



Appeal Decisions

Inquiry Held on 11, 13 and 14 May 2021

Site visit made on 14 May 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2021

Appeal A Ref: APP/T5150/C/20/3248089

Flats 1-6, 45A Prout Grove, London NW10 1PU

- 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 Chaim Reiner on behalf of Pineview Property Limited against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 22 January 2020.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats("the unauthorised change of use)".
 - The requirements of the notice are:
 - STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO), and its occupation by more than ONE household.
 - STEP 2 Cease the use of the premises as flats.
 - STEP 3 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, except ONE, and remove all en-suite bathrooms/shower rooms and reinstate a communal family bathroom.
 - STEP 4 Restore the internal configuration to the original layout before the unauthorised change of use took place.
 - 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. 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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Appeal B Ref: APP/T5150/X/20/3245304

45A Prout Grove, London NW10 1PU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Chaim Reiner against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/3185, dated 04 August 2019, was refused by notice dated 29 November 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is: "Use of property as 6 self-contained flats (Class C3)".
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Decisions

Appeal A Ref: APP/T5150/C/20/3248089

1. It is directed that the enforcement notice is:
 - corrected by inserting the words “mixed use of a” before the words “House in Multiple Occupation....” within Schedule 2 of the enforcement notice (the alleged breach of planning control).
2. Subject to the correction, the appeal is allowed on ground (b) and the enforcement notice is quashed.

Appeal B Ref: APP/T5150/X/20/3245304

3. The appeal is dismissed.

Application for costs

4. At the Inquiry an application for costs was made by the Council of the London Borough of Brent against Mr Chaim Reiner on behalf of Pineview Property Limited. This application will be the subject of a separate Decision.

Procedural matters

5. All oral evidence to the Inquiry was given on oath or sworn affirmation.
6. Appeal A was originally lodged under grounds (d), (f) and (g). However, it is clear from the substance of their appeal submissions and their opening submissions that the appellant is also making an appeal under ground (b), in so far as they consider that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. As both parties were made aware of this in my pre-inquiry note and were offered an adjournment at the Inquiry, I am satisfied that neither party are prejudiced by the inclusion of this. I have thus determined the appeal on this basis.
7. The Pre-Inquiry note sought clarification from the Council regarding the allegation in the enforcement notice, and whether the Council were alleging two primary uses as an HMO and flats or a ‘mixed use’ as an HMO and flats. The Council responded to this pre-inquiry note stating, “It appeared to the Council that the appeal premises were a single planning unit in mixed used”. This ‘mixed-use’ was also re-iterated within the Council’s appeal submissions¹, which also refer to the *Westminster* judgement² in support of this. The appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. For clarity, I shall however correct the allegation to insert the additional words “mixed use”. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction. I have thus determined the appeal on this basis.
8. During the Inquiry, a number of authorities³ have been submitted within the ‘High Court Bundle’ document, which I have had regard to. However, I have

¹ Paragraph 1.3 of the Council’s appeal statement and Paragraph 3.5 of the Proof of Evidence, by Nigel Wicks.

² *Westminster CC v SoSCLG* [2015] EWCA Civ 482. This concerned whether there had been a material change of use of premises from a hotel to a mixed use hotel and hostel. It was held that a mixed use can subsist where the different elements are not associated with particular parts of the premises, and where the uses fluctuate.

³ *Islington Borough Council v Secretary of State for Communities and Local Government* [2019] EWHC 2691 (Admin) 11; *Westminster City Council v Secretary of State for Communities and Local Government* [2015] EWC

concentrated on the recent *Brent* judgement⁴ and the *Gravesham* judgement⁵ in particular, which were specifically referred to during the Inquiry.

9. The parties intended to provide a further floor plan of the appeal site at the site visit. However, since no agreement could be reached between the parties, I have given it no weight.

Appeal A: The appeal on ground (b)

10. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. Under this ground of appeal, the appellant's primary submission, applying the approach established by the Inspector in recent *Brent* Judgement, is that there is no mixed use and no 45A Prout Grove is in use as an HMO only. This ground, and effectively Appeal B as well, turns on the question of whether any of the units of accommodation were being used as flat(s).
11. 45A Prout Grove constitutes the two upper floors of an early C20 semi-detached building. The Council state that the property consists of 6 units of accommodation and communal accommodation. Each unit is contained behind a single lockable door, numbered 1-6, containing, bathroom, toilet, and kitchen facilities as well as a bed and living/dining furniture. They also state that at least 2 of the units contained all the facilities required for day to day domestic existence, including cooking facilities and were used as self-contained dwellings, with others relying on the communal kitchen. The Council also state that there is some fluidity in the use of the units and the use of the remaining communal accommodation, with varying levels of self-containment.
12. In support of the Council's contention of the mixed use, they state that when they visited the appeal site on 21 April 2016 only room 5 contained a cooking facility, with the remainder of the rooms relying on the communal kitchen at second floor level. They further state when they visited the site on 28 November 2019, rooms 1 and 4 had only been provided with cooking facilities since 2017, and rooms 5 and 6 also contained a cooking facility with the remainder relying on a shared kitchen on the second floor.
13. However, the photographs of these site visits⁶ show, that the only cooking facilities within the rooms comprise plug in microwaves, and save for kettles, do not show any other cooking or heating appliances. During the Inquiry Mr Wicks also referred to the letter from London Fire Brigade, dated 1 August 2018, which refers to "cooking taking place within rooms although shared kitchens provided", and reference to residents using hotplates to cook in their room. Mr Wicks, Proof of Evidence also states that some of the units of occupation, at 10.4sqm, are too small to be considered dwellinghouses for the purpose of s171B(2) and refers to "the Tadworth Road Appeal"⁷ in support of this. This all suggests (and indeed the oral evidence heard during the inquiry support this) that the Council's views on whether a room was a flat or an HMO

Civ 482 33 R (on the application of Welwyn Hatfield Council) v Secretary of State for Communities and Local Government [2009] EWHC 966 (Admin)47; Swale Borough Council v First Secretary of State [2005] EWCA Civ 1568 59; Uratemp Holdings Ltd v Collins [2001] UKHL 43.

⁴ Brent LBC v Secretary of State and Reiner [2020] EWHC 3620 (Admin) dated 10 December 2020.

⁵ Gravesham BC v Secretary of State for Environment (1984) 47 P & CR 142 1.

⁶ Appendix 7 and 10 of Nigel Wicks, Proof of Evidence.

⁷ Appeal ref. APP/T5150/C/19/3241370 ("the Tadworth Road Appeal") allowed on ground (b) and the enforcement notice is quashed, on 4 November 2020. N.B. The Council's statement of case, Appendix 12 contains an erroneous version of the decision letter for that appeal.

room depended on the inclusion of a portable cooking appliance within the rooms, in addition to the size of the rooms/units.

14. Both parties have drawn my attention to a number of appeal decisions concerning flats and HMOs, both before and during the Inquiry. Each appeal should be considered on its own merits, having regard to the particular circumstances of the case and evidence submitted. Nevertheless, those most relevant to this appeal are referenced in my decision.
15. In particular, the Council referred to "the Tadworth Road Appeal". That appeal also related to an appeal by the same appellant and was the subject to an enforcement notice issued by Brent, which also alleged a change of use to a mixed use as flats and an HMO. When I opened the Inquiry, Counsel for the appellant drew to my attention to the recent High Court judgement (*Brent* judgement) relating to this case, following the Council's application for permission to appeal against the Inspector's decision. The *Brent* judgement dealt with the question regarding what might be described as a "flat/HMO" and provides clarification on this, as outlined below.
16. The appellant states that the HMO use has existed since late 2014, as demonstrated by the date of the tenancy agreements for the 6 rooms, and that rooms 1, 3, 4, 5 and 6 have been consistently occupied since late 2014 by the same occupants. The appellant's case is that the layout of no 45A has since 2014 been that shown on p.43 of the appendices to Mr Wicks proof of evidence, and that this is the case beyond doubt given that room 6 has been in the occupation of the same person (Mr Reece Sargeant) from late 2014 and has not changed at all during that time. The Council disagree and states that the layout of the appeal premises appears to have changed at least once since 13 August 2014 (owing to the changes shown on the floor plans submitted by the appellant in various applications). However, the Officer's Reports for application refs: 19/3185 and 20/0196 makes clear that the plans submitted with these drawings were incorrect and do not accurately reflect the layouts of the premises. I also note that the Council's photographs of the appeal site from 2016 and 2019, match the current layouts I observed at the time of my own site visit. In addition, during cross examination Mr Patel accepted, that layout has not changed since 2014.
17. The "Tadworth Road Appeal", which was upheld by the High Court (*Brent* judgement) succeeded on ground (b) and the enforcement notice was quashed. The Inspector stated in paragraphs 3 of his decision that:

3. "Pinning down exactly what each room is actually used for is an important part of the appeal and I shall deal with this below...."
18. In paragraph 4 the Inspector distinguishes between a self-contained flat and an HMO and refers to *Gravesham* as the lead case on what constitutes a dwellinghouse. He states that:

4. "In planning terms a self-contained flat is a separate dwelling whereas an HMO is a single dwelling in use by people sharing (or not having access to) at least one facility. Gravesham is the lead case on defining a dwelling from where springs the idea that a dwelling is a building that ordinarily affords the facilities required for day to day private domestic existence. The Housing Act 2004 at section 254 deal with HMOs and creates a number of tests, including that those who occupy the building must share one or more basic amenities (or their

accommodation must lack one or more basic amenities). Basic amenities are defined as a toilet, personal washing facilities and cooking facilities."

20. In paragraph 5 the Inspector states:

5. "A problem has arisen in many flat/HMO cases because the idea of 'basic amenities' has been confused with the Gravesham test of 'facilities required for day to day private existence'. The two are not necessarily the same. Thus, a room in an HMO might well consist of a bed, table, and chairs and a small ensuite bathroom. There is no doubt this lacks the basic facility for cooking. Add in a fridge under a worktop and storage cupboard and the room is still lacking cooking facilities. However, plug in a microwave and suddenly, it is often argued, you have a self-contained flat. That is clearly not the case."

21. With regards to the above, the Judge states that the Inspector is reminding himself of that important point, that these are not the same tests that he has to apply, not the same considerations, but they may overlap. The Inspector went on:

6. "This is not to say that it is impossible to use them in a day to day sense, clearly, some people can happily survive on a microwave alone, but Gravesham is concerned with what would generally be considered by reasonable people to comprise the test for a dwelling, not the bare minimum that it is actually possible to survive on. Otherwise the confusion that has occurred in this case sets in, where, if the plug-in hob is removed from the room, it turns from a flat to a room in an HMO, and back the next day. That is clearly a nonsense".

22. The Judge highlights that paragraph 7 of the Inspector's decision is clearly a critical paragraph, because the Inspector is relying on his site visit and what he was able to see of the rooms on his site visit. He was looking at suitability and that is a relevant consideration. That is not in dispute. Suitability is relevant to the question of the use of the rooms and he is making that clear in this paragraph. He then described the various rooms and concluded:

"7. When I looked round the building on my site visit, I saw the rooms were very small. Room 1 contained a sink, fridge and a hob plugged in. There was a microwave on the floor not plugged in because there was no-where for it to go. Room 2 sacrificed the small dining table to accommodate the microwave. Rooms 3, 4 and 5 had fridges, sinks, hobs, and microwaves, but very little storage space for food. Room 6 had no fridge or microwave, and the hob was on the floor not plugged in. All the rooms had small ensuites but were cramped with little or no extra storage space, the residents having to choose between clothes, personal possession, and food storage. Thus, while most of the rooms did contain the basic amenities none could, by any stretch of the imagination, be said to provide "the facilities required for day to day private domestic existence". From the evidence provided by the appellant it appears this has been the case since they purchased the property.

8. On that basis alone I would find the building had not been converted into a mixture of flats and an HMO. However, the building also contained two shared kitchens. One on the first floor did not seem to be used but contained an oven with four ring hobs with an extractor unit over, and a washing machine as well as a number of empty kitchen units. There was another kitchen in the loft, which was clearly used, probably by the occupant of the adjacent room 6 who had no cooking facilities. The kitchen contained food and washing up and

another large oven and hob as well as a fridge. There seemed nothing to stop this kitchen from being used by anyone in the building”.

23. The Judge considered that this was an important finding of fact, that the Inspector made on the basis of his site visit and in reliance on his planning judgment and his expertise. The Inspector concluded that: *In my view therefore the residents of the building did have the opportunity to share one or more basic amenities. No70 was thus clearly being used as a 6 bed HMO.”*
24. The Court found that none of the grounds of the application were arguable. The judgement states at paragraph 8 that: “ ... the Inspector did set himself the right test in para.3 in the sentence beginning “pinning down exactly which room is actually used for is an important part of the appeal.” He set out in para.4 both the Gravesham test and the definition of an HMO and he understood the distinction between them, as is clear from the rest of the decision letter. In para.7 he looks at the suitability of use and in para.8 he is looking at the actual use to which the building is being put and to which each room is being put, in accordance with the test he set himself in para.3 I do not accept that any of these grounds is made out.”
25. The *Brent* judgement confirms the important distinction in the definition of an HMO and a dwellinghouse, and also reaffirms the need to consider both the physical attributes of the individual rooms and evidence of their use. Given the similarities between the current appeal and the ‘Tadworth Road’ appeal, I have applied the same principles and definitions above, and have adopted a consistent approach in my decision.
26. With regards to “pinning down exactly what each room is actually used for”, it is notable that nowhere within either the enforcement notice or any of its written evidence have the Council explicitly made clear which of the rooms it considered were self-contained flats and which rooms they considered to be an HMO. The Officer’s Reports from three Lawful Development Certificate (LDC) applications also do not provide any clarity on this and contradict the allegation of a ‘mixed use’ of flats and an HMO. Indeed, the Officer’s Reports for all three LDC applications between 2016 to 2020, states that the subject property appears to be in use as only self-contained flats⁸. The delegated report for the enforcement notice provides no analyses as to why the Council departed from its previous conclusions that the use was as 6 self-contained flats. In cross examination, Mr Patel agreed that no such explanation has ever been provided and that none can be found in any of the documents.
27. Furthermore, when asked during the Inquiry, both Council witnesses gave inconsistent responses. Mr Wicks’ evidence refers to at least two rooms being flats⁹ but in oral evidence he said three rooms (3, 4 and 6). Mr Patel’s answer ranged from rooms 1, 4, 5 and 6 in cross examination, and when I questioned him specifically, he answered rooms 3, 4 and 6. As such, it is not clear from either the written or oral evidence which units the Council were alleging were flats and which were in HMO use, at the time of their investigations and issue of the notice.
28. During my visit, I observed that whilst the rooms varied in size and shape, overall all the rooms were modest in size, each containing an ensuite with a

⁸ Council Ref: 15/5613, refused on 07 Jun 2016; 19/3185: refused on 29 November 2019; 20/0196: refused on 17 March 2020.

⁹ Paragraph 3.10.

shower cubicle, toilet and sink, and small kitchenette area comprising a fridge, sink and worktop area with cupboards. All of the rooms appeared cramped and contained a bed, wardrobe, table and various household and personal belongings. Rooms 5 and 6 on the top floor also had a low height door, providing access to additional storage in the eaves of the roof. However, given the limited head heights in the eaves, and access was gained via a very low door, I do not consider these formed any useable habitable or circulation space, nor would they appear to be used on a day to day basis, as one would need to crawl through a small door. As such they appeared to be used in much the same way as an attic or garden shed/garage would be.

29. Rooms 1, 3, 5 and 6 all contained a microwave. There were no microwaves in room 2 and 4 (the latter occupied by Mr Villar), but room 4 contained a small hot plate. Rooms 3 and 6 both contained an additional fridge. There were no form of cooking or heating appliance in room 2. There was also a large saucepan in Room 1, which given the lack of any cooker within this very modest room could only have been used in the communal kitchen. Furthermore, none of the rooms contained any form of conventional ovens nor power supply or connections to install them, and in this respect, the "2 Bridge Road Appeal Decision"¹⁰ found that the kitchen facilities for the rooms were deficient.
30. A communal kitchen is located on the second floor which comprised a conventional cooker/oven, sink, washing machine, worktops and cupboards for food preparation and storage. I also observed two Saucepans, a frying pan and an oven tray draining next to kitchen sink. Since there were no cookers/ovens within any of the rooms, it is highly likely that these were used for cooking in the communal kitchen. There was also clear evidence of a washing machine being used in the communal kitchen, with bed linen and towels drying in the kitchen, and this was the only washing machine in no 45a. As such, whilst the communal kitchen appeared "clean" (as Mr Patel stated), it was nevertheless clearly being used by the tenants, and moreover, there appears nothing to stop this kitchen from being used by anyone in no 45a, should a tenant wish. I also have no reason to believe the layout of the property has changed since the enforcement notice was issued.
31. Furthermore, the Council's site visit photographs of no 45a in 2016 and 2019¹¹ both show clear use of the communal kitchen. The photographs from 2016, save for an unplugged microwave in room 5, show no cooking facilities in any of the rooms. The photographs also show a number of pots and pans in Room 2, and what Mr Patel accepted was a lid (from a saucepan which could not be microwaved) in Room 6. The 2019 site visit photographs which show: (1) a saucepan with a wooden spoon and baking trays draining in the communal kitchen (which contradicts Mr Patel's evidence that the kitchen was too clean and unused); (2) a saucepan draining in room 1 (where there was only a microwave in which that saucepan could not be used); nor has there been any suggestion of a plug in hot plate of any description in that room; and (3) a saucepan draining in room 6 which again could only be used in the kitchen (given that there was only microwave present in room 6).
32. As such, both my own observations and the photographs submitted by the Council demonstrates that the communal kitchen is available for use by anyone in the building and has been used for cooking and washing clothes.

¹⁰ Appeal ref: APP/T5150/C/3245508.

¹¹ Proof of Evidence, by Nigel Wicks.

Furthermore, during his oral evidence, Mr Villar, tenant of room 4 since late 2014, explained that all the occupants of 45a, including himself, regularly used the kitchen to cook. He also explained the difference between cooking, which involved washing, chopping, preparing, and then cooking (often for 2-3 hours) ingredients, as compared with heating up food (which takes a matter of minutes). His oral evidence was clear that he cooks in the kitchen, and that he keeps his food in the fridge there. He also explained that he uses his hot plate to warm up food, instead of a microwave, which he considers are un-healthy.

33. Mr Villar evidence above was corroborated by the oral evidence of Mr King, (tenant of room 5 since 2014) who also stated that he, and the other 5 residents of no 45a all cook regularly in the kitchen. He explained that Ms Hyatt, (tenant of room 1) cooks curries and that he cooks roast joints. He also remembered the name of the tenants of room 2 and had met them in the communal kitchen. He also confirmed that he never smelt any Indian food smell coming out from Ms Hayat's room.
34. Therefore, not only is there a communal kitchen available for use by anyone in the building but there is clear evidence of use, from late 2014 to the present. Indeed, the tenants were reliant on the communal kitchen, since it is not possible to roast a joint in the microwave or on a portable stove, and cooking a stew (like Mr Villar) or Indian food (like Ms Hyatt) requires space to chop and prepare food and also creates steam/smell. Therefore, given the modest size of the rooms, together with the limited space and lack of conventional ovens/cookers to wash, chop, prepare and cook food, together with the availability of the communal kitchen within no 45a, I consider it highly unlikely that the tenants would choose to cook all of their meals in their respective rooms.
35. Thus, tenants of all the rooms rely on the communal kitchen on the second floor to provide some of the facilities they require for day-to-day domestic existence that are not available in the rooms and cannot be provided due to their modest size. Therefore, in accordance with section 254 of the Housing Act 2004, the tenants of the building did have the opportunity to share one or more basic amenities, that being cooking facilities.
36. In addition, the rent is the same across all of the rooms in no 45A, regardless of their size, as are the terms of the tenancy agreements, which Mr Patel accepted in cross examination. The terms of those agreements have not changed over the years. Both Mr King and Mr Villar referred to their initial tenancy agreement as governing their occupation.
37. As such, having carefully considered all of the evidence before me put forward by both parties, I conclude, on the balance of probabilities, as a matter of fact and degree, the premises comprise an HMO.
38. For the above reasons, I have concluded that the use of the premises has not changed to a mixed use of HMO and flats, as alleged in the notice as corrected. The breach of planning control has not occurred, and the appeal succeeds on ground (b).
39. Under section 176(1)(a) of the 1990 Act, I have the power to correct, vary or amend the notice provided I am satisfied that there is no injustice caused to either party. However, in this case a correction to the allegation to 'an HMO' may change how the parties would have presented their cases and give rise to

other grounds of appeal. For example, Counsel for the appellant highlighted that this may have included appeals under ground (c), with regards to permitted development rights to change of use to an HMO and/or an appeal under ground (a) (with reference to permitted development rights as a fall back option). However, Counsel for the appellant states they have not done so because the allegation in the notice is of a 'mixed use' of flats and HMO which does not benefit from permitted development rights. In this regard, correcting the notice would prejudice the appellant. This is consistent with the approach in a number of other appeal decisions¹², where it has been found that the use is an HMO and not a mixed use, including that upheld by the High Court in the *Brent* judgement.

40. The Council have referred to two appeal decisions¹³ where the Inspector corrected the notice to allege the use as an HMO. In both of those appeals the appeals had also been pleaded on both grounds (a) and (c). Thus, there was no prejudice as the arguments could still be presented under grounds (a) and (c), but this would not be the case in the current appeal.
41. The Council also refer to the *Hammersmith* judgement¹⁴ in support of their case that the notice can be corrected without causing injustice. However, as the Council acknowledge, there is a material difference between a dwellinghouse, HMO and flats. The issue with the notice is not that it mislabels the use, but that it seeks to target a use materially different use than that alleged. Had the Council identified the correct HMO use, its reasons for taking enforcement action (if it had done so) would have also been different, and the grounds of appeal would in part for that reason be different too.
42. In these circumstances and having regard to my conclusions on appeal (b), I shall not seek to correct the notice, as there would be prejudice to the appellant. Rather, I shall quash it.
43. As a result of the success of the appeal on ground (b), the enforcement notice has been quashed. Grounds (d), (f) and (g) no longer fall to be considered. I have taken into account all the other matters raised, including a representation from a third party, but these do not alter my conclusion.

Appeal B

44. The main issue on appeal B is whether the Council's refusal to issue a certificate is well founded. In this case, the main issue is 'Whether the appellant has proven on the balance of probability that the use of the property changed to 6 self-contained flats (Use Class C3) on or before 4 August 2015 (that being 4 years prior to the date of the LDC application) and that the use then continued without significant interruption for 4 years after the date of the change'. The onus is on the appellant to demonstrate this.
45. Counsel for the appellant made clear during his opening statement that this argument is only made in the alternative and in circumstances where his primary argument, under appeal A is rejected. However, as outlined above Appeal A succeeds under ground (b), and I have found that the evidence does

¹² Appeal refs: APP/T5150/C/20/3245509, (3 Bridge Mews); APP/T5150/C/20/3245508 (2 Bridge Road); Appeal Decision APP/T5150/C/20/3245511 (4 Bridge Mews); and APP/T5150/C/20/3245517 (84 Ilex Road).

¹³ Appeal ref: APP/T5150/C/20/3245606 (5 Tatam Road) and Appeal Ref: APP/T5150/C/20/3247662 (18 Greenwood Terrace)

¹⁴ *Hammersmith LBC v SoSE* [1975] 30 P&CR 19.

not support the appellant's alternative argument for 6 self-contained flats (Use Class C3).

46. In relation to appeal B, I conclude that the appellant has failed to prove on the balance of probability that the use of the property changed to 6 self-contained flats (Use Class C3) on or before 4 August 2015, such that the refusal of the LDC was well-founded. In these circumstances, I need not consider whether the use then continued for at least 4 years after the date of the change.

47. On this basis, Appeal B must fail.

Conclusion for Appeal A

48. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (d), (f), and (g) do not fall to be considered.

Conclusion for Appeal B

49. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "use of property as 6 self-contained flats (Class C3)" was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Satheesan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Charles Streeten of Counsel instructed by Shulem Posen on behalf of Eade Planning Ltd.

He called

Martin King

Mario Rey Villar

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks, BTP, Dip Law, MRTPI, Director of Enforcement Services Ltd, instructed by the London Borough of Brent Council

He called

Kushal Patel, BA (Hons), MSc, Planning Enforcement Officer for the London Borough of Brent Council

Nigel Wicks

INTERESTED PERSONS:

Sam Lam

Neighbouring resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Appellant's opening submissions.
2. High Court Bundle, containing the <i>Brent</i> judgement.
3. Brent Appeal Decisions - provide by the appellant ¹⁵ .
4. Delegated Report for the Enforcement Notice.
5. Delegated Report 15/5613
6. Delegated Report 19/3185
7. Delegated Report 20/0196
8. Email from J Stern dated 6 April 2021.
9. London Fire Brigade Audit 1 8 18 – provided by the Council.
10. Further appeal Decisions – provided by the Council ¹⁶ .
11. Appeal Ref: APP/T5150/C/17/3182429, 5 The Circle London NW2 7QR.
12. First and Second floor Plan, drawing no PG45.01.
13. Costs application on behalf of the London Borough of Brent.
14. Council's closing submissions.
15. Appellant's closing submissions.

¹⁵ APP/T5150/C/20/3245612; APP/T5150/C/20/3245509; APP/T5150/C/20/3245508; APP/T5150/C/20/3245511; APP/T5150/C/20/3245517; APP/T5150/C/20/3247662; APP/T5150/C/12/2173635; APP/T5150/C/18/3206971; APP/T5150/C/20/3245153; APP/T5150/C/20/3245606 & APP/T5150/C/20/3250446.

¹⁶ APP/W2465/W/20/3259525; APP/F5540/A/14/2228951; APP/T5150/C/20/3244766.