



Appeal Decision

Site visit made on 1 November 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2022

Appeal Ref: APP/T5150/C/20/3249031

Flats 1-6, 642 North Circular Road, Neasden, London NW2 7QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Richard Lewis, Magnum Lettings Ltd against an enforcement notice issued by the Council of the London Borough of Brent (the LPA).
 - The enforcement notice was issued on 18 February 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:
 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.
 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.
 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 grounds set out in section 174(2)(a),(b),(d), (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.
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Decision

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

The Notice

2. S173(1)(a) of the Act sets out that an enforcement notice shall state the matters which appear to the local planning authority to constitute a breach of planning control. S173(2) states that a notice complies with S173(1)(a) if it enables any person on whom a copy of it is served to know what those matters are. If an enforcement notice does not comply with S173(1)(a) of the Act, it is null and it cannot be saved by the powers of correction available under S176(1).
3. In *Miller-Mead*¹ it was held that the test is whether the notice tells the recipient fairly what they have done wrong. It must inform the recipient with, "reasonable certainty" what the breach of planning control is.

¹ *Miller-Mead v MHLG* [1963] 2 WLR 225

4. The appellant argues that the recipient should be clear from the notice which rooms within the premises are alleged to be flats and which are rooms in HMO use. Thus, it is said that the failure of the LPA to state within the notice the number of flats and the number of rooms in the HMO means the recipient is unsure as to what it is that they are alleged to have done wrong. Moreover, the appellant says, even if that were not the case, the flats would be separate planning units and would not therefore form part of a mixed use of a single planning unit.
5. The notice alleges a material change of use of the premises to an HMO and flats. The Land to which the notice relates is the entirety of the property as edged red on the attached plan. It can be thus inferred that the allegation is a mixed use, that being more than one primary use within a single planning unit. Whilst flats within a building can often be separate planning units, it is possible for part of the premises to be used as a dwellinghouse and the overall premises to be in mixed use.
6. The allegation refers to flats in the plural. Thus, it can be inferred that it appeared to the LPA that the breach comprised at least two flats. In the *Brent*² judgement referred to by both parties, the High Court endorsed the approach of the Inspector in the ground (b) appeal. In that case, the allegation referred to the material change of use to two flats and an HMO. The Inspector corrected that the notice to refer to three flats and an HMO. The Inspector did so on the basis that the correction from two to three flats did not materially alter the alleged material change of use of the premises from a mix of flats and an HMO. As he pointed out, pinning down what each room within the premises was being used for was an important part of the appeal. Moreover, uses within a mixed use can fluctuate without necessarily giving rise to a further material change of use.
7. Whilst it would have been clearer for the notice to have specified the number of flats and rooms within the HMO, I am satisfied that the recipient of the notice would have been able to fairly understand with reasonable certainty what it is the LPA alleged had took place. As a result, I consider the notice meets the requirements S173(1)(a) and is not a nullity.

The appeal on ground (b)

8. In an appeal on ground (b) it is necessary for the appellants to demonstrate that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, those matters have not occurred.
9. The appellant's case is that there is no distinction in terms of the use of the individual rooms and thus either the premises are entirely in use as an HMO or entirely in use as flats and therefore no mixed use has taken place.
10. A self-contained flat normally comprises a dwellinghouse for the purposes of the Act. The Act does not define what constitutes a dwellinghouse. Nonetheless, it was accepted in *Gravesham*³ that the distinctive characteristic of a dwellinghouse was its ability to afford those who used it the facilities required for day-to-day private domestic existence.

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

³ *Gravesham BC v SSE & O'Brien* [1983]

11. In contrast, S254 of the Housing Act 2004 sets out that an HMO contains 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 defined as a toilet, personal washing facilities or cooking facilities.
12. Nevertheless, even if a unit of accommodation has those basic amenities and does not share one or more of those basic amenities with other households, it is not automatically a dwellinghouse for the purposes of the *Gravesham* test. One must still consider whether the amenities it provides afford the occupiers the facilities required for day-to-day private domestic existence. This is the approach endorsed in *Brent*.
13. The property comprises six rooms with a separate kitchen. The kitchen provides a single oven, a four ring hob with extractor, washing machine, sink with draining board and several kitchen cabinets. The room on the first floor marked as unit 6 on the appellant's submitted floor plan was vacant at the time of my site visit and used for storage. The appellant indicates that no use of this unit has taken place since concerns were raised by the Council's HMO Licensing department. Each of the 5 units of occupation contained a toilet and personal washing facilities. I understand that to have been the case at the time the notice was issued.
14. The LPA states that some of the units have contained all the facilities required for day to day domestic existence, including cooking facilities, and were used as self-contained dwellings, whilst others relied on the communal kitchen. When the LPA visited the property on 26 November 2019, it says that it was only able to obtain access to 1 of the units which it found to contain no cooking facilities. Thus, it concludes that at least 1 of the units reliant on the communal cooking facilities within the kitchen. The communal kitchen was clearly present at the time of the LPA's visit and was clearly in use judging by the food waste present on the photographs. There is little else from the LPA which evidences the cooking facilities contained within the units at the time of their visit and thus the LPA has not pinned down exactly what each room was used for.
15. The LPA suggests there has been fluidity in the use of the units and raises the issue of 'micro flats'. It is suggested that such flats blur the lines between HMOs and flats. The LPA's arguments are based on the proposition that the units would become self-contained if they used a microwave or plug-in hob. The appellant accepts that each room was provided with a mini-oven. Essentially, a plug in cooker of similar size and design as a microwave.
16. At the time of my site visit, I saw that each unit was accessed via a lockable door and each had a separate shower room with a toilet and sink. In addition, each unit was freely able to access the shared kitchen on the ground floor. However, whilst there were sinks and fridges, none of the units contained any cooking facilities. Moreover, given the limited size of the rooms, and the requirement to accommodate sleeping and storage needs, there would be limited scope to provide sufficient cooking facilities within the rooms.
17. However, even if the rooms were to have contained the plug-in cookers suggested by the appellant, it seems to me that they would not offer occupants the required scope and flexibility for cooking that is offered by the conventional oven and facilities provide in the shared kitchen. The limitations of plug-in

cooker, or indeed microwave, may be acceptable for occasional use, but it is too small and limited to sufficiently provide for normal, everyday residential use. In essence, they would only provide the bare minimum on which occupants could survive rather than acceptable facilities for everyday living.

18. Moreover, even if provided with the plug-in ovens, occupants have still had the option of using the shared kitchen to provide for the necessary facilities for cooking. The availability of this shared facility has been essential to meet the everyday needs of the occupants.
19. As a result, due to the lack of conventional cooking facilities and the lack of space for them to provided, I consider the rooms were not capable of providing the facilities required for day-to-date private domestic existence at the date. Thus, at the date the notice was issued, there was no use of the premises as flats.
20. The LPA points out that the appellant responded to a Planning Contravention Notice issued by the LPA on 24 January 2020 and described the use as 5 self-contained flats. The LPA also draws my attention to a tenancy agreement from June 2017 in which the unit is referred to as Flat 4 and housing benefit correspondence from May 2018 referring to a unit as Flat 2. However, regardless of the reference to flats in such correspondence, the evidence leads me to conclude that none of the units were capable of being a dwellinghouse for the purposes of the *Gravesham* test at the date the notice was issued. Even if they were, then it seems from the evidence that all of the units would have been considered as flats. The mixed use alleged would not thus have taken place in any event.
21. As a consequence, I am led to conclude that at the date the notice was issued, the premises was not in a mixed use of HMO and flats as alleged in the notice. The alleged breach of planning control has not therefore occurred.
22. The appeal on ground (b) succeeds.

Conclusion

23. 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 (c), (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.

J Whitfield

INSPECTOR