
Appeal Decisions

Site visit made on 1 May 2018

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2018

1 Nyton Close, London N19 4BL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr J Barrington against 2 enforcement notices issued by the Council of the London Borough of Islington.
- The enforcement notices were issued on 12 June 2017.

Appeal A Ref: APP/V5570/C/17/3180505

- The breach of planning control as alleged in the notice is the material change of use of the first and second floor levels to six bedsits with shared communal facilities.
- The requirements of the notice are:
 - i. Cease the use of the first and second floor units as a house in multiple occupation.
 - ii. Remove kitchen units from bedsits [sic] No.2 (first floor level).
 - iii. Remove all the fixtures and fittings that solely facilitate the use of the bedsits accommodation including, (but not limited to) all internal locks on bedroom doors.
 - iv. Remove from the site all debris arising from compliance with steps i, ii and iii and bring the property back to its former state existing immediately prior to the breach of planning control taking place.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and variations.

Appeal B Ref: APP/V5570/C/17/3180507

- The breach of planning control as alleged in the notice is the material change of use of room (1) at ground floor level to a self-contained unit.
- The requirements of the notice are:
 - i. Cease the residential use of room 1.
 - ii. Remove the kitchenette, WCs [sic], shower room and the internal lock on the bedroom door.
 - iii. Upon the completion of steps i and ii remove all resulting materials from the land and bring the property back to its former state existing immediately prior to the breach of planning control taking place.
- 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), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the notice is upheld with a correction and variations.

Application for costs

1. An application for costs was made by Mr J Barrington against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Grounds of Appeal

2. Grounds (b), (c), and (d) are legal grounds of appeal, distinct from any planning merits. The Courts have held that the onus on proving them lies with the appellant. The appellant points out that the Appeal B notice does not state what the material change of use was from [the same applies to the Appeal A notice]. However, mindful that in *Westminster CC v SSE and Aboro [1983] JPL 602* it was held that a notice alleging a material change of use need not recite the previous use, I am not inclined to attach much weight to the concern expressed in this respect.

The Enforcement Notices

3. Each notice contains what appears to be a typographical error in that bedsit 2 is referred to as "bedsits" 2 and there is a further reference to WCs in room one whereas I only noted one. I am satisfied that these seemingly minor matters can be rectified without causing the injustice to the parties involved and so I will exercise my power to correct the notices accordingly.

The Appeal Property and Background

4. The appeal property contains living accommodation on 3 floors, access to all of which is gained via a front door opening onto Nyton Close. The ground floor includes a hallway, a communal dining area with a door that gives access to an open yard area and a communal kitchen. A door by the foot of the stairs gives access to what is referred to on the appellant's plans as 'bedroom 1'. This room is laid out as a bed sitting room and has its own cooking facilities. In addition, off the room is an en suite room that includes a shower, WC and a washbasin.
5. On the first floor are what are referred to as bedrooms 2, 3 and 4, together with a communal room containing a shower, WC and washbasin. Bedroom 2 has its own cooking facilities, but unlike bedroom 1 there is no en suite. There are 3 further bedrooms, 5, 6 and 7, on the second floor where there is another communal room containing a bath, WC and washbasin.
6. A Notice of Variation of a Licence for a House in Multiple Occupation (HIMO) concerning the property was issued on 26 September 2017. The schedule of accommodation set out in the Licence describes bedroom 1 as a 'Ground floor self-contained unit'. Bedrooms 2 to 7 on the first and second floors are each described as 'bedsit'.
7. An application for a Lawful Development Certificate (LDC) for the use of the ground floor ('Room1') as a self-contained flat was refused by notice dated 27 April 2017.

Appeal B - Ground (b)

8. In order for the appeal to succeed on this ground, it has to be shown that the matters alleged in the notice have not occurred as a matter of fact.

9. In essence, the appellant's case is based on the premise that the whole of the appeal property, including 'bedroom 1', falls within the definition of a HIMO as defined in section 254 of the Housing Act 2004. The configuration of the property has not resulted in the material change of use of bedroom 1 to a self-contained unit and therefore the alleged breach has not taken place.
10. These submissions seem somewhat at odds with the terms of the LDC application referred to in paragraph 5 above. And, the appellant's appeal statements both refer to the ground floor bedroom becoming "a self-contained studio".¹ Mindful of *Gravesham v Secretary of State for the Environment and O'Brien [1983] JPL 306*, it seems to me that the living accommodation provided in 'bedroom 1' affords to those who use it the facilities for day-to-day private domestic existence in a manner that is physically distinct and separate from the rest of the accommodation in the appeal building. It may be that the occupiers of 'bedroom 1' make use of the external yard area, but there is nothing that indicates that they need to rely upon any of the other shared facilities in the appeal property.
11. In the light of the foregoing, I am not satisfied that it has been demonstrated that the use in question has not occurred as a matter of fact. Accordingly, therefore, the appeal on ground (b) fails.

Appeal A – Ground (c)

12. In order for the appeal to succeed on this ground it has to be shown that the matters alleged in the notice do not constitute a breach of planning control.
13. I am unable to identify anything in the appellant's submissions under this heading that expressly supports the appeal on this ground. The premise underlying the appeal, namely that the use in question is immune from enforcement action, is more appropriately dealt with under ground (d) which I consider in the next section of my decision. As far as the appeal on this ground is concerned, the burden of proof that rests with the appellant has not been discharged.
14. The appeal on ground (c) therefore fails.

Appeals on Ground (d)

15. In order for the appeals to succeed on this ground it has to be demonstrated that at the time the enforcement notices were issued it was too late to take enforcement action. In particular, in appeal A it has to be shown that the use in question commenced more than 10 years before the notice was issued, and 4 years in the case of Appeal B. It also has to be shown that these uses continued actively throughout the subsequent 10 and 4 year periods. The relevant dates therefore are 12 June 2007 and 12 June 2013 respectively. The test for the evidence is the balance of probability.
16. Much of the evidence put forward in support of the appeals is contained in an affidavit by the appellant. Attached to this are various documents – some of which are also in the form of affidavits – appertaining to the purchase of the property, works carried out to it, tenancy agreements and financial records. This evidence indicates that the appellant bought the appeal property in December 2005. A survey and valuation report dated 17 October 2005 records

¹ Appellant's appeal statements paragraph 6.7.

that the property then contained 5 bedrooms. The report also refers to the presence of tenants, so it may be that some form of multiple occupancy was occurring then. However, as this point has not been elaborated upon, I find it somewhat inconclusive.

17. The appellant's affidavit goes on to indicate that the property was altered to its current configuration in early 2007 when a ground floor shower room was made en suite to the bedroom and a kitchenette was added to it. The property is said to have been used continuously as a HIMO since March of that year. The whole property was rented to a Mr Sciborek. He lived in the ground floor 'studio' and sublet and managed the rest of the rooms.
18. The works referred to above are itemised on an invoice from Nazbrow Construction dated 12 March 2007. Cheque book stubs and a bank statement entry, all dated March 2007, appear to confirm the payments, and the works are also described in an affidavit by the builder who carried them out. However, while the property is said to have been used continuously as a HIMO since that time, the appellant notes that he no longer has records that show when Mr Sciborek began to rent it. And, perhaps due to Mr Sciborek's apparent role, the appellant's affidavit sheds little light upon the pattern of occupancy of the rest of the appeals property following the 2007 alteration works, both prior to and after the '10 year' relevant date of 12 June 2007.
19. The only tenancy agreement before me relating to Mr Sciborek covers the period 1 June 2012 to 11 May 2013. This is prior to the relevant date for the 4 year period, but a tenancy agreement is not necessarily synonymous with occupancy. Moreover, the agreement only describes the property by its postal address, namely 1 Nyton Close; it does not mention any part or parts of the building.
20. The rental arrangement with Mr Sciborek is confirmed in another affidavit from an acquaintance of his. However, while the affidavit mentions other rooms in the property having been rented out, no dates are given, and it is silent insofar as the use of the property in 2007 and 2008 is concerned. The affidavit differs from that of the appellant somewhat in that it does not mention Mr Sciborek having resided at the property since 2007; it only refers to his occupancy between 2009/10 and April 2014. The latter date also differs from that given by the appellant who says he moved out in mid or late March 2014.
21. The Council's records indicate that Mr Sciborek paid Council Tax for the whole property between February 2007 and March 2014. This is consistent with the main thrust of the appellant's case, but while it may reflect the nature of the letting arrangement between the appellant and Mr Sciborek, it offers little detailed insight into the use of the property and the manner in which it was actually occupied, either by Mr Sciborek or by any other tenants.
22. The appellant's bank statement records highlight regular monthly payments made between July 2012 and March 2014. They reflect the terms of the tenancy agreement entered into by Mr Sciborek, but the entries concerned are all termed 'Camden Town'. Although some of the individual entries have been annotated '1 Nyton Close' in handwriting, Mr Sciborek's name does not appear on the statements. As no explanation has been offered for this, it imparts an element of uncertainty into this evidence. In addition, details prior to July 2012 are somewhat lacking; they do not cover the period between then and 12 June 2007 or before then.

23. The appellant's Background Report links a number of individuals to the property between 2002 and 2017. But, the table illustrating this² does not appear to reflect the gap in 2014, to which I refer below, there are periods when only 3 or 4 names are given, and Mr Sciborek's name only appears under the heading '2014'. I am concerned that this does not provide a clear or reliable indication of just how the property was occupied.
24. Despite the abundance of documents appended to the appellant's affidavit, neither they nor the evidence as a whole paints a particularly clear picture of the nature and pattern of the occupancy of the appeal property prior to and within either of the 2 relevant time periods. Indeed, given that the individual rooms on the first and second floor are said to have been sublet by Mr Sciborek, it appears that in all probability only he or those persons who actually occupied the accommodation would have been able to shed light on this point.
25. Having read that Mr Sciborek no longer lives in this country and is in poor health, I appreciate that obtaining such evidence may well have proved difficult. Be that as it may, the relative paucity of information and the rather ambiguous nature of some of it means that the appellant's case is lacking in clarity somewhat. Significantly, there is no evidence from anyone who actually lived or purported to have lived in the property. Furthermore, while the information provided by Mr Sciborek's acquaintance is generally consistent with the appellant's case, it lacks precision insofar as numbers and dates are concerned to the extent that I am only inclined to attach limited weight to it.
26. There is also another matter that causes me concern. According to the appellant, other tenants vacated the property around the same time as Mr Sciborek; the main reason for terminating the contract with him "was to *renovate the property fully*"³. Following this work, from August 2014, the entire property was rented out by a company called Ozgog Ltd trading as Smart Room Rental.
27. Having read that some tenants needed time to make alternative arrangements, it is possible that some may have remained in the appeal property after Mr Sciborek's departure, seemingly in mid to late March 2014 according to the appellant, albeit there is nothing that shows this is what actually happened. Smart Room Rentals' accounting ledger shows an advance rental payment on 31 July 2014, but the other entries in it are dated from August 11 2014 onwards. This strongly suggests that there was an appreciable length of time when neither of the uses in question was actually taking place.
28. A relatively brief spell of vacancy between different tenancies is fairly commonplace and perhaps almost inevitable in an instance such as this where a number of rooms are involved. However, the evidence in this case points to the break in the occupancy of the property having been as long as 4 months, or possibly a week or two longer. As a matter of fact and degree, I find the apparent absence of any physical occupancy for a period as long as this constitutes a significant and material interruption in both of the uses concerned. Mindful of the judgement in *Swale Borough Council v First Secretary of State [2005] EWCA Civ 1568*, I consider this would have precluded the Council from taking enforcement action at the time.

² Appendix 14 attached to the appellant's final comments regarding Appeal B.

³ Appellant's affidavit, paragraph 19.

29. I accept that some of the evidence lends support to the appellant's case. Nevertheless, viewing the matter in the round, the ambiguity and lack of clarity and precision I have identified, coupled with the break in continuity of the uses, leads me to conclude that the burden of proof that rests with the appellant has not been discharged insofar as this ground of appeal is concerned either. I am not satisfied that the evidence is sufficiently compelling to demonstrate that, on the balance of probability, at the time the enforcement notices were issued, the respective uses in question were immune from enforcement action.
30. The appeals on ground (d) therefore fail.

Appeals on Ground (a) and the Deemed Applications

31. The reasons for issuing the disputed notices focus on the size of the living accommodation in the building. No issue is taken with the principle of the subdivision of the property or its residential use. In the light of this, I consider the main issue is whether the accommodation provides satisfactory living conditions for the occupiers of the property.
32. Planning policies for the area are contained in The London Plan (TLP) and the Council's Core Strategy (ICS) and Development Management Policies (IDMP). TLP Policy 3.5 states that housing developments should be of the highest quality internally and externally. ICS Policy CS 10 seeks to ensure that the Borough develops in a way that, amongst other things, improves the quality of life, an approach which is echoed in ICS Policy CS 12. The amenity of future occupants is one of the criteria set out in IDMP Policy DM3.3. Policy DM3.4 is headed 'Housing Standards' and applies to changes of use as well as new housing. Amongst the criteria are that accommodation should be of an adequate size and should meet the space standards set out in Table 3.2. Policy DM3.9 is expressly directed at HMOs. Such development will be supported subject to, amongst other things, B.(iv), the provision of good quality accommodation consistent with the space standards set out in Table 3.5, headed 'Non-self contained HMO standards' which sets out minimum room sizes for such accommodation.
33. Pointing to the HIMO Licence granted in September 2017 referred to in paragraph 4 above, it is submitted that this confirms that the Council's Environmental Health Department is satisfied that the property provides a good standard of accommodation for the tenants. In this respect my attention has been drawn to an appeal decision in Croydon where planning permission was granted for an 8 bed HIMO⁴.
34. I acknowledge that the HIMO Licence was issued after the 2 disputed enforcement notices, and it is reasonable to assume that the accommodation meets the requisite standards in that respect. I note that a particular concern in the Croydon appeal decision was the inappropriate reliance on space standards applicable to new housing developments. However, it is clear from IDMP Policies DM3.4 and DM3.9 that the standards relied on by the Council, and the tables contained in supporting text to the respective policies, namely Tables 3.2 and 3.5, are relevant considerations in this instance.
35. The Council's space calculations for all the rooms have not been challenged. Even allowing for the en suite facility attached to bedroom 1, which does not

⁴ Appeal decision reference APP/L5240/W/15/3134235 dated 24 February 2016.

appear to have been taken into account in the Council's assessment, the floorspace of this part of the building is well below the 37m² minimum figure for a studio/single person flat set out in IDMP Table 3.2. Similarly, the floorspace figures for the bedrooms on the first and second floors of the property, namely rooms 2, 3, 4, 5, 6 and 7, are all below the relevant minimum figures in IDMP Table 3.5. Indeed, in the case of rooms 3, 4, 6 and 7 the Council's figures indicate that the size of each of these rooms is rather less than two thirds of the minimum floorspace figure applicable to them.

36. I am mindful that paragraph 3.55 of the TLP's supporting text notes that "*Shared accommodation or houses in multiple occupation is a strategically important part of London's housing offer*". And, a similar point is made at paragraph 3.102 of the IDMP. Moreover, the accommodation appeared to me to be well maintained and in good decorative order, and there is nothing before me that points to any dissatisfaction with it on the part of any of the occupiers. However, while these are not matters I set aside lightly, my impression was that the accommodation is very cramped, notwithstanding the HIMO Licence. Having regard to the IDMP standards, I do not consider the accommodation in question provides satisfactory living conditions for the occupiers of the property. I therefore find the development contrary to the relevant provisions of the development plan as indicated in paragraph 32 above.
37. The appeals on ground (a) therefore fail and planning permission will not be granted on the deemed applications.

Appeals on Ground (f)

38. Referring to the lack of information regarding the previous use of the property, the premise underlying the appeals on this ground is that the requirements of the notices are excessive, imprecise, and unreasonable. It is further submitted that as the notices do not state what use the building should revert to, the notices are fundamentally defective to the extent that they cannot reasonably be corrected.
39. As noted in paragraph 2 above, it is not necessary for the previous use of property to be recited in the notice. And, although it is stated that when the appellant purchased the property in December 2005 it had already been let out to multiple tenants, and the October 2005 surveyor's report also refers to the presence of tenants in the property, precisely how the property was being used then has not been made clear.
40. As the Council point out section 173(4) indicates that a breach of planning control can be remedied restoring the land to its condition before the breach took place. However, given the lack of clarity regarding the use of the property in the past, just what the Council envisage by the phrase "*bring the property back to its former use immediately prior to the breach*" is not wholly clear; it imparts an element of uncertainty into both of the disputed notices. That said, defective though the notices may be in this respect, I do not consider that this shortcoming is so fundamental that it renders the notices invalid or incapable of being put right. As I see it, this defect can be remedied simply by deleting the references to the "*former use*" from the relevant requirements of the respective notices. To my mind, this measure would not reduce the efficacy of either of them.

41. It is also submitted that requiring the cessation of the “*residential use*” of room 1 in the notice that is the subject of Appeal B is a major defect in that it would prevent the room from being used for any form of residential use. As the reasons for issuing the notice focus on the quality of the living accommodation as opposed to the principle of residential use of the appeals property, I agree that requiring the cessation of the residential use exceeds what is reasonably necessary in order to remedy the breach. Again, though, while I accept that this is another defect, I consider it can be remedied by varying the requirement so that it refers to a *self-contained* residential unit.
42. It is also pointed out that the notices require the removal of items that do not constitute development as defined in section 55 of the 1990 Act. This may be so, but *Murfitt v SSE [1980] JPL 598* and *Somak Travel v SSE [1987] JPL 630* have held that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development. It seems to me that, with one exception, the matters referred to are integral to and part and parcel of the respective uses. It may be that this applies to what are termed the “*fixtures and fittings that solely facilitate the use of the bedsits*”, but as requirement iii of the Appeal A notice does not identify exactly what these are other than internal door locks, this imparts another element of uncertainty into this notice and ought to be deleted.
43. As regards room 1, while I am satisfied that the shower room and WC is part and parcel of the use in question, I am mindful that the residential use of the property is not in dispute. And, unlike the kitchen facility in room 1, the shower room here does not duplicate something already present on the ground floor of the building. In these circumstances I consider requiring its removal is excessive and so will delete this.
44. Referring to the permitted developments appertaining to the change of use from a C3 use to a C4 use, mention is made of a fall-back position. Although this is made under the heading of ground (f) this point could also be relevant to the appeals on ground (a). But as there is no suggestion that there is a reasonable likelihood that this would occur, it is not a matter to which I attach much weight.
45. In the light of the foregoing, the appeals on ground (f) succeed to the extent as described in the preceding paragraphs. The notices will be varied accordingly.

Appeals on Ground (g)

46. As I see it, the 3 month compliance period in both cases is sufficient to enable the requisite works to take place. However, this overlooks the interests of the occupiers of the building who seemingly through no fault of their own are effectively caught in the ‘crossfire’.
47. I have no information regarding the current nature of the tenancy agreements regarding the accommodation, but it seems probable that the tenants would have to vacate the property and find somewhere else to live before any disruption caused by the works required commences. Viewing all these factors in the round it seems to me that 3 months is unreasonably short and a longer period, which would give the occupiers a reasonable opportunity to make alternative arrangements, should be instituted instead. This would also give the appellant the opportunity, if he so chooses, to enter into a dialogue with the

Council with a view to seeing if a mutually acceptable solution regarding the future use of the appeal property can be achieved.

48. In the light of the foregoing, I consider that the 9 month compliance period sought by the appellant would be more reasonable in this instance and the notices will be varied accordingly. The ground (g) appeals therefore succeed on this basis.

Other Matters

49. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decisions

Appeal A Ref: APP/V5570/C/17/3180505

50. I direct that the enforcement notice be:

- A. Corrected in Schedule 4 II. by the deletion of "bedsits" and its replacement by "bedsit".
- B. Varied:
 - (a) In Schedule 4 III by the deletion of "all fixtures and fittings that solely facilitate the use of the bedsits occupation including (but not limited to)"
 - (b) In Schedule 4 IV by the deletion of "and bring the property back to its former state existing immediately prior to the breach of planning control taking place".
 - (c) In Schedule 5 by the deletion of "three (3) months" and its replacement by "9 months".

Subject to this correction and variations, I dismiss the appeal and uphold the enforcement notice. I 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 Ref: APP/V5570/C/17/3180507

51. I direct that the enforcement notice be:

- A. Corrected in Schedule 4 II. by the deletion of "WCs" and its replacement by "WC".
- B. Varied:
 - (a) In Schedule 4 I. by the insertion of "self-contained" between "residential and "use".
 - (b) In Schedule 4 II. by the deletion of "WC, shower room".
 - (c) In Schedule 4 III. By the deletion of "and bring the property back to its former state existing immediately prior to the breach of planning control taking place".
 - (d) In Schedule 5 by the deletion of "three (3) months" and its replacement by "9 months".

Subject to this correction and variations, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D H Brier

Inspector