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## Appeal Decision

Site visit made on 20 October 2021

**by Roy Merrett Bsc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 November 2021**

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**Appeal Ref: APP/T5150/C/20/3248154**

**Flats 1 - 5, 238 North Circular Road, Stonebridge, London NW10 0JU**

- 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 Abraham Low, Melview Ltd, against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice was issued on 23 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 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, en-suite bathrooms/shower rooms and toilets; 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 a kitchen, dining room and lounge on the ground floor, bedrooms on the upper floors, a bathroom on the first floor, and a WC on the ground floor.
  - The period for compliance with the requirements is 6 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.
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### Decision

1. The appeal is allowed and the enforcement notice is quashed.

### The appeal on ground (b)

2. The ground of appeal is that the matter alleged in the notice has not occurred as a matter of fact. Essentially the appellant argues that the property is in use as an HMO with five rooms and not in the alleged use as an HMO and flats. The burden of proof rests with the appellant to make their case and the standard of proof is the balance of probability.
3. Section 254 of the Housing Act 2004 sets out the criteria to be met if a building or a part of a building is an HMO. The criteria include that it must consist of one or more units of living accommodation not consisting of a self-contained flat or flats and that two or more of the households who occupy the living accommodation share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities. "Basic amenities" is defined as a toilet, personal washing facilities or cooking facilities.

4. By contrast the case of *Gravesham* established that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence<sup>1</sup>. A self-contained flat is normally a dwellinghouse for the purposes of the Act.
5. The appellant has referred me to a High Court judgement which considered the approach taken by an Inspector who was considering a similar alleged breach to that which has been alleged in this case<sup>2</sup>. The judgement, which found that none of the grounds of challenge against the Inspector's decision were arguable, emphasised and endorsed key aspects of the Inspector's approach.
6. These were that "pinning down exactly what each room is actually used for is an important part of the appeal..."; the fact that a unit may possess basic amenities does not necessarily mean that it meets the *Gravesham* test of being able to afford the facilities for day-to-day private domestic existence; suitability is relevant to the question of the use of the rooms; there seemed nothing to stop one of the shared kitchens from being used by anyone in the building; the mixed use as alleged was not taking place. I have had regard to that judgement in my consideration of and approach to this appeal.
7. It is apparent from the Council's evidence that officers visited the property on 9 January 2020. The site visit note refers to three of the five tenant rooms being accessed, two of which had some cooking facilities with the position being unclear in the third. Photographs of what appears to be the interior of one of the tenant rooms and a small communal kitchen area are provided. The Council does not clearly identify which parts of the premises it considers to be flats and which parts the HMO. It did not pin down exactly what each room is actually used for.
8. The accommodation subject to the notice is set out on the first and second floors of the property. From my visit it was evident that this comprised of five rooms for occupation by tenants and a very small, shared kitchen on the first floor. I saw that each tenant had access within their respective rooms to en-suite washing facilities. However notwithstanding the presence of fridges and small sinks, the rooms did not contain cooking facilities.
9. Furthermore it seemed to me that because of the limited size of the rooms and the resultant competition for space within them between furnishings, items requiring storage and the need to move around in and use the space with a reasonable degree of comfort, the rooms did not lend themselves to the provision of cooking facilities. The fact that one of the photographs supplied by the Council appears to show small portable cooking facilities positioned for use on the floor only supports this view.
10. The Council says that two of the tenants it spoke to during its site visit said they cook in their own room only. However, even if it is accepted that portable plug-in cooking facilities might be utilised by some tenants within their respective rooms, these would not tend to offer the flexibility and scope of food preparation that would be possible from a conventional oven, which would further weigh against the consideration that the rooms were equipped with necessary day to day facilities.

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<sup>1</sup> *Gravesham BC v SSE & O'Brien* [1983]

<sup>2</sup> *Brent LBC v Secretary of State and Reiner* [2020] EWHC 3620 (Admin)

11. In this context, because they would be too cramped, I find that none of the tenant rooms would meet the *Gravesham* test of affording the facilities for day-to-day private domestic existence, also that they are not suitable for such use.
12. I found the shared kitchen to be very small with limited preparation space, such that it might be very difficult or uncomfortable for more than one person to use this area at the same time. Notwithstanding this, a conventional oven and hob facility were available for use and it seemed to me that there was nothing to stop the shared kitchen from being used by anyone in the building. The residents of the building therefore at least have the opportunity to share the basic amenity of cooking facilities, even though they might not be able to use those facilities simultaneously. The kitchen is therefore suitable for shared use. This is something that the Council would appear to accept, in principle, given the nature of the alleged breach.
13. I have had regard to the various appeal decisions provided by the Council. However it is important to consider each case on its individual merits and I consider the specific observations from the site visit to be particularly relevant in a case of this type. The cases referred to, where self-contained flats or a mixed use of flats and HMO were found to be present, do not therefore bear on the outcome of this case. Furthermore the fact that planning permission was previously granted in 2005 for development at the appeal site, and neighbouring property, which included two one-bedroom flats does not bear on the ground (b) appeal in this case.
14. I have also considered the point that some of the tenancy agreements associated with the property do not prohibit cooking in rooms, whereas some do contain a prohibitive clause. However I do not consider this evidence to be incompatible with the analysis that I have made above, because the documents are not directly related to the *Gravesham* test and as such are not determinative of the suitability of use or actual use of the building. Furthermore, that the accommodation where cooking is prohibited is described as flats on the respective agreements, seems to me to indicate that the term 'flat' is loosely defined in this context.
15. Drawing the above considerations together I am not persuaded that the Council's evidence is strong enough to contradict the conclusion that, as a matter of fact and degree, the premises should, on the balance of probability, be regarded as an HMO and not as an HMO and flats.

## **Conclusion**

16. For the reasons given I conclude the use as alleged has not taken place and that the appeal should therefore succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under grounds (d), (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

*Roy Merrett*

INSPECTOR