
Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4th January 2021

Appeal Ref: APP/N5660/C/20/3244515
13 Craster Road, London, SW2 2AT

- 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 Mr John Ioannou, New Habitat Limited against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The enforcement notice, numbered 19/00061/3COU, was issued on 2 December 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the property from a single dwellinghouse to eleven self-contained flats ("the 11 unauthorised flats").
- The requirements of the notice are: a) Cease the use of each of the 11 unauthorised flats; and b) Remove from the premises all internal partitions and divisions, all but one set of kitchen units, appliances and associated plumbing and electrical wiring; and any other fixtures and fittings that facilitate the use of the unauthorised flats; and c) Remove all associated waste and debris resulting from compliance with the above steps from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds to a limited degree on ground (d) and also on ground (g). Otherwise the appeal is dismissed and the enforcement notice is upheld as corrected and varied. See formal decision below.

Application for costs

1. An application for costs was made by the appellant against the Council. This application in the subject of a separate Decision.

Ground (d)

2. To succeed on this ground the appellants must show that there has been a continuous period of 4 years prior to the service of the notice during which the property has been used as 11 self-contained flats. It is accepted by the parties that the appeal property had been used as a large house in multiple occupation and is now in use as self-contained flats (and that each unit has the necessary facilities required for day to day domestic existence). The issue in dispute is when the use of the rooms as 11 separate units commenced and whether the use has been for the necessary continuous period of 4 years.
3. The appellant's case is that each unit has been self-contained and occupied separately and independently from each other since 2009. A House in Multiple Occupation (as different from a building containing self-contained units) is

defined in section 254(2) (f) of the Housing Act 1987 as two or more households who occupy living accommodation and share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. Basic amenities are a toilet, personal washing facilities and cooking facilities.

4. The appellant states that there had been no shared facilities at the property since at least 2009 and relies on the HMO licence application forms and extracts from the tenancy agreement dating from 26 May 2014 (which leave blank the sections relating to any "Shared Facilities" at the property) as proof. The appellant accepts that there was a shared laundry within the cellar but argues that this does not fall within the definition of a basic amenity and so does not make the property an HMO. The Council does not dispute that the property was being used as separate flats when the notice was issued and I am satisfied that the lack of shared facilities and fact that basic amenities were provided for each unit of accommodation means that the change of use to 11 separate flats had occurred.
5. In correspondence with the Council in Summer 2016, the former owner (Elizabeth Bax) stated that she intended to convert the first room to become available within the appeal property into a communal kitchen. The HMO licence issued on 20 September 2016 records that the ground floor drawing room or Flat 3 should be removed and a communal kitchen provided. Further correspondence from the Council requests that the owner provides a shared kitchen and removes the sinks, hot plates and work surfaces from all of the rooms. The statement from Mr Jose Soares, the veracity of which has not been challenged by the Council although not sworn evidence, states that he has lived in Flat 8 in the appeal property since 2011 and that there has been no shared kitchens or bathrooms, or change in the layout of the property at any point during that time. I see no reason not to accept Mr Soares account but he does not say whether the other units were occupied during that time period.
6. The HMO licence dated 20 September 2016 was granted for a maximum of 10 households and this is on the basis that one of the rooms ("the Ground Floor Drawing Room") will be changed into a communal kitchen. It seems more than likely that this did not in fact occur, and also accords with Ms Bax's email dated 24 August 2016 where she states that she has 10 tenancy agreements to submit in support of her HMO licence application. This would seem to indicate that 10 of the units were occupied at that time. Ms Bax's email to the Council dated 14 November 2016 sought confirmation that if she installed a new kitchen that "this will take me back into an HMO use" and confirms that at that time each unit has its own cooking facilities. However, Ms Bax also refers to their being 7 tenants at that time, not 11, which would mean that not all of the units were being occupied in November 2016. The Property Information Form submitted by Ms Bax during the sale process of the appeal property (which is undated but which was most probably completed fairly shortly before the transfer of the property on 17 January 2019) lists 5 tenants at that time, which again suggests that not all of the units were occupied. It does not provide further information about which units were occupied at that time.
7. The appellant has provided examples of tenancy agreements for each numbered flat/room (1 – 11) in the appeal property between the years of 2010 and 2019. The tenancy agreements provided, taken as a set, do cover the whole of the appeal property with the "property" for the purposes of the

tenancies defined as the individual rooms with the only defined shared facility being the laundry. However, the extracts from the tenancy agreements (as summarised in the Tenancy Agreement Summary Table appended to the appellant's statement including some additional information labelled "Supplementary Evidence") do not show that there was continuous occupation of each unit throughout the necessary 4 year period prior to the issue of the notice (either immediately prior to the issue date or during some other previous 4 year period). There are long gaps in the time periods covered for each of the units prior to 2017, and in some cases for longer periods up until 2019. The tenancy agreements that have been provided are not all signed and have not been corroborated with other evidence, such as records of the payment of the rents or other evidence of occupancy. The tenancy records alone do not therefore prove that each of the units was used continuously as a single self-contained flat. Mr Soares's statement, which accords with the extracts of the tenancy agreements from 2014 and 2019 relating to Flat 8, provides the requisite proof on the balance of probabilities that he lived in a self-contained unit in Flat 8 within the appeal building for 4 years prior to the issue of the notice.

8. The other evidence that has been submitted, including the HMO licences and application documents, do not provide any information about the actual occupation of the flats.

Conclusion on ground (d)

9. It is for the appellant to prove, on the balance of probabilities, that there has been a continuous use of the property as 11 self-contained flats for a period of 4 years prior to 2 December 2019. Based on the evidence as set out above, I am not satisfied that the appellant has discharged this burden of proof in relation to any of the units other than Flat/Room 8. The appeal on ground (d) therefore succeeds only in relation to Flat 8 and fails in relation to the rest of the appeal property and I have varied the notice accordingly.

Ground (f)

10. An appeal on this ground is on the basis that the steps exceed what is necessary to remedy any breach of planning control or, as the case may be, remedy any injury to amenity which has been caused by such breach. The purpose of the notice in this case was to remedy the breach of planning control, which was the change of use to 11 self-contained flats.
11. The appeal brought under this ground is on the basis that the requirements on the notice are imprecisely drafted which makes the notice vague and unclear, rather than that the steps exceed what is necessary to remedy the breach of planning control. This is an argument about the validity of the notice and whilst the appellant has said lesser steps would overcome the alleged breach these lesser steps have not been identified.
12. The description in the allegation of the previous use of the building as a single dwellinghouse would include use as an HMO. The appellant has failed to establish the lawful use as 11 self-contained flats and if the previous lawful use is not evident then this could be established by an application for a certificate of lawful use or indeed a new planning application for a proposed use. The purpose of the notice is to remedy the breach of planning control and as such the requirements do not exceed what is necessary. As a result of the findings

relating to the ground (d) appeal, the requirements have been varied to reflect the lawful use of Flat 8 as a separate unit and to allow the associated internal partitions and division, set of kitchen units, appliances and plumbing and electrical wiring associated with Flat 8 to remain. However, I am satisfied that the notice was clear and precise as to what it required and will remain so following the variations to remove Flat 8. These variations can be made without causing injustice to the parties.

13. For the reasons given above I conclude that the requirements are excessive because they should only apply to the parts of the property that are not included in Flat 8, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent only.

Ground (g)

14. Taking into account the views of the parties, the ongoing situation with the Coronavirus Pandemic and the personal circumstances of some of the residents, 12 months is a proportionate time period for compliance. The Council have already indicated that they will engage with the appellant regarding the appropriate use of their power under section 173A of the 1990 Act depending on the circumstances at the relevant time. I am therefore minded to extend the compliance period to 12 months and the appeal succeeds on ground (g).

Decision

15. It is directed that the notice be corrected by:

- (i) The deletion of the word 'plan' in paragraph 2 and substitution of the words 'Plan 1';
- (ii) And inclusion of Plans 1 and 2 as attached to this decision.

16. The appeal succeeds to a limited extent on ground (d) in relation to Flat 8 only. It also succeeds on ground (g).

17. It is directed that the notice be varied by:

- (i) The deletion of the requirements in paragraph 5 and substitution with the words:
 - a) 'With the exception of Flat 8 shown outlined in red on Plan 2 attached to this decision, cease the use of the property as self-contained flats;
 - b) With the exception of Flat 8 shown outlined red on Plan 2 attached to this decision, remove from the premises all internal partitions and division, all but one set of kitchen units, appliances and associated plumbing and electrical wiring; and any other fixtures and fittings that facilitate the use of the unauthorised flats; and
 - c) Remove all associated waste and debris resulting from compliance with the above steps from the premises.'
- (ii) The deletion of the word "Six" in paragraph 6 "Time for Compliance" and substitution with the word "Twelve".

18. Otherwise the appeal is dismissed and the enforcement notice is upheld as corrected and varied.

Zoë Franks

INSPECTOR



Plan 1

This is the plan referred to in my decision dated:

by Zoë Franks, Solicitor

13 Craster Road, London, SW2 2AT

Reference: APP/N5660/C/20/3244515

Scale: Not to scale

LAMBETH PLANNING Enforcement Case Site Plan



Case Number:	EN/19/00061/3COU
Site Address:	13 Craster Road, London, SW2 2AT





Plan 2

This is the plan referred to in my decision dated:

by Zoë Franks, Solicitor

13 Craster Road, London, SW2 2AT

Reference: APP/N5660/C/20/3244515

Scale: Not to scale

