

---

## Appeal Decision

Site visit made on 1 November 2016

**by Mr N P Freeman BA(Hons) DipTP MRTPI DMS**

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

**Decision date: 8 November 2016**

---

**Appeal Ref: APP/Y5420/C/16/3149515**  
**63 Langham Road, London, N15 3LR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Masrar Ahmed against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice (Council reference UNW/2015/00516) was issued on 23 March 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the material change of use of the property from a single family dwellinghouse to seven self contained flats".
- The requirements of the notice are:
  - i) Cease the use of the property as self contained flats;
  - ii) Remove all kitchens and associated fixtures and fittings;
  - iii) Remove from the land any debris resulting from carrying out steps i) and ii) above.
- The period for compliance with the requirements is four (4) months after the notice takes effect.
- 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 variations.**

---

### Preamble

1. The appeal relates to a 2 storey terraced property with a converted attic located on the south side of Langham Road within a residential area. The property comprises 3 flats each on the ground and first floors and another in the converted roofspace giving a total of 7 units.

### Ground (d)

2. Where ground (d) is pursued and the lawfulness of the use and immunity from enforcement action is claimed the onus is upon the appellant to show, by the production of sufficiently precise and unambiguous evidence, that on the balance of probability the use in question has been taking place for the requisite period of time without any significant breaks. In this case the period to demonstrate is 4 years either back from the date the notice was issued (that is by 23 March 2012) or an earlier 4 year period with the use continuing thereafter up to the date the notice was issued. Any significant breaks in the use would mean that a fresh period of 4 years continuing up to the date the notice was issued would need to be demonstrated on the balance of probability.

3. The case for the appellant is that the use of the property as 7 self-contained flats has been taking place for in excess of 4 years prior to the date of the issuing of the notice – that is before 23 March 2012 – and has continued ever since up to the present day without any material breaks in the continuity of such a use. The evidence to support this is in the form of a number of tenancy agreements and related documents and an acknowledgement letter from the Council's Building Control Department addressed to the appellant, dated 29 July 2004, concerning the loft conversion, internal alterations and the removal of a chimney breast at the property.
4. Dealing firstly with the latter document, the letter in question does not give details of the works intended and there is no reference to the creation or indeed the refurbishment of 7 self-contained flats. The Council have also referred to two previous enforcement investigations in June 2004 and January 2011 which led to site visits to investigate works relating to a loft conversion at the property. At both times it was concluded following inspection that the works were compliant with the permitted development allowances applying at these dates, which would only apply to a dwellinghouse not flats. Moreover, it is reasonable to assume that if works that were occurring at these times related to the subdivision of the property this would have been noted and investigated further but this was not the case. This leads me to conclude that at these times it is unlikely that the property had been converted to 7 flats. The fact that the loft was converted at some point with the related alterations, including a dormer window as observed, does not mean the house was necessarily in occupation as flats once the work was complete.
5. The tenancy documents provided are various and relate to a number of different occupiers for the period from July 2009 to September 2014. The earlier ones refer to a weekly rental payment and the later ones to monthly payments. The quality of the copy provided is poor in some cases but the documents appear to relate to room numbers although it is difficult to decipher the number on some and one just refers to "The House" at 23 Langham Road. The tenancy information is not comprehensive as some rooms are either missing altogether (No.1) or have gaps for the period indicated above. There are tenancy agreements covering a continuous 4 year period for Room 2 (Mr Cemuruti) and Room 7 (Mr Loka). There is an absence of any agreements after September 2014. This is curious and not explained as if the presence of the flats had existed as far back as 2009 and continued ever since it is to be expected that documentation from the more recent past would have been available and provided.
6. As well as the actual tenancy agreements there are also schedules of entries of rent paid for each of the room numbers covering differing periods from April 2010 to February 2011 with Christian names given some of which tie up with the tenancy agreements. Again it is surprising that the information provided only covers this period and does not include schedules up to date if as is claimed the property has been in continuous use for 7 flats from at least 2009. In the grounds of appeal statement submitted for the appellant it is accepted that there is no evidence for the "intervening period" up to the date of the issuing of the notice at present but that the appellant will sign an affidavit to attest to the layout and use of the property for the past 4 years. This has not been submitted.

7. Based on what is before me I consider there is insufficient evidence to demonstrate that the property has been in occupation as 7 self-contained flats for a four year period prior to the service of the notice and that this has continued without any substantial breaks. Moreover, whilst the tenancy agreements show that there have been a range of different occupiers inhabiting various rooms between 2009 and 2014 there is no reference in the documentation that I can find to separate flats. It is therefore at least possible that the actual occupation by these tenants was in the nature of rooms with shared facilities which would amount to a house in multiple occupation and not self-contained flats.
8. I have also taken account of other evidence provided by the Council. As well as the previous inspections in relation to the loft conversion described above, it is explained that the property was only listed as 7 separate self-contained flats on the Valuation Office Agency (VOA) website on 1 November 2015. I accept that this is not conclusive evidence as there is often a time lag between such changes being registered. However this would be a significant number of years after the claims made regarding use as flats and well after the relevant date of 23 March 2012.
9. It is also pertinent to note that the Council's investigation into the change of use began in mid-2015 following concerns raised by local residents that building works to convert the property were taking place. This is corroborated by a neighbour who refers to the works causing concerns since they bought their property about 2 years ago. No explanation has been provided by the appellant of what these extensive works related to but it may be that this was when the conversion to self-contained units actually occurred and this would tally with the use only being registered with the VOA in late 2015. There is no documentary evidence, such as orders for materials or invoices for work carried out, which shows that building works to create the flats were taking place at an earlier date.
10. Bringing these findings together I conclude that whilst the property may have been in multiple occupation for a number of years it has not been shown that on the balance of probability this was in the nature of 7 self-contained flats which have existed for the requisite 4 year period prior to the issuing of the enforcement notice. The evidence contains ambiguities and is not sufficiently precise not demonstrate lawfulness for the alleged breach. Accordingly there is no success on ground (d).

## **Ground (a)**

### ***Main Issues***

11. These are firstly, whether the change of use to flats would compromise the Council's housing policies regarding maintaining the stock of single family dwellings, and secondly, whether the accommodation provided is of satisfactory living standard.

### ***Reasons***

#### ***Issue 1) - Loss of a single family dwelling***

12. Saved Policy HSG11 of the Haringey Unitary Development Plan (UDP) 2006 places a restriction on the conversion of single dwellings to flats in certain defined locations within the Borough and where conversions and/or Houses in

Multiple Occupation (HMO) already equal 20% of the properties. The Council state that this threshold has already been exceeded in Langham Road and hence the development that has taken place is contrary to this policy. The appellant has not refuted this claim or produced any evidence to show that it is unfounded. Policy DM16 "Residential Conversions" of the emerging Haringey Development Management Development Plan Document (DPD) 2016 seeks to resist the loss of larger family houses in locations within the Family Housing Protection Zone which from the accompanying plan provided includes Langham Road. Accordingly I agree there is conflict with these policies and permitting the development would comprise their objectives which are to seek to retain an adequate stock of family housing and to address the problems of on-street parking demand which tend to occur when conversion to flats and multiple occupation take place.

13. I have borne in mind that the property may have previously been in occupation as a HMO prior to the present use as self-contained flats but there is nothing to show that if this was the case that it was a lawful use and the property would originally have been a single dwellinghouse. Moreover a change of use from a HMO to a single dwellinghouse would also run counter to the terms of Policy HSG11. My conclusion on this issue is that the development that has taken place is in conflict with the Council's aims and objectives to retain an adequate stock of family housing accommodation within the Borough.

*Issue 2) – Standard of accommodation*

14. On my site inspection I was able to visit all the flats to assess the size, layout and facilities provided. Each unit is effectively a bedsit with living, sleeping and kitchen facilities all in one room and a small separate en-suite shower/WC. The kitchen area is very small and comprises two hobs, a small fridge and a sink. I accept that the essential facilities for day-to-day living are provided but consider the accommodation has a cramped feel, especially Flats 2 and 5 which are the smallest within the heart of the building with only limited natural light received from one window.
15. I have also had regard to Policy 3.5 of The London Plan 2011 which requires housing development to have adequately sized rooms with convenient and efficient room layouts and to meet defined minimum space standards which are set out in the accompanying schedule. Policy DM16 of the emerging DPD stipulates, amongst other things, that all new residential units should satisfy minimum internal space standards .
16. As I have already said, based on my own observations, I would question whether Flats 2 and 5 are of an adequate size even for one person to live in satisfactorily. The floorspace standard for a 1 person flat set out in the schedule to Policy 3.5 is 37 sq.m. gross internal area. The Council have provided calculations which record floor areas of between 20 sq.m. for Flat 7 and 12.3 and 12.7 sq.m. respectively for Flats 2 and 5. This demonstrates that all the units are well below the required standard and Flats 2 and 5 only have about one third of the required space and are thus seriously deficient.
17. For the appellant it is accepted that all the flats have floor areas below the threshold but that the units have been let and that the occupiers are content to live there. In this respect I agree with the Council that the willingness to live in these units does not mean that they should be accepted as the purpose of the policies described above is to seek to ensure that housing accommodation

meets reasonable standards not just for the present occupiers but future ones as well. It is also a fair point that because of the high demand for housing in London people may well be willing to accept a standard of accommodation which falls below what is satisfactory in order to secure somewhere to live. This does not lead to a conclusion that this type of accommodation should be permitted but rather supports the argument that certain minimum standards need to be maintained to avoid the spread of deficient and unacceptable accommodation.

18. Section D of Policy 3.5 of the London Plan indicates that exceptions may be made to the application of the minimum floorspace standards where the accommodation is of "exemplary design and contributes to achievement of other objectives of this Plan". For the reasons set out above the accommodation is far from being of exemplary design. On the matter of meeting other defined objectives it is argued for the appellant that the need to provide more dwellings in Haringey (said to be a minimum of 1,502 dwellings each for the next 10 years) is an important objective which warrants an exception being made. For the reasons expressed by the Council I disagree.
19. The appellant has provided no analysis of what type of housing is most needed whereas the Council explain that paragraph 3.2.18 of the Haringey Local Plan (HLP) 2013, which supports Policy SP2 of the same, emphasises the importance of encouraging mixed and balanced communities by ensuring that an adequate mix of dwelling sizes is provided in new developments, whilst protecting existing family housing. It also refers to the problem of significant overcrowding which has resulted from the lack of family housing. These findings provide a clear rationale for the policies described above and why it is important to resist the loss of family housing in certain parts of the Borough. Moreover the argument about the need for more housing in general in Haringey does not outweigh the policy presumptions against permitting the development.
20. Consequently I conclude that the development that has taken place is in conflict with Policy 3.5 of the London Plan and Policy DM16 of the emerging DPD. There is also conflict with Policy SP2 of the HLP which requires housing to be of a high quality and comply with the adopted housing standards. For these reasons I conclude on this issue that the development that has taken place fails to provide a satisfactory standard of living accommodation and there are no sound reasons for departing from the policies of relevance.

### ***Conclusions on ground (a)***

21. I find against the development for the reasons set out above and accordingly there is no success on this ground.

### **Ground (f)**

22. For the appellant it is argued that requirement ii) to remove all the kitchens and associated fixtures and fittings is excessive as it would leave the property without any kitchen. It is asserted that for this reason the notice is seriously defective and should be quashed. The Council argue that the Inspector has powers to vary the requirements of the notice and it is suggested that if necessary the wording could be changed to require the removal of all but one of the kitchens so as to reasonably allow the property to revert to a single family dwellinghouse.

23. I agree that requiring the removal of all the kitchens is excessive to remedy the breach of planning control and that the Council's suggested course of action is reasonable and appropriate. The purpose of ground (f) is to consider, amongst other things, whether lesser steps would remedy the breach and in this instance I consider that such a variation would achieve this and is justified. I do not consider that the notice is seriously defective and no case has been made out to support a conclusion that it is invalid or a nullity.
24. I have taken account of the additional point for the appellant that the removal of kitchens is excessive as an alternative use could be a HMO. As explained above there is nothing to show that this use is lawful and Langham Road falls within an area covered by an Article 4 Direction which precludes the permitted development right to change the use of a C3 dwellinghouse to a C4 HMO without the need for express planning permission. For this reason there is no substance to any claim that there is a legitimate 'fallback' option to use the property as a HMO.
25. I conclude that the appeal on this ground should succeed to this extent and I will vary the wording of requirement ii) using the powers conveyed by s176(1)(b) of the Act.

### **Ground (g)**

26. It is asserted for the appellant that the stated compliance period of 4 months is too short to allow for the necessary physical alterations to be carried out and to enable the present occupiers to find alternative accommodation. A period of 9 months is requested instead. The Council's response is that a Section 21 notice could be served on the tenants giving them 3 months to find alternative accommodation should the notice be upheld. The extra month would allow sufficient time for the other works required to be carried out.
27. I consider that 4 months would be a limited time period for the occupants of all 7 flats to find alternative accommodation and this may not be possible within that time frame. It may also leave little or no time to carry out the physical works once they had vacated. For this reason some extension of the time period is justified but I do not consider it should go as far as 9 months. I find that a 6 month period would be reasonable and appropriate and should provide sufficient time for the requirements, as modified, to be complied with. The appeal succeeds to this extent on this ground.

### **Formal Decision**

28. The enforcement notice is varied by the deletion of the wording in requirement ii) and the substitution of the wording "Remove all kitchens and associated fixtures and fittings with the exception of one". The notice is also varied in terms of the "Time for compliance" by the deletion of the word/number "Four (4)" and the substitution of the word/number "Six (6)". Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*N P Freeman*

INSPECTOR