The Planning Inspectorate

Appeal Decision

Inquiry held on 24 April and 11 May 2018

Site visit made on 11 May 2018

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 14 September 2018

Appeal Ref: APP/T5150/C/17/3176717
43 Woodheyes Road, London NW10 9DE

- 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 by Israel Krausz of Woodriver Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, ref. E/17/0298, was issued on 18 May 2017.
- The breaches of planning control alleged in the notice are:

  Without planning permission the material change of use from a single family dwelling house to five self-contained flats.

  AND

  Without planning permission the erection of single storey rear extensions to the premises.
- The requirements of the notice are to:
  1. Demolish the single-storey rear extensions in the rear garden of the premises, and remove all items, materials, and debris arising from that demolition from the premises.
  2. Cease the use of the premises as self-contained flats and its occupation by more than ONE household, remove all items, materials and debris associated with the unauthorised change of use, including all kitchens, except ONE, and all bathrooms, except TWO, from the premises.
  3. Revert the layout of the premises to the position which it was before the unauthorised change of use took place by providing a lounge, dining room and kitchen on the ground floor and bedrooms on the upper floors.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, and the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

Decision

1. The appeal is allowed to a limited extent on ground (f), and it is directed that the enforcement notice be varied by:

   DELETION of the words *'by providing a lounge, dining room and kitchen on the ground floor and bedrooms on the upper floors'* from Requirement 3 of the enforcement notice.

Furthermore, the appeal is allowed on ground (g), and the enforcement notice is varied by:

DELETION of *3 months* and the SUBSTITUTION of *6 months* as the period for compliance.

Subject to these variations the appeal is otherwise dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. At the Inquiry applications for costs were made by the appellant against the Council and by the Council against the appellant. These applications are the subject of separate Decisions.

The Inquiry

3. Evidence at the Inquiry was taken under oath or solemn affirmation.

Background matters

4. The Council originally issued an enforcement notice on 28 March 2017, in the same terms as the notice subject of this appeal. As a result of there being no proper authority for issue, this notice was withdrawn on 18 May 2017, the date of issue of the notice subject of this appeal.

5. The appeal property was originally a modest two-storey house standing on the eastern side of Woodheyes Road, within a terrace of similar houses. Plans provided by the appellant show a layout prior to the 2014 alterations, with two principal rooms within the main body of the building, and a central transverse staircase. To the back, within a two-storey offshot were a further room, and a smaller room beyond in a single storey extension. Particulars of sale from January 2014 indicate these were a kitchen and bathroom. There was a door in the flank wall of the kitchen, giving access to a single-storey extension infilling the re-entrant space between the flank wall of the offshot and single storey extension and the back wall of the main body. I understand this had a translucent roof, and the particulars of sale indicate this was a utility room. On the first floor were bedrooms to front and back, and the room on the first floor of the offshot accessed directly from the main back room. This latter room was an en-suite bathroom.

6. As now configured, a single-storey back extension has been built beyond the original single-storey extension, and there is a side extension where the utility room had been. On the first floor there is a small kitchen within what had been the back bedroom. The remainder of this room and the former first floor bathroom has become what is labelled on the appellant's plan as 'Studio 3'.

The appeal on ground (b)

7. This ground is that the matters alleged have not occurred as a matter of fact. The appellant argues this only in relation to the alleged material change of use.

8. The appellant's company – Woodriver Ltd - had bought the house in April 2014, from a property development company – Manlow Developments Ltd[1]. Manlow offer a full development service including commissioning any works needed,

[1] For the purposes of this decision I shall refer to these two companies as 'Woodriver' and 'Manlow' respectively.

furnishing, marketing, signing up tenants, and subsequent management of properties. As a result, the investor/owner of a property need do nothing.

9. The appellant's managing agent, Mr Isaac Krausz, explained that Woodriver Ltd instructed Manlow to accept a quote for building works, and to supervise these works. However, he claims there was a misunderstanding, and Manlow had taken that it was intended they should provide a complete package – the building works, furnishing, renting out, and subsequent management. As a result, the works were completed in October 2014, the house was furnished, and 4 tenants signed up by Manlow through a firm called Pointview Estates between 29 October 2014 and 3 November 2014. At least 3 of these tenants moved in to the property.

10. However, at almost the same time, Isaac Krausz had arranged viewings for other potential tenants. Through a firm called Topgate Ltd[2] – owned by the appellant - 5 tenants were signed up between 30 October 2014 and 3 November 2014. I was told that this became apparent as soon as the first Topgate tenant tried to move in, and found another person already in occupation.

11. The appellant says this problem was quickly settled – Pointview were able to find alternative accommodation for their tenants, who were able to quit the appeal property by 12 November 2014. The Topgate tenants were able to wait until they were able to move in a short while later. In this intervening period Isaac Krausz had inspected the property, and says he was surprised to find portable two-ring cookers in each unit, still in their boxes.

12. Extracts from tenancy agreements have also been put forward relating to the tenants initially signed up by Manlow – relating to Flats 1, 3, 4 and 5 of the appeal property. Two of these are signed, but there is also a note from Pointview Ltd to the Council's benefits department recording that these tenants had not signed up, and that no claims should be put through. There are also copies of agreements indicating that these same four individuals had taken tenancies in other flats from early November 2014.

13. Given the wide experience in property matters of both the appellant and his agent – who manages some 60 properties - I find it surprising that without their knowledge, Manlow were instructed to carry out works that included installation of stainless steel kitchen sinks, storage cupboards, small worktops, and tiled splashbacks in each room and subsequently provide two-ring electric hotplates and fridges. While I can understand there may be a Jewish cultural tradition that contracts are entered into and executed on a word-of-mouth basis, I find it difficult to believe that this would not include agreements about the extent and cost of the services to be provided. Furthermore, I consider it unlikely there would be no paperwork at all to record transactions for purposes such as accounting and taxation.

14. Mr Isaac Krausz states that the two ring hotplates were removed before the new Topgate tenants moved in, and that all tenants were clearly instructed that cooking and warming food was allowed only in the communal kitchen. He admits that the alleged material change of use had indeed occurred – albeit without his explicit agreement – but that he had instructed removal of the cookers, stainless steel sinks, and tiled splashbacks.

[2] Whom I shall refer to as 'Topgate' for the purposes of this decision.

15. Photographs taken during a Council officer's visit in November 2014 show at least 3 of the units fitted out with small areas of worktop with circular inset stainless steel sinks and mixer taps, and tiled splashbacks. There were cabinets and fridges below the worktops, and wall cupboards above. On the worktops were two-ring electric hotplates – still in their original cardboard boxes – and electrical socket outlets nearby. There was nothing to suggest that all 5 units had not been fitted out in this way. Irrespective of subsequent actions by the appellant, I consider there was a material change of use of the property probably at the end of October 2014.

16. Photographs taken for the appellant apparently on 17 and 25 May 2017 show sinks, worktops and the cupboards below had been replaced with relatively large ceramic sinks with mixer taps – not unlike a butler's sink – and storage cupboards below. The tiled splashbacks had been removed. Tall storage units have also been introduced. A two-ring electric hotplate is still visible in at least one of these photographs – still in the original cardboard box – and in another there are two microwave ovens, or an electric oven and a microwave oven, as well as a two-ring hotplate, all placed on top of the refrigerator.

17. Also in May 2017, alterations were carried out to the communal kitchen, including the installation of the two-ring hob – in addition to the original four-ring hob - a new section of worktop and a higher level shelf for placing microwave ovens, and the five lockable cupboards. Photographs taken during a Council site visit on 9 May 2017 show the works of alteration to the communal kitchen in progress.

18. On my site visit I saw that each unit of accommodation has a small shower/WC/washbasin cubicle, and within the rooms themselves are the sinks and other fitments described above, as well as basic furnishing of a double bed – or a single in the case of Unit 3 - a wardrobe, and at least a chair or small sofa. None of the rooms had any provision – such as a chair and dining table – for sitting to eat.

19. I also saw the small communal kitchen on the first floor, which has an area of slightly less than 4 square metres. This is equipped with worktops on the window wall and one of the side walls, in which are set a stainless steel sink and drainer, a four-ring electric hob, and a two-ring electric hob, and an extract hood above. Below the worktop are an electric oven, a washing machine, low level storage cupboards, and waste bins. There are five lockable wall-mounted storage cupboards, labelled with unit numbers. On the other side wall, I saw 2 microwave ovens connected at the time of my visit, but a photograph from July 2017 shows there to be 3, with another stored at high level.

20. Mr Posen explained that the tenants were not pleased by the removal of what he described as the 'kitchenettes', and that the additions to the communal kitchen were done in order to appease them for loss of facilities in their rooms. Furthermore, he claims that all this occurred before the enforcement notice was issued on 18 May 2017. This contradicts Isaac Krausz's evidence that all cooking facilities had been removed in November 2014.

21. Assured Shorthold Tenancy agreements commencing on 3 November 2014 have been put forward for each of the 5 units, recording the landlord as 'Topgate Ltd c/o Woodriver Ltd'. Each of these describes the units as being flats.

22. Various housing benefit applications were provided by the Council. In May 2016 unit 2 is described as a 'flat in a house', and records that the unit includes a kitchen used only by that particular household. There are no rooms identified as being shared with other households, such as a kitchen or bathroom. Applications for units 3 and 5 from December 2014, and April and October 2016 record very similar information. However, an application by an earlier tenant of unit 5, from November 2014, records somewhat ambiguously that there are a number of rooms that are shared, including a kitchen, as well as a kitchen for the tenant's exclusive use.

23. The Council also submitted Local Housing Allowance Rates for South Brent, the area in which the appeal property lies. The allowable rent for one-bedroom, self-contained accommodation is about £1,053 per month, and for a shared property £479 per month. Local Housing Allowance rates for this postcode, as advised by the government Valuation Office Agency are very similar. Tenancy agreements show that Units 2, 3 and 5 have been let consistently, mostly for £1,150 per month – very much in line with Council and government allowances for single bedroom self-contained property.

24. I have received a statutory declaration from Miss Adebambo Adesanya, who says she is the occupant of Unit 4. There is no handwritten signature, it is not sworn, and the day of the month is omitted from the date, which is only printed as 'April 2018'. She says she was living at the address on the 9 May 2017 and still lives there. She records principally, that she never cooks in her room, that Isaac Krausz visits regularly to check there is no cooking in the units, and that microwave ovens and a hob were temporarily present in her room on 9 May 2017 in connection with renovation of the communal kitchen. It is clear from e-mails that Mr Posen was influential in drafting the affidavit and making edits before it was submitted. I have concerns as to whether it can be regarded as an independent tenant's view of use of the property. It also became apparent that Miss Adesanya is a sub-tenant of Unit 4, and not the tenant actually receiving housing benefit.

25. It is notable that neither Miss Adesanya, or any tenant appeared at the Inquiry to give evidence. There was very little in the way of other first-hand evidence as to how the property is used on a day-to-day basis.

26. In appeals made on 'legal grounds' – such as grounds (b) and (c) - the burden of proof is firmly upon the appellant, and the relevant test of the evidence is on the balance of probabilities. The court has held that if a 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 refuse an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify his case.

27. Looking at the evidence as a whole, I am sceptical about the original commissioning of the development and the appellant's claimed ignorance of the changes that were made – both physically and in terms of use. Although the original Manlow tenants were replaced by those from Topgate, this does not demonstrate anything significant about the way in which the property was used. While there is good evidence about switching of tenants from Manlow to Topgate, there is no documentary evidence to support the claims about removal of cooking facilities and the regular instruction of tenants concerning a

prohibition on cooking within individual units. Nor is there anything in tenancy agreements imposing such a prohibition.

28. It is apparent that further works were carried out in May 2017 – principally alterations to the communal kitchen – but it appears to me that these were probably an attempt to ward off the Council's intention to take enforcement action, which had been made very clear by the issue of the original notice in March 2017, subsequently withdrawn. Evidence as to the claimed cessation of use is vague and unsupported by significant documentary evidence. The Council cannot reasonably monitor the use of a property on a day-to-day basis, and I am not persuaded the use had ceased at the time the new enforcement notice was issued.

29. Tenancy agreements support the view that the units were let as 'flats', and drawings put in by the appellant indicate the units were regarded as 'studios' – which are usually taken to be self-contained units. The rents charged all indicate the units have been, and continue to be let for the rates allowable for self-contained accommodation, as recommended by the Council and the Valuation Office.

30. The appellant suggested that tenants completing such forms as tenancy agreements and benefit applications were suffering from a range of deficiencies/disabilities such that they were not physically able or fit to understand the content of these documents, or to appear at a planning Inquiry. However, in the case of the benefit applications, such details as the rent and tenancy periods were properly recorded, and I can see no good reason why other information would not be so.

31. I appreciate the appellant has applied for and been granted a licence for the appeal property as a HMO under s.64 of the Housing Act 2004. However, such a licence does no more than confirm that the house is reasonably suitable for occupation by no more than a specified number of households or persons, and that various requirements are met regarding the licence holder, the manager of the house, and the management arrangements. Furthermore, such a licence can be issued under s.257 of that Act in certain circumstances where properties have been converted to self-contained flats.

32. It was argued that even if the units had been provided with two-ring hotplates, and the other related facilities, this would not be sufficient to be regarded as proper cooking facilities. The example was put forward from an appeal in 2012[3], where the Inspector gave his opinion that the cooking facilities – comprising free-standing units with built-in sink, 2-ring electric hob small fridge and microwave oven - were too small and basic for everyday domestic use. However, he goes on to say that also within the property, which had 6 flats, there were two full-size bespoke kitchens. While the cooking facilities within the appeal property may be basic, the communal kitchen – as I describe under ground (a) below, is barely large enough to allow one person at a time to prepare and cook a meal. Given this situation, I do not consider the in-room facilities were inadequate, but were rather a necessity to make the property reasonably habitable.

33. I do not consider the appellant has put forward sufficiently precise and unambiguous evidence to show that the units have ceased to be self-contained

[3] Appeal decision ref. APP/T5150/C/12/2173635, dated 24 July 2012.

in the *Gravesham*[4] sense of their ability to afford to those who used them the facilities required for day-to-day private domestic existence. I conclude that on the balance of probabilities a material change of use has taken place as a matter of fact. The appeal on ground (b) therefore fails.

The appeal on ground (c)

34. This ground is that there has not been a breach of planning control. With regard to the alleged material change of use the appellant argues that the owner's intention was to create a 5 person HMO falling within Use Class C4. The property was initially in such use for a short period before being changed without the owner's consent to 5 separate C3 dwellinghouses.

35. I have already expressed my concerns as to the credibility of the owner being unaware of way in which the conversion was carried out. Notwithstanding, it appears to me the sequence of events was that in 2014 the original house was altered and extended significantly so that it was no longer a single 2-bedroom dwellinghouse. On the appellant's own evidence, it became 5 separate units of accommodation each providing 'the facilities required for day to day private domestic existence' and therefore should be regarded as dwellinghouses in the terms set out in *Gravesham.*

36. Plans put in by the appellant with his appeal application form show the original house as I describe in paragraph 5 above. The sale particulars of January 2014 indicate that was indeed the layout. The appellant has put in drawings dated March 2018 labelled 'pre-existing floor plans'. These appear to show some intermediate form of development prior to construction of the extensions, but with the communal kitchen and shower cubicles in the two first floor units, and no significant alterations on the ground floor. However, the appellant's principal evidence is that the entire conversion from the two-bedroom house to 5 self-contained units was completed by Manlow in October 2014. There is no significant evidence to suggest any intermediate stage when the property might have been converted to a small Class C4 HMO.

37. Although it is claimed there was an intention to convert the house to a Class C4 HMO, it appears to me this is not what happened, and that on the balance of probabilities the change of use was from a two-bedroom house in Class C3 use, to 5 separate Class C3 uses. This is not a change of use that is permitted under the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). No planning permission was granted for this change of use, and it follows that a breach of planning control has occurred.

38. The appellant also argues that the claimed change from a Class C4 dwellinghouse to 5 separate units of accommodation is not a material change, since actual differences between the uses does not have significant planning consequences. However, s.55(3) of the principal Act states, at subsection (a):

'for the avoidance of doubt it is hereby declared that for the purposes of this section the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used'.

[4] *Gravesham Borough Council v Secretary of State for the Environment and Another* [1984] 47 P. & C.R. 142.

It follows that the change, from either Use Class C3 or from Use Class C4, to 5 separate flats constituted a material change of use. I do not accept the fact there may be slight physical differences between the uses, and slight differences in patterns of use, can alter this fundamental definition of the meaning of development.

39. Regarding the operational development in constructing the rear extension, the appellant claims this was permitted as an extension to a lawful dwellinghouse under the provisions of Class A of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). However, Article 2(1) of the GPDO includes the definition that:

'except in Part 3 of Schedule 2 to the Order (changes of use), a dwellinghouse does not include a building containing one or more flats, or a flat contained within such a building'.

At the point when the rear extension and other internal alterations were substantially complete the building was in use as 5 self-contained flats, and cannot be regarded as a dwellinghouse for the purposes of permitted development under Class A of Part 1 to Schedule 2. On the balance of probabilities I consider the operations in this case were carried out as part-and-parcel of the conversion of the house to five separate self-contained units, and not to create a Class C4 dwellinghouse. I have come to the view that the appellant has not demonstrated on the balance of probabilities that use as self-contained flats had already ceased when the Council took enforcement action. I do not therefore accept the appellant's contention that the extensions became lawful as a result of the claimed cessation of use as separate flats.

40. Furthermore GPDO Article 3(5) states that the permission granted by Schedule 2 does not apply if:

(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; and,

(b) in the case of permission granted in connection with an existing use, that use is unlawful.

In this case the operations involved in the construction of the building were unlawful.

41. I conclude on the balance of probabilities that no permission has been granted for either the material change of use or the operational development, and that the alleged breaches of planning control have occurred. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

42. This ground is that planning permission should be granted for what is alleged in the enforcement notice.

43. I consider the main issues in this case to be as follows:

- The effect of the alleged development on living conditions for occupants of the appeal property in terms of the size of units, outlook and natural light.
- The effect of the alleged development on the living conditions for occupants of nearby dwellings in terms of noise and general disturbance.

- The effect of the alleged development upon housing provision within the Borough.

44. London Plan Policy 3.5 seeks to ensure housing development is of the highest quality internally, externally, and in relation to its context and to the wider environment. It further sets out minimum space standards in Table 3.3. The minimum standard for a 1-bedroom unit to accommodate 1 person, where there is a shower room rather than a bathroom, is 37 square metres. The London Borough of Brent Supplementary Planning Guidance (SPG 17) of 2001 advises at paragraph 3.5 that a 1-perosn studio should have a minimum area of 33 square metres. Further advice is that the size and arrangement of rooms should result in a well-designed home environment, and spaces should be attractive, usable, and fully accessible. The 5 units in the appeal property range between 11 square metres and 16 square metres, well below either the London Plan or SPG 17 standard.

45. 'Studio 1'[5] is on the ground floor to the front, has an area of 10 square metres, and is well lit by the front window. It is equipped with a ceramic sink, storage cupboard, two fridges, a double bed, small sofa and a wardrobe. The shower cubicle[6] is largely within the space beneath the stairs, so the room is of conveniently rectangular shape. However there is not adequate space for a dining table and chair.

46. 'Studio 2' is on the ground floor at the back, and includes the side part of the recent extension. It has an overall area of 11.2 square metres. The inner part of the room contains the ceramic sink, tall storage cupboard and a fridge/freezer. The shower cubicle associated with Studio 1 obtrudes into the corner of this space, making it awkward to use. This part is distant from the window and daylight is poor. The part of the room towards the back is extremely narrow – about 1.3 metres – and it is barely possible to move around the bed to access the shower cubicle. Again there is no adequate space for a table and chair.

47. 'Studio 3' is at the back of the house on the ground floor and includes the rear part of the recent extension. It has a floor area of 10.6 square metres. It is entered via a corridor – essentially an extension of the main entrance corridor - with the shower cubicle to one side. This gives into a narrow section of room about 1.4metres wide containing a wardrobe, suitcase storage, and a small sofa. This part of the room is poorly lit, and is itself little more than a corridor. The wider part of the room beyond that has a single bed, as well as the ceramic sink, tall storage cupboard, and fridge. Again there is not reasonable space for a table and chair for dining.

48. 'Studio 4' – the front first floor room – has an area of 11.1 square metres, and is well lit by the front window. The furnishing principally comprises a double bed, wardrobe, a single chair, and the ceramic sink, storage cupboard and fridge. Again, the shower cubicle intrudes into the room, and there is insufficient space to include a table for dining, or any other chair.

49. 'Studio 5', has an area of 11.6 square metres. It is split into 2 rooms, the inner one of which has no window, but has a door opening into a smaller room

[5] 'Studio 1' etc. is the nomenclature used by the appellant on plans submitted showing the original layout of the house, the subsequent extensions and alterations, and the areas of the various units.
[6] I have used the expression 'shower cubicle' to mean the cubicle containing shower, wash-basin, and WC.

at lower level within the original outshot. The interior room is severely lacking in daylight and is an awkward shape as a result of the corner being cut off by the shower cubicle. There is effectively no reasonable space to include a table and chair for dining. While the outer room has a window, the room itself is of a size that the bed is only just accommodated, leaving little space for circulation. I note also – although this is not related to the design – that this room suffers from serious damp penetration.

50. Also on the first floor is the kitchen intended for use by all the occupants. This has an area of 3.8 metres. This kitchen is so small that it can only reasonably be used by one person at a time, despite the generous provision of hotplates, microwave ovens and cupboards in this small space.

51. Overall, as a matter of fact and degree, I consider the space provision for each room is not properly adequate to ensure reasonable living conditions. Daylighting in three of the units is poor in large parts of those rooms. There is no access to any outdoor amenity space, except for the occupants of Units 2 and 3, and the outlook from these two units onto the small remaining yard is poor. I conclude on the first main issue that the development causes significant harm to living conditions for occupants of the appeal property in terms of the size of units, outlook and natural light. The development does not accord with the development plan, particularly with respect to the aims of London Plan Policy 3.5, and Policy DPM 18 of the Borough's Development Management Policies of 2016, both of which set standards for minimum dwelling sizes. Furthermore, the development does not take account of the advice of paragraph 3.5 of SPG 17, with regard to space standards and quality of design.

52. Turning to the second main issue, as a two-bedroom dwelling, it is likely the property was occupied by 4 people, quite possibly a family. As five separate units of accommodation, it is likely be occupied by 5 or more people leading quite separate lives, as 5 households. The use as a single dwelling would probably result in there being the types of activities associated with family use – such as trips to and from work, shops, schools, and entertainments, with limited car ownership, and reliance of a small group of people upon local services such as refuse collection.

53. The use as 5 separate dwellings would be likely to entail greater numbers of trips to services, a higher level of vehicle ownership with resultant pressure on parking, greater reliance upon refuse collection, and the likelihood of greater activity within the building itself such as playing music and entertaining. As a matter of fact and degree, I consider the character of these two uses to be materially different. In the light of this, I consider it likely that the development has caused significant harm in terms of harm to living conditions for the occupants of nearby dwellings in terms of noise and general disturbance.

54. Regarding housing provision in the Borough, Policy CP 21 of the Council's Core Strategy[7] seeks to maintain and provide a balanced housing stock by protecting existing accommodation that meets known needs and ensuring new housing appropriately contributes to a wide range of borough household needs. The appellant argues that this conversion provides for tenants incapable of living in conventional accommodation, who would otherwise be homeless, and there is

[7] The London Borough of Brent Core Strategy of July 2010.

much need for housing like this in the Borough. That may be the case, but to my mind does not justify provision of accommodation of such a poor standard.

55. The appellant concedes that the development has resulted in the loss of a small, purpose-built family sized dwelling having an area of less than 130 square metres. Strictly, this is not contrary to the aims of Policy DMP 17 of the Borough's Development Management Policies of 2016, which seeks to maintain family sized housing of 3 bedrooms or more - whereas this property had 2 bedrooms. Nonetheless, a smaller family dwelling has been lost, and poor quality accommodation has taken its place. I consider the development results in an unacceptable loss to housing provision in the Borough. The development does not accord with the development plan, particularly with respect to London Plan Policy 3.5 and Core Strategy Policy CP 21.

56. There was some discussion about the appearance of the property, and particularly the extensions. However, they have been painted to blend with the brickwork at the back of the house, and have more or less no visual impact in any public view. I consider the development has a neutral effect upon the character and appearance of the area.

57. I do not consider imposition of planning conditions would overcome the harm resulting from this development.

58. I accept that if the property were returned to use as a Class C3 dwellinghouse, the appellant could convert it to a Class C4 HMO under the GPDO provisions. However, this does not mean that the unlawful extensions could be retained.

59. The appeal on ground (a) therefore fails, and I intend to refuse planning permission on the deemed planning application.

The appeal on ground (f)

60. This ground is that the steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the Council's objections. The appellant argues that the initial use was as a HMO, and that it is therefore excessive to require a return to use as a single family dwelling. However, as I have concluded above there is no evidence of any substance to support the contention that there was some intermediate use as a HMO before the construction of the extensions, and conversion to 5 self-contained flats.

61. In order to return the building to its previous lawful state it appears to me that the necessary requirements are to demolish the unlawful extensions, and cease the use as self-contained flats, and its occupation by more than one household, as well as reversion of the layout of the premises to the position which it was before the unauthorised change of use took place. Furthermore, it would be necessary to remove items associated with the unauthorised change of use, including all kitchens, except one, and all bathrooms, except two. Merely requiring the property to revert to HMO use would not achieve the purpose of remedying the breach by removal of the unlawful extensions, and by return to the previous lawful use.

62. Once the property was returned to the previous lawful use, there would be no prohibition on the appellant exercising rights under the GPDO to change from C3 to C4 use.

63. I do not consider that imposition of planning conditions would overcome the harm I have identified.

64. I concur with the appellant's view that the requirement to provide a lounge, dining room and kitchen on the ground floor, and bedrooms on the upper floors is over-prescriptive, and that the requirement to revert the layout to its previous lawful state adequately covers this aspect. The appeal on ground (f) therefore succeeds to this limited extent, and I intend to vary the enforcement notice by omission of the latter part of the third requirement to provide a lounge, dining room and kitchen on the ground floor and bedrooms on the upper floors.

The appeal on ground (g)

65. This ground is that the compliance period is too short. It is argued that a longer period is required for the process of vacating the property.

66. It will clearly be necessary to give existing tenants due notice to leave the property – probably 2 months - as court orders may well be required in some instances. The overall period would be likely to exceed 3 months, and I consider that a 6 month compliance period would be more reasonable. The appeal on ground (g) therefore succeeds, and I intend to vary the enforcement notice accordingly.

Conclusions

67. For the reasons given above I conclude that the requirements of the notice are to an extent excessive and that part of Requirement 3 of the notice should be omitted. Furthermore, I consider the compliance period is too short and that a reasonable period would be 6 months. The appeals under grounds (f) and (g) succeed to that extent, and I am varying the enforcement notice accordingly. Otherwise, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as varied, and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Fraser-Urquhart	of Counsel, instructed by Shulem Posen of Planning Advisory Ltd.
He called:	
Isaac Krausz	Property Manager for Woodriver Ltd.
Shulem Posen	Planning Consultant Planning Advisory Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks BTP Dip Law MRTPI	Director, Enforcement Services Ltd.

DOCUMENTS

1 Attendance lists.
2 The Council's letter of notification of the appeal, dated 27 March 2018.
3 Letter of representation objecting to the development.
4 E-mail drafts of Adebambo Adesaya's statutory declaration.
5 Adebambo Adesaya's statutory declaration
6 Appendices to Mr Isaac Krausz's proof of evidence.
7 Appendices to Mr Posen's proof of evidence.
8 Appendices to Mr Wicks' proof of evidence
9 The Council's planning decision notices ref. 17/5012 & 17/5129
10 Enforcement Officer's delegated report on the appeal property, dated 29 March 2017.
11 Statement of Reasons for Decision on First-Tier Tribunal case ref. SC168/16/03545.
12 Bundle of legal authorities put in by the Council.
13 Schedule of proposed planning conditions.
14 The appellant's costs application.
15 The Council's costs application.
16 Appellant’s response to the Council’s costs application.