The Planning Inspectorate

Appeal Decisions

Inquiry held on 24 March & 7 April 2011
Site visit made on 7 April 2011

by Bridget M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 May 2011

Appeal A: APP/T5150/C/10/2134651
Flats 1-5, 44 High Road, London NW10 2QA

- 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 Adilsons Properties Limited against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0153.
- The notice was issued on 16 July 2010.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the premises to five self contained flats.
- The requirements of the notice are to:
  1 Cease the use of the premises as five self contained flats and its occupation by more than ONE household; and
  2 Remove all items, fixtures, fittings and materials associated with the unauthorised use from the premises including all except ONE, kitchen facilities, all, except ONE, en-suite bathrooms and all, except ONE, doorbells.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

Appeal B: APP/T5150/X/10/2132805
Land at 44a High Road, London NW10 2QA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Adilsons Properties Limited against the decision of the Council of the London Borough of Brent.
- The application Ref 10/1050, dated 28 April 2010, was refused by notice dated 9 July 2010.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use of the first floor, second floor and loft as 5 flats (comprising 3 x studio and 2 x 1 bedroom flats).

Summary of Decision: The appeal is dismissed.

Preliminary matters

1. Whilst in the application for the LDC the Appellant distinguishes the flats on the upper floors from the ground floor of the property by attributing the number 44a; in the enforcement notice the Council has referred to 44 which could be

taken as meaning the whole of the property. I was asked to correct the notice to make clear that it only relates to the first, second and third floors and the Appellant raised no objection to this change. I shall exercise my powers accordingly.

2. All oral evidence to the inquiry was given on oath.

Appeal A ground (d) and Appeal B

3. For ground (d) to succeed the use as 5 flats would need to have continued since 16 July 2006 and for Appeal B since 28 April 2006. On the available evidence, and in particular relying on rent receipts/bank statements, there is agreement between the parties that the property has been so used since the autumn of 2007 (about September). It is thus the period between 16 July 2006 (or 28 April 2006) and September 2007 which is critical.

The case for the Appellant

4. The Appellant Company purchased the property in October 2006. It argues that the upper floors were in use as 5 flats (two on the first floor, two on the second floor and one on the third floor within the roof space) well before either of the two material dates.

5. A statutory declaration made by the former owner **Mr I Nejad** in October 2006, confirms that he converted the upper floors to 5 flats in 1990. He has left the country and so could not be called to give evidence.

6. **Mr A Sultan**, (evidence in person) property manager for the Appellant since June 2006 said that he visited the property several times before purchase to see what works needed to be done. The layout of the property has not changed since but the flats were refurbished on purchase.

7. **Mr P Ziman**, (evidence in person) is a solicitor who was instructed by the Appellant in the latter part of 2006 in connection with the purchase of the appeal property. He visited the property prior to purchase and confirms it was in use as 5 flats. He described the flats as tatty and in need of smartening up. In the course of the conveyancing, he could not recall what action was taken to reconcile a planning permission for 2 flats with the existence of five.

8. **Mr R Adil**, (evidence in person) is a shareholder of the Appellant Company. He visited the property several times before purchase (once with Mr Ziman). He confirms there were 5 flats and that he went into the top floor flat with Mr Ziman when he noted that the dormer was there and that the flat was in a poor state. It was because there was permission for only two flats that a statutory declaration from Mr Nejad was obtained at the time of purchase concerning the length of time that there had been 5 flats.

9. **Mr M Waseem**, (evidence in person) is a builder. He says he worked on the top floor flat between 18 May and 8 June 2006. He had scaffolding erected to the rear of the property to install the dormer but did not need it at the front. His invoice includes replacement and installation of new velux windows and refurbishment works including new laminate flooring, new plastering where needed and complete redecoration of the flat.

The case for the Council

10. The Council points to inconsistencies in the Appellant's oral and documentary evidence which, it argues, casts doubt. It says the Appellant has not

discharged the burden of proof to show use of 5 flats throughout a four year period. In addition, it produces documentary evidence which contradicts the case made by the Appellant. A Notice dated 25 May 1995 issued under s352 of the Housing Act indicates that at that time the property was in use as an HMO with no accommodation in the roof. A notice before forfeiture issued in July 2000 on Mr Nejad's behalf addresses unauthorised alterations made to the first and second floors, the subject of a single tenancy. Planning applications for two flats in November 2005 and March 2006 show an existing arrangement of a single residential unit with no accommodation in the roof. The architect who prepared the drawings confirmed by e-mail that he surveyed the property between 19 and 23 September 2005 and supplied a copy of his contemporaneous site survey notes.

Appraisal

11. The documents produced by the Council address dates before the relevant 4 year period. However, they directly contradict the statement made by Mr Nejad that the property was converted to 5 flats in 1990. Furthermore, there appears to be no rooflight on the aerial photographs taken in 2001 and 2005/6 which casts doubt that there was habitable accommodation within the roof space at those times.

12. If the property was not converted to 5 flats in 1990, then the question is when was it so converted. The evidence of Mr Sultan, Mr Ziman and Mr Adil is that each one of them visited the property before the purchase was executed in October 2006 and each said that there were 5 flats in need of refurbishment which suggests that they had been in existence for some time. However, the evidence of Mr Waseem was that he had installed the dormer and refurbished the top floor flat in May/June 2006. It should therefore have been in much better condition than the other 4 and yet none of the other witnesses mentioned this.

13. The explanation that a tenant might have trashed it in a very short time is possible but improbable. Moreover, it seems unlikely that the flat would have needed refurbishment in May/June 2006 if it wasn't in existence when the property was surveyed by an architect in September 2005. I find it highly unlikely that the survey notes would have been manufactured by the architect for the purpose of this appeal so as to keep on the right side of the Council. Notwithstanding that there is an error in that a window has been omitted, the notes are very detailed and there would have been no need to produce the notes for the basement and ground floor since they are not in contention.

14. Much of the other documentary evidence provided in support seems to pose more questions than provide answers; or it does not assist with the time period in dispute. The signature on Mr Nejad's planning application in 1997 relating to the ground floor of the property and that on his statutory declaration look the same, but his signature on the tenancy agreements for periods in 2005/6 - intended to demonstrate occupancy of 5 flats at that time - is entirely different. As the tenancy agreements are legal documents and the signatures were witnessed, I find it difficult to accept the suggestion that someone else might have signed Mr Nejad's name for him at that time.

15. The utility bills submitted do not help to clarify how the property was used in the period in dispute. The property was not assessed as 5 flats for Council Tax purposes until August 2009. The Appellant's two copies of receipts (the originals were not made available) for furniture and white goods appear to

have been overwritten and altered and in any event predate the purchase of the property by some 8 months. The explanation given that the Appellant firm owned several properties in the road and that only one of them might have been put on the invoice where multiple deliveries were to be made to several properties does not explain how a property yet to be purchased would be used as the delivery address. The alternative explanation that those writing the invoices might have got the date wrong as English would not be their first language also seems doubtful as the date is written using numerals and two entirely different firms have made much the same error. The rent receipts and marketing information go back no earlier than July 2007 and Mr Waseem's quotation and invoice for the installation of the dormer and refurbishment of flat 5 are not the originals but were printed from a computer for the purpose of these appeals.

16. There are, however, tenancy agreements with the Appellant Company for each flat commencing in November 2006. The Council thought it odd that these should all have commenced within the same month and sought to demonstrate by reference to 3 aerial photographs submitted at the inquiry that the dormer was not constructed until that winter. That conclusion relies heavily on whether trees are in leaf or not and in my view the photographs are not clear enough to be able to draw so firm a conclusion. The November tenancy agreements do not coincide with the information in rent receipts, bank deposits and marketing information provided by the Appellant which does not start until July 2007. But even accepting that tenancies for each flat did commence in November 2006; that would still leave the period prior to that from 16 July 2006 in dispute.

17. In appeals on legal grounds, the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the local planning authority has no evidence of its own or from others to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

18. In this case, there is no clear evidence to enable a conclusion to be drawn as to when the property was first used as 5 flats. The notice issued under the Housing Act, the notice before forfeiture, the architect's survey drawings and the questionable signatures on the tenancy agreements for 2005/6 bring into serious doubt that the property was converted in 1990 as claimed.

19. None of the Appellant's documentary evidence other than the questionable 2005/6 tenancy agreements assists with the period 16 July 2006 to November 2006. Moreover, the Appellant's own evidence is contradictory with the builder saying the top flat was refurbished in May/June 2006 and yet others saying that only a few months later it was "tatty" and in need of refurbishment along with the rest of the flats. Both versions cannot be right and both conflict with the architect's survey which recorded no accommodation in the roof space in September 2005.

20. I conclude that there is insufficient precise and unambiguous evidence before me to enable me to conclude on the balance of probability that the premises has been in use as five flats since 16 July 2006. Appeal A on ground (d) fails. It follows that Appeal B, requiring use since 28 April 2006, must also fail and that the Council's refusal to grant a certificate of lawful use or development was well-founded.

Appeal A, ground (a)

21. The ground of appeal is that planning permission should be granted. Before the inquiry commenced, the Council indicated that there was no longer an objection in relation to a lack of a range of unit sizes. In addition, it confirmed that the drawing prepared to show how cycle and refuse storage might be accommodated would overcome concerns in relation to those matters. The main issues are whether the flats provide satisfactory living conditions for the occupiers and the effect of the development on the local transport network, open space and educational facilities and on on-street parking conditions.

Issue 1 – occupiers' living conditions

22. Saved policy H18 of the Brent Unitary Development Plan 2004 requires flat conversions to provide an acceptable standard of accommodation and sets out a number of criteria aimed at achieving this. The policy also makes reference to the Council's Supplementary Planning Guidance SPG17 *Design Guide for New Development*.

23. There is a studio flat and a one bedroom flat on both the first and second floors and a further studio flat within the roof space lit by a rooflight and dormer window. Paragraph 3.5 of SPG17 provides guidance on internal residential areas. Although to be taken only as a guide, none of the flats meet the minimum floorspace standards set out which is indicative of a tight layout.

24. I went into each flat. Whilst every effort has been made to make the optimum use of the space available, I found all the flats to be severely limited in size with restricted facilities, circulation and storage. For example, the very small drop leaf tables provided have to be fully opened before affording table space for two people and when open reduce already restricted circulation space. Flat 2 has a single bed with no room in the living area for a sofa as well, and I had to squeeze past the only wardrobe to get into the bathroom. Flat 3 has a sofa bed and even in the Appellant's proposed enlarged layout would not accommodate a separate bed and sofa. With the bed opened out there would be very little room to move about. In flat 4 the double bed was squeezed into an alcove of much the same width as the bed and with limited head height. These are some of the features of the flats that I noted indicative of an overly cramped layout arising from an attempt to fit too many units into a limited area. In addition, whilst I did not find any of the units unduly dark, outlook is restricted. It is particularly poor for flat 1 where the living area window is hemmed in by walls to both sides and both this and the living room window to flat 3 above have an extractor flue immediately outside.

25. I note the Council's concern about the stacking arrangements of rooms with different functions above one another and the resulting potential for noise disturbance. This does not seem to me to be an unreasonable concern and whilst I was told that there would have been sound insulation installed because false ceilings had been put in, this seems to be more of an assumption rather than a statement based on knowledge of what was in fact carried out.

26. I have noted the policy support for the conversion of existing housing in national guidance and in both the UDP and the London Plan drawn to my attention by the Appellant. However, this objective is clearly not intended to be achieved by the creation of units which provide less than satisfactory living conditions for the occupiers which I have found to be the case here. I find the

development does not provide an acceptable standard of accommodation for residents and thus does not accord with the objective of UDP policy H18.

Issue 2 – the effect of the development on the local transport network, open space and educational facilities and on on-street parking conditions

27. Following the close of the inquiry a signed unilateral undertaking was submitted in which a contribution as required by the Council to address transport, open space and education facilities would be made on the grant of planning permission. In addition occupiers of the flats would be prohibited from obtaining parking permits. This addresses the Council's concerns in relation to these matters.

28. Circular 05/2005 sets out the 5 policy tests to ensure that planning obligations are only sought where all the tests are met. The tests include that the obligation is necessary to make the development acceptable in planning terms, that it is directly related to the proposed development and that it is fairly and reasonably related in scale and kind. The Council's SPD *S106 Planning Obligations* adopted in 2007 sets out a standard charge for developments to mitigate additional pressure placed on physical, social and economic infrastructure. In respect of this development, the charge is based on one additional bedroom being created.

29. Reliance on the SPD alone, however, is not sufficient to indicate that without the undertaking a refusal of planning permission would be warranted. An assessment of the specific additional demands arising from this development and the extent to which existing facilities or infrastructure are unable to meet that demand is necessary to show that without the obligation unacceptable harm would arise. UDP policy TRN4, for example is predicated on the transport impact of a development being unacceptable, and similarly CF6 is based on housing development worsening or creating a shortage of school places. At the inquiry the Council produced additional evidence to support its concerns but that is couched in general terms rather than assessing the specific impact of this particular development. Moreover, there is no assessment at all of the effect on on-street parking and the free flow of traffic.

30. I am aware of my colleague's findings in relation to the appeal at 12A Burton Road although I have not seen, nor been told of the substance of, the evidence with which he was presented. However, on what is before me in this case (an undated and unaddressed email presented to the inquiry following my request for evidence) I find that there is insufficient evidence to enable me to conclude that, without the undertaking, unacceptable harm would arise such as to warrant the payment of the sums entailed. Accordingly, I cannot conclude that the development with the undertaking satisfies the relevant Development Plan policies or provisions of the SPD.

Conclusion

31. Whilst I find that I have insufficient evidence to enable me to make a conclusive finding in respect of issue 2, the development is nonetheless unacceptable as it fails to provide an acceptable standard of accommodation for its residents. The appeal on ground (a) fails.

Appeal A ground (f)

32. The ground of appeal is that the steps required to be taken exceed what is necessary.

33. The Appellant says it is excessive to require the removal of all bar one en-suite bathrooms given that a single dwellinghouse might reasonably have more than one en-suite bathroom. The bathrooms do not have to be removed before use as a single dwellinghouse could take place. This case can be distinguished from *Somak Travel* where the internal staircase had to be removed to remedy the breach as the structure amalgamated two floors previously separate and in different uses.

34. In this case the purpose of the notice is to remedy the breach of planning control which has occurred (s173(4)(a)). The Act indicates that this might be achieved in several ways including by discontinuing the use and by restoring the land to its condition before the breach took place. Notwithstanding the distinction made from *Somak Travel*, it is not unreasonable to require items introduced or alterations undertaken to facilitate the use to be removed or undone albeit that they might be capable of being utilised by some alternative subsequent use. They form part and parcel of the breach in that they have facilitated the unauthorised use; it is not excessive to require removal.

35. Having said that it might be that the Council would be content with a future layout of the property which did include more than one en-suite bathroom. That would be a matter for discussion between the parties and could be accommodated under s173A(1)(b) whereby a local planning authority may waive or relax any requirement of a notice. The appeal on ground (f) fails.

Appeal A, ground (g)

36. The ground of appeal is that the time to comply with the requirements falls short of what should reasonably be allowed. Six months is given to cease the use and to restore the property. The Appellant asked for a minimum of 9 months in evidence although in closing this was increased to 12 months.

37. In this case 5 households will lose their homes, and work to restore the property could not be carried out with occupiers still in residence. Interference with the way the Appellant uses the property and with the residents' homes must be proportionate taking into account the conflicting considerations of private and public interest. The unlawful use should cease as soon as possible having regard to the harm identified in the appeal on ground (a). I consider a period of 9 months to be a reasonable time in which to expect the use to cease and remedial works to be undertaken. It would strike the appropriate balance between the conflicting public and private interests and be proportionate so as not to violate the individuals' rights. To this limited extent the appeal on ground (g) succeeds.

Formal Decisions

Appeal A: APP/T5150/C/10/2134651

38. I direct that the enforcement notice be corrected by the insertion in Schedule 1 of the words "(on first, second and third floors)" between "Flats 1-5" and "44 High Road" and varied by the deletion from Schedule 5 of the words "6 months" and the substitution therefor of the words "9 months" as the time for compliance with the notice. Subject to this correction and variation, I dismiss

the appeal, 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.

Appeal B: APP/T5150/X/10/2132805

39. I dismiss the appeal.

Bridget M Campbell
Inspector

APPEARANCES

FOR THE APPELLANT:

Mr J Lopez	of Counsel
He called	
Mr A Sultan	Property Manager for Appellant Company
Mr Ziman	Solicitor
Mr R Adil	Shareholder of Appellant Company
Mr M Waseem	Builder
Mr A Covey	Planning witness

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks	
He called	
Mr Peggie	Deputy Planning Enforcement Manager
Mr T Rolt	Planning Enforcement Manager

DOCUMENTS submitted at the inquiry

1 3 aerial photographs submitted by the Council
2 Companies House record submitted by the Council
3 Draft Unilateral Undertaking submitted by the Appellant
4 Suggested conditions submitted by the Appellant
5 E-mail addressing contributions towards local infrastructure provision submitted by the Council
6 Extracts from the UDP submitted by the Council
7 Closing submissions for the Council
8 Closing submission with authorities for the Appellant