



Appeal Decision

Site visit made on 15 March 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Ref: APP/T5150/C/20/3247855
27 Pembroke Road, WEMBLEY, HA9 7PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Sentinel Estates Limited against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/19/0202, 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 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, 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), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

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

Ground (b)

2. An appeal on this ground is on the basis that the matters stated in the notice to be a breach of planning control have not occurred. The allegation on the notice is for the material change of use to a house in multiple occupation (HMO) and flats.
3. In order to succeed on this ground, it is for the appellant to prove, and on a balance of probability, that the property was not being used as an HMO and flats on the date that the notice was served i.e. not in a mixed use.
4. The definition of an HMO is found in section 254(2)(f) of the Housing Act 2004 and requires that for a property to be an HMO it must contain 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 or cooking facilities.

5. Conversely, a self-contained dwelling in the Gravesham¹ sense must afford to those who use them the facilities required for day-to-day private domestic existence. The basic amenities listed in the Housing Act above are not necessarily the facilities required for day-to-day private existence pursuant to Gravesham, although there can be an overlap. Whether a building is or is not a dwelling-house is a question of fact.
6. The appellant's case is that the whole of the property was in use as a HMO for 6 people (use class C4) on the date of the notice (23 January 2020), and that the allegation is factually incorrect as there are not any flats in the property. The appellant states that the 6 rooms did not contain cooking facilities (although they did contain a sink unit with fridge, worktop and cupboards), and that the occupiers had to use the communal kitchen with oven and washing machine. It is accepted that each of the rooms had its own en-suite toilet, sink and shower.
7. The Council's case is that two out of six numbered rooms were used as self-contained flats and that this was seen by a council officer during a site inspection on 9 January 2020 when one room contained a microwave and another contained a microwave and plugged-in hob. The Council say that these were evidently being used to prepare food within the room. The Council also rely on housing benefit application forms from 2016 and 2017, which would have been completed by the tenants which state that Flats 1 and 2 had sole access to 1 kitchen, 1 bathroom and 1 toilet (and were therefore self-contained), whereas in contrast Room 4 is shown as sharing a kitchen.
8. The appellant has submitted a survey report dated 23 January 2020, the intention of which was to confirm the layout of the rooms and communal facilities. The report states that the site inspection was undertaken on Wednesday 21 January 2020, although the Wednesday that week was in fact 22 January 2020, and the front elevational photograph is recorded as having been taken on 22 January. The survey and the photographs attached record that during the visit there were no cooking facilities in any of the rooms other than the communal kitchen. The photograph of the communal kitchen includes a washing machine and oven as well as 2 microwaves, sink and cupboard space. The photographs included in this survey report and as submitted by the Council taken on 9 January 2020 record only a snapshot in time, and the main difference between them is that the microwaves and hotplate from the two bedrooms were not present in the photographs attached to the survey.
9. It appears from the evidence submitted by the Council, that some cooking was taking place in two of the rooms at around the time of the visit on 9 January 2020. However, I am not satisfied that a microwave oven alone, or even in conjunction with a hotplate, would afford all of the facilities within those rooms required for day-to-day domestic existence. The rooms were very small and did not have sufficient space or furniture other than a bed and some storage, and there was not room for a table, chairs or sofa. A microwave alone allows for only very basic cooking, and the storage, sink and counter space provided in each room was also extremely limited, and not of a standard ordinarily afforded in a dwelling. The communal kitchen, whilst small and without windows or space for a dining table and chairs, did have a conventional oven

¹ Gravesham Borough Council v Secretary of State for the Environment and Another [1984] 47 P. & C.R. 142.

- with hob, washing machine, plenty of cupboard space and work surface area and a large kitchen sink with area to dry dishes.
10. I have been provided with many other appeal decisions that deal with similar types of issues by both parties. However, these simply underline the fact that each case is dependent on its specific facts.
 11. I find, that on the facts contained within the evidence before me and my observations during the site visit, that the allegation on the notice is incorrect. I have taken into account the facilities in each room but also how the rooms were being used. I do not find that the rooms numbered 1 and 2 were separate planning units distinct from any other part of the building that met the Gravesham requirements and contained all of the normal facilities associated with use as a dwellinghouse.
 12. Whilst I have taken into account the information included on the housing benefit application forms, the presence of microwaves and a hotplate in two of the rooms, the 6 doorbells and electricity metres, I do not find that this is sufficient factually to undermine the appellant's case that the house is being used as an HMO.
 13. The allegations describes a mixed use of the property as an HMO and flats and I cannot correct it without causing an injustice to both parties. I have been provided with insufficient evidence regarding the previous use and cannot therefore determine whether there has been a material change of use, and the parties would no doubt wish to make different arguments of grounds of an appeal if the allegation were to allege sole HMO use.
 14. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b).

Zoë Franks

INSPECTOR