the deemed planning application

3. The deemed planning application is for the material change of use to eight self-contained flats at the appeal site.

Main Issues

4. The main issues are the effect of the development on i) the living conditions for existing occupiers with specific regard to standard of accommodation and ii) the living conditions of neighbouring properties with specific regard to noise and disturbance.

Reasons

Living conditions – existing occupiers

5. The Government's nationally described space standard, March 2015 (NDSS) contains the minimum internal space requirements for new dwellings. These requirements are also applied in a local context within policy DM10 of the Development Management in Birmingham (DMB) Development Plan Document, adopted in December 2021.

6. I acknowledge that I was unable to gain access to each of the flats, however I was able to view Flat 8 which appears representative of the other flats, in accordance with the appellants floor plan which was submitted as part of this appeal[1]. The appellant indicates that all the dwellings are occupied by single tenants. The NDSS states the minimum gross internal floor area for a one person, one bedroom dwelling with a shower room, should be 37m^2. From the information before me the dwellings fall considerably short of this minimum gross internal floor area requirement.

7. Given the appeal site currently provides eight individual flats, the layout is such that it creates cramped and small internal living environments for the existing occupiers. Given that the NDSS figures are minimum standards which are intended to act as a benchmark for high design quality, the significant shortfall in floorspace is not appropriate. As such, the accommodation standards are not considered as acceptable.

8. I have been presented with no evidence that there is a minimum space requirement for the provision of outside amenity space in either the NDSS or the DMB. However, guidance in the Birmingham Design Guide: Healthy Living and Working Places City Manual (BDG), adopted September 2022 indicates that residential development should have access to private outdoor amenity space, of sufficient size and quality to serve the occupants of the dwelling. In addition, the National Planning Policy Framework (the Framework), amongst other things, expects planning decisions to ensure healthy living conditions and create better places to live, indicating that higher densities should not be at the expense of acceptable living standards.

9. The appellant contends that adequate amenity space is provided at the ground floor outside the front and the side of the appeal site, claiming that the type of accommodation does not require child play space or a garden. At the site visit I noted the constraints of the site, and given the scheme is seeking eight x one-bedroom dwellings, it is unlikely to be used for family accommodation. However, whilst a one bedroom dwelling may be occupied by a single person or childless or older couples, who may not wish to have a large garden, the scheme should still provide a good standard of accommodation for all existing and future occupiers.

10. The external amenity space amounts to a modest hardstanding along the front and side edges of the building, interspersed between the access routes, waste stores and car parking spaces. These areas of amenity are small and provide limited space for tables and chairs and other domestic paraphernalia to be used and would be interspersed between parked vehicles. Furthermore, given the prominent and focal positioning from public vantage points, it does not provide adequate

[1] Appendix 1 of the Appellants Response Statement: Drawing number A101

levels of privacy. Consequently, given its cramped and tight positioning, located in and amongst boundary fences, parking areas and other functional facilities, it is considered that any existing amenity space provides poor living conditions and an unsuitable and unattractive amenity area for occupants. This would be consistent with the previous Inspectors findings[2].

11. For the reasons outlined above, I conclude that the development does not provide acceptable living conditions for occupiers of the appeal site in respect of provision of internal space standards and outside amenity space. It therefore conflicts with policies PG3 and TP27 of the Birmingham Development Plan (BDP), adopted January 2017; policy DM10 of the DMB; the aims and objectives of the BDG, and the Framework which together expect planning decisions to ensure healthy living conditions and create better places to live.

Living conditions – neighbouring properties

12. The scheme provides for additional occupants at the appeal site. However, given the existing use of the site there would be no notable increase in the number of cars and people entering and exiting the site, where it could be considered as excessive.

13. Whilst it is acknowledged that further residents would create some additional comings and goings associated with day-to-day activities, this increased activity is associated with the existing use and is limited. Furthermore, these are likely to be spread over the day, which would not be considered as overly intrusive, noisy or disruptive to neighbours.

14. Considering the above, I find that the development would not harm the living conditions of existing occupiers of nearby dwellings with regard to noise and other nuisance and general disturbance. Consequently, in this regard it would comply with the objectives of the relevant sections of BDP policy PG3; DMB policies DM2 and DM6 and the BDG which collectively seek to avoid any adverse impact on the amenity of neighbouring properties.

Conclusion on ground (a)

15. Overall, I find that the scheme is contrary to the development plan, taken as a whole. There are no material considerations that indicate the scheme should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

16. I have had regard to the fact that in dismissing the appeal and upholding the notice, it will result in the loss of the occupiers' homes and interfere with their rights under Article 8 of the Human Rights Act which states that everyone has a right to respect for private and family life, their home and correspondence. However, this is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. I find that the interference is the minimum necessary and is proportionate having regard to the legitimate and well-established planning policy aims to provide good quality living conditions.

17. Consequently, the ground (a) appeal does not succeed, and planning permission will be refused in respect of the appeal development.

[2] PINS Ref: APP/P4605/W/21/3282576

Appeal on ground (f)

18. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or b) remedying any injury to amenity which has been caused by the breach.

19. The requirements of the enforcement notice are clear, as it requires the cessation of the unauthorised self-contained flats and removing the fixtures and fittings which facilitate that use from the property. By doing so, the property would then be restored to its condition before the breach took place. Consequently, I am satisfied, that the purpose of the notice is to remedy the breach of planning control as set out under section 173(4)(a) of the 1990 Act.

20. The appellant claims that the use of the appeal property for six flats is lawful. The Statement of Common Ground also confirms the parties agreement that six flats have been banded for Council Tax purposes, and several planning applications[3] have been submitted and refused where the existing property has been referred to as six flats. Be that as it may, I have been presented with no certificate of lawful development or similar that clarifies the lawful position at the appeal site. Furthermore, whilst the appellant originally submitted a ground (d) appeal this has subsequently been withdrawn. Nevertheless, based on the information presented, the lawful nature of the use is inconclusive, as the appellant has failed to provide the necessary evidence that the change of use was immune from enforcement action, on the balance of probabilities[4].

21. The appellant further contends that the requirements of the notice should be corrected to allow the use of the site as six flats. The allegation section of the notice already specifies the number of flats (eight) thus any further references to a specific number in the requirements section of the notice is unnecessary. Any correction of the notice to require a specific number of flats to be retained could cause injustice to the appellant in that it would lead to uncertainty in regard to which flats would need to be removed and/or altered. There could also be injustice to the Council given that the formal lawful status of the property has not been established.

22. The second requirement of the notice states that the fixtures and fittings associated with the unauthorised use are to be removed. These terms are commonly understood as including separate kitchens and bathrooms. As the landowner, it is not unreasonable to expect the appellant to be the person with the best knowledge of exactly which fixtures and fittings facilitated the unauthorised use and those that were already present at the property in connection with any previous use. Therefore, this requirement is also clear and not excessive.

23. Overall, given the uncertainty regarding the lawful status of the appeal site and which flats are to be removed and/or altered to remedy the breach of planning control, I am not satisfied that the enforcement notice could be varied to require

[3] Birmingham City Council Planning Refs: 2020/09812/PA, 2021/1877/PA and 2021/04269/PA
[4] *Thrasyvoulou v SSE & Hackney LBC (No 1) [1984] JPL 732*

lesser steps whilst also having the necessary degree of precision to prevent the unauthorised use. Therefore, the steps set out in the notice are not excessive; they are proportionate and commensurate to the breach of planning control, being the minimum that is required to restore the property to its condition prior to the breach taking place.

24. As a consequence, the ground (f) appeal fails.

Appeal on ground (g)

25. For an appeal on ground (g) to succeed, it is to be demonstrated that the period specified in the notice for compliance in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.

26. The appellant argues that a period of 12 months is the minimum necessary to undertake the requirements of the enforcement notice, given that the existing tenants would need time to find alternative accommodation. I appreciate that finding and securing alternative accommodation is not a straightforward process.

27. Nevertheless, I have been presented with little evidence that would lead me to otherwise conclude that the period of 6 months is reasonable and proportionate to remedy the breach of planning control. Furthermore, the 6 month timeframe would strike an appropriate balance between the remedial rather than punitive requirements of the enforcement notice whilst also maintaining public confidence in the planning system.

28. I therefore conclude that the ground (g) appeal also fails.

Conclusion

29. 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).

Robert Naylor

INSPECTOR