



Appeal Decisions

Site visit made on 29 March 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2022

Appeal A Ref: APP/T5150/C/20/3245607

Flats 1-6, 66 Gresham Road, London NW10 9BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by LEHATZLIACH LIMITED against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 18 December 2019.
- 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 to:
 - STEP 1 Cease the use of the premises as flats and/or a House in Multiple Occupation (HMO), and its occupation by more than ONE Household.
 - STEP 2 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 3 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 ground set out in section 174(2)(a), (b), (c), (f) and (g) 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.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/T5150/C/20/3250442

Flats 1-6, 66 Gresham Road, London NW10 9BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by LEHATZLIACH LIMITED against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 9 March 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a rear dormer and single storey rear extension to the rear of the premises.
- The requirements of the notice are to:
 - STEP 1 Demolish the single storey rear extension and remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
 - STEP 2 Demolish the rear dormer and remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (c) and (g) 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.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. The property at 66 Gresham Road is subject of two enforcement notices. Appeal A relates to an enforcement notice alleging the change of use of the building to a use as flats and/or an HMO. Appeal B relates to an enforcement notice alleging operational development comprising extensions to the property. Whilst they are subject of separate enforcement notices, the two developments are on the same property. Consequently, I will deal with both in this decision.
2. The appeal form relating to appeal A states that the appeals were submitted on behalf of an individual. However, I understand that the intention was to appeal on behalf of the appellant company. This has been subject to correspondence early in the process and the appeal was accepted due to the inadequacy of the appeal form and that the error was identified and amended quickly. I see no reason to disagree with that decision and will proceed with the appeal on that basis.
3. I note that the appellant suggests that the operational development breach comprising extensions under appeal B is not a stand-alone breach and is closely related to the change of use breach subject of appeal A. The Council suggest that the extensions subject of appeal B were built for the purpose of creating the additional units of accommodation subject of the change of use under appeal A. Although the appellant refers to this under ground (c) of appeal B, I consider it should fall to be considered under ground (b), i.e. that the matters described in the notice have not occurred. Given that the arguments of the parties are similar I consider that neither party would be disadvantaged if I were to consider them under ground (b) of appeal B.
4. The burden of proof on grounds (b) and (c) are on the appellant, with the relevant test of the evidence being on the balance of probability.
5. A substantial number of appeal decisions and court judgements have been drawn to my attention. I have taken these into account insofar as they are relevant to my decision.

Appeal A on Ground (b)

6. The enforcement notice alleges that 66 Gresham Road is in use as a House in Multiple Occupation (HMO) and flats and was occupied by more than one Household. That suggests the Council consider the building to be in a mixed use.
7. The appellant alleges that the property is an HMO and does not contain flats. As the property accommodates six residents, an HMO use would fall within class C4 of the Town and Country Planning (Use Classes) Order 1987 (UCO). Class C4 of the UCO states that HMO has the same meaning as that used at section 254 of the Housing Act 2004, except where it relates to a converted block of flats to which section 257 of that Act applies. Section 254 of the Housing Act 2004 refers to a number of different tests for HMOs, including the converted building test at section 254(4).

8. Each unit comprises a bedroom and small shower room. The bedrooms contain kitchen areas, providing a fridge and sink. They also mostly contain microwaves, kettles and toasters, albeit these may be provided by tenants rather than the landlord. As a result, they provide the basic needs for the occupiers, but lack the full facilities normally required in a kitchen, principally an oven and hob. They also have access to two kitchens in the building providing cooking facilities, including sinks, ovens and hobs. The ground floor kitchen is accessible to all residents and also includes a washing machine.
9. The kitchen on the top floor is for use by the unit on that floor. The kitchen is accessed from the landing such that there are no barriers to access by other residents. This also means that the occupier has to leave their unit in order to access the kitchen. As a result, it does not function as a flat.
10. I understand the residents are supposed to use the kitchens for cooking rather than their rooms. Three Statutory Declarations have been submitted by tenants that confirm they use the kitchens for cooking rather than the facilities in their rooms.
11. Given the layout of the accommodation and the facilities provided, all the units contain basic facilities to provide for most needs of residents. However, residents rely on the two kitchens to provide adequate cooking facilities. As a result and on balance, I consider the units are not self-contained.
12. In terms of the requirements of section 254 of the Housing Act 2004, the converted building test relates to a building where one or more units of such accommodation have been created since the building was constructed. It requires that the building contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats). This indicates that a converted building cannot fall within a mixed use of HMO and flats, as suggested by the enforcement notice. In this case, it means that even if a unit, such as the room and kitchen on the top floor, were considered a flat, that would not affect whether or not the building as a whole is in HMO use.
13. The other requirements of the converted building test are that it is converted, it is not occupied by a single household, forms the only or main residence for occupiers, is the only use of the accommodation and rents are payable in respect of at least one of those persons' occupying the accommodation. The building complies with all those requirements. As a result, this indicates that the building falls within the definition of an HMO for the purposes of section 254 of the Housing Act 2004.
14. I understand that the property has been registered as six flats with the valuation office and the units have been assessed as flats by an accredited energy performance assessor. Residents have been in receipt of housing benefit as occupying flats rather than in a shared house and tenancy agreements refer to flats. The building has also been licenced as an HMO. However, these matters do not alter my conclusion based on the manner in which the building is used.
15. The provisions of section 176(1) of the Town and Country Planning Act 1990 (the Act) give Inspectors wide ranging powers to correct or vary enforcement notices in order to get them "in order", provided that such alterations would not result in injustice to any party. Use as an HMO would differ significantly from the mixed use alleged in the notice.

16. The Council's case on the appeals under grounds (a) and (c) are both based on the building being in mixed use. Policies relating to an HMO use are different from policies relating to a mixed use including flats, such that the Council would be likely to make out a different case if it were to oppose such a use. On that basis, I consider that injustice would be caused to the Council were I to amend the notice. I note that the Council could issue another notice were they to consider a breach of planning control had occurred.

17. For these reasons, I conclude that the appeal under ground (b) should succeed and I will quash the notice subject of appeal A on that basis.

Appeal B on Ground (b)

18. As set out in my preliminary matters, the parties indicate that they consider the extensions and change of use comprise a single breach taking place at the same time. This indicates that the extension took place in order to facilitate the change of use. I see no reason to disagree. However, the breach of planning control on appeal B relates only to the erection of the rear dormer and a single storey rear extension, but not the change of use. Given the links between that operational development and the change of use, I consider that the breach of planning control that is described on the enforcement notice subject of appeal B did not occur. It would be possible for the Council to issue a single enforcement notice were they to consider such a breach of planning control had occurred.

19. For these reasons, I conclude that the appeal under ground (b) should succeed and I will quash the notice subject of appeal B on that basis.

Formal Decision

Appeal A

20. For the reasons given above I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

Appeal B

21. For the reasons given above I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

Both appeals

22. In these circumstances, appeals A and B under grounds (a), (c), (f) and (g), as set out in section 174(2) of the 1990 Act as amended, and the applications for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not fall to be considered.

AJ Steen

INSPECTOR