



Appeal Decision

Site visit made on 11 July 2022

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2022

Appeal Ref: APP/T5150/C/20/3245152

824 North Circular Road, London NW2 7TD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A S Chaim Singer against an enforcement notice issued by London Borough of Brent.
 - The notice was issued on 11 December 2019.
 - The breach of planning control as alleged in the notice is the material change of use to a House in Multiple Occupation (HMO) and flats.
 - The requirements of the notice are 1. Cease the use of the premises as flats and/or a House in Multiple Occupation, and its occupation by more than one household; 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; and 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 floor, 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), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

Procedural matter

2. An application for an award of costs has been made by the Council against the Appellant and by the Appellant against the Council. These applications are the subject of a separate decision.

Reasons

3. A Planning Contravention Notice (PCN) was issued on 22 May 2019 alleging 'the change of use of the premises into 6 flats'. The Owner of the premises responded to the PCN on 30 June 2019 and answered 'August- September 2014' to the question 'State when the internal works took place to convert the premises into flats first took place', 'October 2014' to the question 'State when each of these flats were first occupied', and '4 November 2014 – 10 February 2015' to the question 'State when each of these flats were first occupied'.
4. An Officer of the Council then visited the premises on 26 November 2019 and "...found 5 doors numbered 1-5". The Officer "...inspected the accommodation behind 3 of those doors and found each comprised a unit of accommodation with bathroom, toilet, and sleeping facilities. 2 of the units contained cooking facilities

and 1 did not. Another door gave access to a communal kitchen and an en suite bathroom and there was a communal washing machine in the hallway. Access could not be secured to the other two units”.

5. Evidence indicates that the premises, after conversion to six flats, has only ever accommodated five persons; there is no Flat 4. The communal kitchen observed by the Council Officer, rather incongruously, has an en suite shower room off it similar in arrangement to the en suites off the other five rooms. This was probably intended to be Flat 4 but was never used as such probably because it is even smaller than any of the other five rooms.

6. On the basis of what was observed by the Council Officer on 26 November 2019, and despite the answers to the questions in the PCN, the enforcement notice was issued about two weeks later alleging the ‘change of use to a House in Multiple Occupation (HMO) and flats’. The appeal site visit was carried out more than two and a half years after the date of issue of the enforcement notice. What was observed at the visit is not therefore relevant to consideration of the use of the appeal property on the date of issue of the notice.

7. It is surprising that the Council concluded that the premises were in use as an HMO and flats when access was only secured to three of the five rooms. If access had been secured to the other two rooms and these had been found to be self-contained flats it is unlikely that they would have reached the same conclusion. Indeed, if four of the five rooms had, at that time, cooking facilities and were thus classified as self-contained flats the other room would not have been an HMO, because, by definition, one room cannot be an HMO.

8. The Council must have assumed that the two rooms that were not observed did not have cooking facilities and that the three rooms that were not, based on that assumption, self-contained flats must have been an HMO. It is likely that the presence of a communal kitchen in the property will have contributed to this conclusion. It is also worth considering, at this point, what the Council’s conclusion would have been if the three rooms that were observed at the site visit had all been self contained flats with cooking facilities. Would they have then assumed that the two unobserved rooms were also self contained flats and that the appeal premises had been converted from a single dwelling to flats ?

9. The Council’s investigations were inadequate and the breach of planning control alleged in the enforcement notice is based on assumptions. The Council maintains that the allegation “...is an appropriate description, this is no more than a label” because “There appears to be some fluidity in the use of various parts of the appeal premises, with some occupiers sharing cooking facilities and others living within self contained units”. But if the two units not observed were, on the date of issue of the enforcement notice, self contained with cooking facilities then the occupant of the one observed unit without cooking facilities would have had sole use of the communal kitchen.

10. The Council cannot have provided a plan of the premises to indicate which units were self contained and which units were part of an HMO because they did not inspect the whole property and did not record, of the rooms that were observed, which rooms were self contained and which was not. The allegation is vague and imprecise and, with regard to the case of *Miller Mead v MHLG* [1963] 1 A11 ER 45, the Appellant cannot know what he has done wrong. The allegation cannot be corrected with certainty because there is insufficient information about what was occurring at the appeal premises on the date of issue of the enforcement

notice. In these circumstances correcting the allegation would certainly cause injustice to the Appellant and would probably cause injustice to the Council.

11. Accepting an allegation as a 'label' has an effect, if legal grounds of appeal are unsuccessful, on consideration of a ground (a) appeal if it has been made, as it has in this case, and it must be assumed that such an appeal could be successful. Planning permission can only be granted for what is alleged in the notice or for what is a corrected allegation. Planning permission, in this regard, cannot be granted for a development that has a vague and imprecise description.

12. The alleged breach of planning control in the enforcement notice is based on assumptions, is vague and imprecise, and cannot be corrected without causing injustice. The notice is therefore invalid and has been quashed.

John Braithwaite

Inspector