



Appeal Decision

Hearing Held on 19 February 2020

Site visit made on 19 February 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/T5150/C/18/3216415

Flats 1-5, 97 Woodhey 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 made by Brent NW10 Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 10 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to five flats, and the erection of single storey side and rear extensions to the premises.
 - The requirements of the notice are:
 - Step 1 Cease the use of the premises as flats
 - Step 2 Remove all kitchens and cooking facilities, except ONE, and remove all bathrooms, except TWO, from the premises.
 - Step 3 Remove all other fixtures, fittings and other paraphernalia associated with the unauthorised use from the premises.
 - Step 4 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include bedrooms on the first floor and a kitchen, dining room and lounge on the ground floor.
 - Step 5 Demolish/remove the single storey side and rear extensions, and remove all items, debris and materials associated with this demolition from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.
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Decision

1. The appeal is dismissed and the enforcement notice upheld.

Procedural Matters

2. Notwithstanding the address provided on the appeal form, I have taken the address from the enforcement notice.
3. The appeal statement confirms that the appeal is made by Brent NW10 Ltd. The name of the appellant was discussed during the hearing. It was agreed that the appeal should proceed on the basis that Brent NW10 Ltd is the appellant and not Mr Teff.

Ground (b)

4. An appeal under ground (b) is made on the basis that those matters (a breach of planning control) have not occurred. The appellant's case under ground (b) is made in relation to the alleged change of use. The onus of proof is firmly on Brent NW10 Ltd to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.
5. The appellant asserts that the property has not been converted into flats but is a 5 bedroom House in Multiple Occupation (HMO) which falls under Class C4¹. It is asserted that the building was converted in March 2015 and that the layout of the property has not changed since this date. Prior to this, it was in use as a single dwelling. In January 2016 a retrospective Building Regulation Notice to convert the property into a 5 room HMO was submitted to the Council, and subsequently approved under reference RGUN/16/00090. In March 2016 an application for an HMO license was submitted to the Council.
6. The appellant contends that this demonstrates the intention for the property to be an HMO. However, as found by my colleague in respect of appeal reference APP/T5150/C/17/3176717, a licence does no more than confirm the suitability of the house for the number of occupants and that the manager of the house is considered to be fit and proper. In itself, it is not an indication that the property is used as an HMO. Furthermore, the property was let out for approximately a year before the licence was applied for. Similarly, obtaining building regulations does not oblige the appellant to use the property as an HMO, nor does it prevent occupants from having microwaves in their rooms.
7. The appellant asserts that in order to constitute an individual dwelling unit, any unit created must contain all necessary facilities for human habitation. The appellant has drawn my attention to an appeal decision, references APP/B5480/C/15/3137773, 3137866 & 3137867. In these cases, the Inspector found that an HMO would not exist where at least two households in occupation did not share, or the living accommodation was lacking in, one or more 'basic amenities'. Basic amenities are defined in section 254(8) of the Housing Act 2004 as a toilet, personal washing facilities or cooking facilities.
8. In the above cases, the Inspector found that to amount to basic amenities, they would have to include items that enable food to be heated sufficiently to prepare meals that would sustain the user without them having to eat elsewhere. An oven and hob/hot plate would fulfil that function; a kettle and sandwich toaster would not. The parties agreed during the hearing that a microwave could fulfil that function. In my view, this approach broadly accords with established case law, that a distinctive characteristic of a dwelling-house is its ability to afford to those who used it the facilities required for day-to-day existence².
9. In March 2015 the property was registered as 5 flats with the Valuation Office, a matter which is not disputed by the appellant. A visit by the Council on 19 March 2015 found the property to be laid out as 5 units of accommodation, but

¹ Use of a dwellinghouse by not more than six residents as a "house in multiple occupation". For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004. Town and Country Planning (Use Classes) Order 1987 (as amended).

² *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

the property was unoccupied. Photographs submitted by the Council show a unit to have a sleeping/living area, bathroom, and kitchen area with a sink. Statements have been submitted by the Managing Agents which sets out that the layout of the property has not changed since its conversion in 2015. Both Mr Teff and Mr Abeless state in their written statements that cooking facilities are not located in any of the five rooms in the property and the preparation and cooking of food by our [sic] residents is undertaken in the communal kitchen.

10. Mr Teff and Mr Abeless explained during the hearing that not all the visits are pre-arranged and that occupants of the premises are given verbal instruction that they are not to have cooking facilities in individual rooms. During my site visit I saw a notice in the communal hallway advising tenants against having cooking facilities in their rooms. However, I have no substantive evidence that this was present at the time the enforcement notice was issued. Furthermore, this evidence is unclear because it refers to a different address, Eastville Avenue, London NW10 0HD. This information is therefore of very limited use in showing that each flat did not contain cooking facilities during the period up to the issuing of the notice.
11. A joint site visit, with representatives of both the Council and the appellant present, was conducted on 15 November 2018. No cooking facilities were found in any of the letting rooms during the visit. However, the visit was conducted after the enforcement notice was issued and is therefore not determinative in terms of the ground (b) appeal.
12. During my visit I saw that each unit has sleeping and washing facilities, as well as a sink and cupboard space and a fridge. I also saw that there is a kitchen on the first floor which is available for occupants of the property to use and which has a range of facilities, including a cooker, microwave, washing machine, fridge, cupboards and sink. I also saw that plug sockets are sufficiently close to the sink units that an appliance resting on the surface, such as a microwave or hot plate, could be plugged in. This is inconsistent with Mr Teff's Statement which asserts that there are no sockets near the sink and cupboard space. No plausible explanation was provided at the hearing for this discrepancy and, since Mr Teff claims to have visited the letting rooms regularly, I afford negligible weight to this aspect of Mr Teff's statement.
13. The Council gained access to the property on 9 May 2017. Photographs of the visit are provided within the Council's Statement of Case which clearly shows a microwave oven in one of the units on the worktop, adjacent to the sink. In addition, during the hearing, Mr Nigel Wicks advised that he saw another oven in Room 1, however, no photograph was taken as the occupant of the room did not wish photos to be taken. He also explained during the hearing that a small portable oven could be seen through the roof light into Room 2, however, it is alleged that the occupant of the room removed something from the room prior to access being gained. A photograph showing a microwave oven unplugged, on the floor of the communal kitchen is also provided in the Council's Statement of Case.
14. Mr Allen asserted that it may be possible for an occupant to store a microwave within a room and to use it in the communal kitchen. Indeed, Mr Abeless asserted that one tenant advised they stored a microwave in their room because they didn't want anyone to use it. Whilst I acknowledge that this may

be possible, and may be desirable when it comes to smaller items such as cooking utensils and food, given the limited size of the communal kitchen and the provision of a microwave within the communal kitchen, I consider it highly unlikely that occupants of the units would have been simply storing the microwaves in their rooms. Moreover, the Council assert that other tenants informed officers during the visit that they occupied the units independently as studio flats and did not share facilities with other tenants. The appellant suggested that occupants of the units may not have understood the questions being posed by Council officers, however, I have been provided with no compelling evidence to dispute the evidence provided by Council officers.

15. Mr Allen asserted that written notes of what was seen on the day should have been provided by the Council, as should multiple photographs. However, the Council has set details out in its Statement of Case and Mr Wicks gave a verbal explanation of events which appear consistent. Mr Teff, Mr Abeless and Mr Jaffa all confirmed that they were not present during the Council's visit on 9 May 2017 and were therefore unable to give an alternative account of the version of events. Furthermore, Mr Teff confirmed that he saw a microwave in units on occasions, specifically mentioning Flat 4. Mr Abeless also confirmed that 'it (use of a microwave in a room) could happen occasionally when a new tenant moves in'. I therefore have no reason to doubt the Council's version of events. Whilst the photographs provided are a snapshot in time, this provides further support to the Council's version of events.
16. The Council's case is also supported by a Housing Benefit Application for Flat 2, dated 20 June 2016. The address provided on the form is Flat 2, 97 Woodheyas Road and is confirmed to be a flat in a house with no rooms shared with other households. The Council has also drawn my attention to Local Housing Allowance Rates for the area for 2015/16. The rates for a 1 bedroom self-contained accommodation are significantly above that which is paid for rent in a shared property and are in line with the rent detailed in the above Housing Benefit Application.
17. The appellant has drawn my attention to appeal decision, appeal reference APP/T5150/C/17/3182429, where the Inspector considered similar evidence and concluded benefit applications in themselves do not establish that there were cooking facilities in the rooms. Whilst I agree they are not definitive; they do weigh against the appellant's case. Mr Allen asserted that the details on the form are factually incorrect since there is a communal kitchen and that limited weight should be placed on it as evidence. However, the appellant has provided no credible evidence to counter it. Consequently, I conclude that this weighs in support of the Council's case.
18. Both the Council and the appellant have provided me with copies of tenancy agreements for units at the appeal property. The documents refer to the units as flats and relate to the individual units, not No 97 as a whole. The Council has drawn my attention to a clause within each of the agreements which states 'The tenant must not assign underlet or part with or share possession of the whole or any part of the property without the permission of the landlord, such permission not to be reasonably withheld.' The appellant asserts that the tenancy agreements are standard documents which prevent subletting of the unit and are not intended to prevent the sharing of the communal kitchen. Whilst the documents do not show how the property has been used, they do weigh in support of the Council's case that the units were occupied as self-

contained flats since they make no provision for the areas of the property which are shared.

19. The Council provided an Energy Performance Certificate (EPC) for Flat 2, 97 Woodhey Road. Were the property an HMO, I would have expected one EPC for the whole property, not the individual units. Although not definitive, the units have been assessed and identified as flats by an independent assessor which weighs in support of the Council's case that the units are occupied as flats.
20. I have been provided with a written statement by Mr Jaffa, a resident at the property. Mr Jaffa also gave a verbal account at the hearing. He advised that he cooks in the communal kitchen and has never had a microwave or other cooking facility in his unit but was unable to confirm whether or not the other units have had cooking facilities and suggested that occupants may choose to eat outside of the premises. The Council confirmed that they did not access Mr Jaffa's unit on 9 May 2017.
21. Whilst Mr Jaffa's evidence is not disputed, I have been provided with no substantive evidence from the other occupants of the property, past or present, that they use the communal kitchen. Whilst Mr Jaffa may have never used cooking facilities within his unit, this does not prove that occupants of other units did not have microwaves or other cooking facilities in their own units. Accordingly, it does not clearly show that the facilities are shared, it simply shows that Mr Jaffa uses the upstairs kitchen to prepare and cook his own meals.
22. Both the appellant³ and the Council have drawn my attention to a number of appeal decisions⁴, which I have had regard to during my consideration of this appeal. I do not have full details of the cases before me, nor are all of the examples referenced in the same local authority area as the appeal site. Nevertheless, I see nothing in the decisions referenced which would cause me to draw a different conclusion in this case.
23. Drawing everything together, whilst some evidence has been submitted by the appellant which points towards the intention of the appellant to let the property as an HMO, in particular the Building Regulations Application and the HMO licence application, the evidence submitted by the Council, as detailed above, is more persuasive. Thus, whether or not it was the intention of the appellant to establish an HMO, on the evidence before me, on the balance of probabilities, I conclude that the breach, as alleged in the notice, has occurred as a matter of fact. Accordingly, the appeal under ground (b) fails.

Ground (c)

24. An appeal on ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. The appellant's case in respect of this ground is made in relation to the extensions, not the material

³ APP/B5480/C/15/3137773 & 3137866, APP/E2205/D/16/3154764, APP/T5150/W/19/3220921 & 3220876, APP/T5150/C/17/3182429,

⁴ APP/T5150/C/17/3176717, APP/T5150/C/16/3155655, APP/T5150/C/18/3215123 & 3224239, APP/T5150/X/15/3138588, APP/T5150/C/15/3031342, APP/T5150/C/15/3031361, APP/T5150/C/15/3095752, APP/X5210/C/12/2187790, APP/T5150/C/05/2002945-7 & 2003055 and APP/T5150/A/05/1185709 and associated costs decision, APP/Q1445/C/17/3176378, APP/G5750/C/12/2179136 and APP/G5750/C/12/2179140, APP/T5150/C/06/2014945, APP/C/17/3178515

change of use. The appellant's case is that when the extensions were constructed they were compliant with the Town and Country Planning (General Permitted Development) (England) Order 1995⁵ (as amended) under Schedule 2, Part 1, Class A of the GPDO.

25. The appellant purchased the property in 2014 as a three bed end terrace house. I am advised that the extensions to the property and the conversion works to create 5 letting rooms and a communal kitchen were completed by the end of March 2015. The appellant asserts that the extensions were undertaken to the property when it was in use as a single dwellinghouse, at the same time as internal works were carried out to the property.
26. However, Mr Allen advised that there was 'no single occupation between the purchase of the property and the use of the dwelling as a C4 HMO'. The side extension forms part of one of the units and, as confirmed by both Mr Teff and Abeless, the layout of the property has not changed. Therefore, from the evidence before me, it appears that the works for the extension have been integral to the conversion of the property to flats.
27. Since I have found that the units are self-contained flats, they do not benefit from permitted development rights under the Town and Country Planning (General Permitted Development)(England) Order 1995 (as amended) and express planning permission is required. The ground (c) appeal therefore fails.

Ground (f)

28. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The Council advise that the purpose of the notice is to remedy the breach.
29. The appellant's case is that the steps of the notice effectively seek to prevent the self-containment of any more than on Class C3 residential use on the site, and that a lawful use of the site can be achieved through "lesser steps" through requirements to cease the use of the premises as flats and remove any type of cooking facility from the five letting rooms. The appellant submits that the current and lawful use of the site is as a Class C4 HMO, however, as set out above, I have found the appeal site to comprise flats.
30. The appellant suggests that the steps set out in the enforcement notice should be amended to prevent any use of the site falling outside of Class 4 and has drawn my attention to APP/T5150/W/19/3220921⁶, an appeal made under section 78 of the Town and Country Planning Act 1990 (as amended), which considered the retention of a 5 bed HMO. Whilst I have considered the Inspector's approach, it is not directly relevant to the appeal before me since there is no ground (a) appeal.
31. A lesser requirement, to simply require the removal of the cooking facilities, without removal of the facilities which enable that use would provide no control

⁵ Because the works were completed by the end of March 2015, prior to the Town and Country Planning (General Permitted Development) (England) Order 2015 coming into force.

⁶ APP/T5150/W/19/3220876 was considered alongside 3220921

on the future use of the property without continual monitoring, which would be unreasonable. Whilst a change of use to a C4 HMO would be permitted under the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), I am not satisfied that it would remedy the breach of control, which would require both the cessation of the use and the works that facilitated that change of use to be removed. This approach is similar to other Inspectors, in particular APP/T5150/C/17/3176717.

32. The requirements fall within the purpose of S173(4)(a) of the 1990 Act and are not excessive. Accordingly, the appeal under ground (f) fails.

Conclusion

33. For the reasons given above I consider that the appeal should not succeed. I have upheld the enforcement notice.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Tony Allen MRTPI	Allen Planning Limited
Charles Teff	C Y Property Management Limited
David Abeless	C Y Property Management Limited
D.Jaffer	Resident of Room 3, 97 Woodheyas Road

FOR THE LOCAL PLANNING AUTHORITY

Mr Nigel Wicks MRTI	Director of Enforcement Service Limited
Tom Wicks	Enforcement Service Limited
Tim Rolt MRTPI	Enforcement Planning Manager
Kushal Patel	Planning Enforcement Officer

DOCUMENTS SUBMITTED AT THE HEARING

- 1: Energy Performance Certificate: Flat 2, 97 Woodheyas Road, London, London, NW10 9DE
- 2: Appeal decision APP/C/17/3178515 40B Herber Road, London NW 2 6AA
- 3: Tenancy agreement dated 30 May 2016 Flat 3, 97 Woodheys Road
- 4: Appeal decision APP/T5150/C/17/3182429 5 TH Circle, London NW2 7QR