



Appeal Decisions

Site visit made on 8 November 2022

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2023

Appeal A: APP/T5150/C/20/3245073

50A-F Village Way, London, NW10 0LL

- Appeal A is made by NDB Holdings Ltd under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: E/19/0838) issued by the Council of the London Borough of Brent on 18 December 2019.
- Two breaches of planning control are alleged in the notice: without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats AND without planning permission, the erection of a single storey rear extension to the premises.
- The requirements of the notice are to:
 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. Demolish the unauthorised rear extension and remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised use and development from the premises.
 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 of the notice is six (6) months.
- Appeal A is proceeding on the grounds set out under section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990. 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 Town and Country Planning Act 1990.

Summary of Decision: Appeal A is allowed, and the enforcement notice is corrected and quashed as set out in the Formal Decision.

Appeal B: APP/T5150/X/20/3256854

50 Village Way, London, NW10 0LL

- Appeal B is made by NDB Holdings Limited under section 195 of Town and Country Planning Act 1990 against the decision of the Council of the London Borough of Brent to refuse an application for a certificate of lawful use or development (LDC).
- The application (ref: 20/1312) was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990, dated 30 April 2020 and refused by notice dated 1 July 2020.
- The existing use and development for which an LDC is sought are described on the LDC application form as: 'single storey rear extension and C4 HMO'.

Summary of Decision: Appeal B is allowed, and a certificate of lawful use is issued in the terms set out in the Formal Decision.

PRELIMINARY MATTERS

Applications for Costs

1. The appellant has applied for a full award of costs against the Council in respect of Appeal B. The Council has applied for a partial award of costs against the appellant in respect of both appeals. The costs applications are subject to a separate decision letter.

The Appeals Site and Building

2. The enforcement notice subject to Appeal A and the Lawful Development Certificate (LDC) application subject to Appeal B relate to the same site. It includes a two-storey terraced building with accommodation in the loft, plus a single storey rear extension.
3. Internally, the building includes six 'bedsits' that are rented out to individual occupiers. I shall refer to them as bedsits because each contains two rooms, one being habitable and the other being a WC/shower room. Also, the term 'bedsit' can denote a studio flat or room in a shared house, and so it is not prejudicial to my reasoning below.
4. Bedsits 1-3 are on the ground floor of the building, Bedsits 4 and 5 are on the first floor and Bedsit 6 is in the loft. The rooms are all similar in size, 15 or 16m², except for Bedsit 6 which has a third more floorspace (24m²) but restricted headroom under the eaves.
5. The building additionally includes a ground floor kitchen, built-in cupboards for the boiler and cleaning equipment, plus items such as fire extinguishers, noticeboards and a wall rack for mail. There are front and back gardens which are hardsurfaced but available for use by the occupiers.

Planning History

6. The building was formerly used as a single dwellinghouse falling within use class C3(a)¹ as defined in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (the UCO): use as a dwellinghouse...by a single person or by people to be regarded as forming a single household². The building was let to a family when the appellant company bought the building on 23 May 2011.
7. On 12 August 2015, upon application (ref: 15/2829), the Council determined that their 'prior approval' was not required for 'a single storey rear extension to the dwellinghouse'. I shall explain what that means in due course but for here simply note **'the 2015 prior approval'**.
8. An LDC application (ref: 17/0615) was made under s192(1)(a) of the Town and Country Planning Act 1990 (TCPA90) to certify that the proposed use of the building as a 'House in Multiple Occupation occupied by up to six persons (Use Class C4)' would have been lawful if instituted or begun on 9 February 2017. The UCO defines use class C4 as meaning 'use of a dwellinghouse by not more than six residents as a "house in multiple occupation"'. The Council granted **'the 2017 LDC'**.

¹ Other dwellinghouse uses as defined by C3(b) and (c) are not relevant to these appeals.

² Under s258(2) of the Housing Act 2004, persons are to be regarded as not forming a single household unless they are all members of the same family.

Appeal B and the Description of the Use

9. While the 2017 LDC concerned a proposed use, Appeal B is made to ascertain that what (the appellant now considers to be) existing is lawful.
10. Under s191(4) of the TCPA90, any LDC granted must describe the existing use or development found to be lawful. That may not be exactly what was written on the application form, and so s191(5) enables a local planning authority (LPA) to modify the description. An Inspector may exercise that power on appeal and is indeed obliged to issue an LDC for any existing use or development that is shown to be lawful on the facts and evidence.
11. I shall in the interests of clarity modify the description of development for which an LDC is sought³. The phrase 'C4 HMO' could be incomprehensible to any lay reader, such as an occupier or future owner of the building. Appeal B concerns: 'the erection of a single storey rear extension, and the use of the dwellinghouse by not more than six residents as a house in multiple occupation as defined by use class C4 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987.'
12. Henceforth, I shall abbreviate 'house in multiple occupation' to 'HMO'.

The Legal Questions for Appeals A and B

13. The appellant has withdrawn their ground (d) appeal against the enforcement notice. They never made a case that it was too late for the Council to take enforcement action against the alleged change of use, and they now accept that the extension is not 'immune' either.
14. Appeal A is still proceeding on the 'legal' grounds of (b) and (c). The former is that the matters alleged by the notice have not occurred; ground (c) is that those matters, if they occurred, do not constitute a breach of planning control. The ground (b) appeal relates to the use of the building alone, while ground (c) concerns both the use and extension.
15. Since the appellant's case against the notice mirrors that for an LDC, I shall deal with Appeals A and B together. However, there is a different 'material date' for each appeal. Appeal A concerns what had occurred and whether there was a breach of planning control on the date the notice was issued, being 18 December 2019. Appeal B concerns what was 'existing' and lawful when the LDC application was made on 30 April 2020.
16. Under s191(2) of the TCPA90, uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them, and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The enforcement notice was validly appealed before 30 April 2020 and so it was not in force on the date of the LDC application. Appeal B is not in conflict with or prevented from succeeding by s191(2)(b).
17. The onus is on the appellant to make their case against the notice on grounds (b) and (c) and for an LDC on the balance of probabilities. Their evidence should be accepted so long as it is sufficiently precise and unambiguous, and

³ The Planning Practice Guidance (PPG) paragraph ref ID: 17c-010-20140306 states that: 'Precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date...a certificate for existing use must include a description of the use...where it is within a "use class", a certificate must also specify the relevant "class" [but] the description needs to be more than simply a title or label...'

there is nothing to contradict their version of events or make it less than probable. Planning merits are not relevant to matters of lawfulness.

APPEAL A ON GROUND (B) AND APPEAL B: HMO/FLATS USE

18. The appellant's case for Appeal A on ground (b) is that there was no change of use to an HMO and flats, as the notice alleges, but rather from use as a C3 dwellinghouse to use as a C4 HMO only. The appellant is plain that there are 'simply no flats'.
19. The Council is resolute that the building is in a mixed use as the notice implies⁴, with some rooms plus the kitchen being occupied as an HMO but at least two bedsits being used as self-contained flats and there being 'some fluidity' between these two types of residential use. The Council also suggests that there may have been a prior change of use from a single dwellinghouse to six flats before the second change to the mixed use.
20. What the existing use is goes to the heart of both appeals. Appeal B must fail if I find that anything other than one change of use from C3 to C4 had occurred by the date of the LDC application.

What is an HMO and What is a Flat?

21. Where a planning unit is in a mixed use, it is not appropriate to describe the components in terms of use classes. Without prejudice, however, the UCO definition of C4 is a helpful starting point in deciding what the use or uses of this building are. The definition is relevant as far as the building is probably used by 'not more than six residents' whether any bedsit is a flat or not.
22. The UCO provides that, for the purposes of use class C4, a 'HMO' does not include a converted block of flats to which section 257 of the Housing Act 2004 (HA04) applies, but otherwise has the same meaning as set out in s254 of the HA04. Cutting straight to the relevant definition, a building or part of a building will be an HMO if it meets the 'standard test' set out under s254(2):
 - (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household;
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
 - (f) 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.
23. Under s254(8), a 'self-contained flat' is a separate set of premises (a) which forms part of a building; (b) which lies in whole or material part above or

⁴ Although the notice is not explicit that HMO plus flats is a mixed use.

below some other part of the building; and (c) in which 'all three basic amenities are available for the exclusive use of its occupants'. The 'basic amenities' are a toilet, personal washing facilities and cooking facilities.

24. That definition of a self-contained flat is consistent with the acceptance by the courts that the 'distinctive characteristic' of a dwellinghouse 'is its ability to afford to those who use it the facilities required for day-to-day private domestic existence'⁵. Whether a property does contain such facilities is known as the *Gravesham* test. A self-contained flat and an HMO would both be expected to contain all such facilities, but some in the latter would be shared by different households as required by s254(2)(f).
25. The appeals building is occupied to meet criteria (b), (c), (d) and (e) of the standard test, although any of the bedsits could also be described as a separate set of premises which forms part of the building and lies above or below some other part of the building. It is necessary for me to determine whether any of the bedsits have all three basic amenities and if any are occupied by households who share one or more of the basic amenities.
26. As noted above, Bedsits 1-6 all include en-suite shower rooms, meaning that every household has a toilet and personal washing facilities for their exclusive use. The parties disagree as to whether there are cooking facilities in any of the bedsits. Before I look at that evidence in detail, I should explain that how the building is defined under s254 is only part of the story. I also need to address whether there is **use** as an HMO and/or flats.

Use as an HMO and Use as a Flat

27. The Council states that a flat will have the characteristics of a dwelling – in the sense of containing the facilities required for day-to-day private domestic existence – **and** be 'used as such'. I agree and note that the *Gravesham* test was derived in a case where the question was 'whether, [in] fact, the building is constructed or adapted for use as a dwelling-house...as a building that provides for the main activities of "day-to-day [private] domestic existence"'.
28. The mere presence of certain amenities may not tell us what the primary use(s) of the planning unit might be. As noted above, there is no dispute that the occupiers use the appeals building as their only or main residence. As a general point, however, a building which contains all the facilities required for day-to-day private domestic existence may be used as a single dwellinghouse, an HMO, a care home, a hotel or even a non-residential use⁶.
29. I also observe that whether any actual toilet, personal washing and cooking facilities are sufficient to support use as a self-contained flat is a fact-sensitive question. The main activities of day-to-day private domestic existence include eating, relaxing and sleeping as well as toileting, washing and cooking, and they collectively require an appropriate quantum and layout of floorspace as well as amenities. I agree with my colleague Inspector in the Mascotts Close appeal decision letter that "cooking facilities" denotes some means to heat

⁵ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

⁶ The Planning Inspectorate is headquartered in Temple Quay House, which has a sole primary use for office purposes but nonetheless contains toilets, personal washing facilities including showers, cooking facilities as well as a room – the sick bay – with a bed.

food such as a microwave, oven or hob⁷. However, the activity of cooking also involves the preparation of food for which space is also required.

30. The Council rightly points out that 'uses falling within the general category of "residential" can be materially different...[as] a matter of fact and degree depending on factors including physical appearance and layout...as well as planning purpose expressed through development plan policy'. Yet the policies cited by the Council – albeit in relation to planning merits – place as much if not more emphasis on the provision of space than amenities in dwellings⁸.
31. The Council has referred in their representations to 'micro flats' and I am well aware that, in London particularly, some households live in extremely small but nonetheless self-contained homes. It still strikes me as curious that the Council invites me to describe Bedsits 5 and 6 as flats while simultaneously arguing that they are inherently incapable of functioning as self-contained dwellings. However, I need not explore that tension further here.

Documentary Evidence

32. On 7 September 2016, the appellant awarded a contract to GS Builders (London) Ltd for the 'refurbishment' of the building and erection of the 'new single storey extension'. It seems probable that the 'refurbishment' would have involved the laying and fitting out of the bedsits, if not also the kitchen, but the contract does not say that. It gives no clue as to what facilities would be installed where. The appellant has given little further information, although they asked another builder to complete the works.
33. The Council's report on the 2017 LDC noted that 'the plans do not detail cooking or kitchen facilities within the bedrooms...no kitchen facilities will be provided in each room...written confirmation has been provided stating this...the property features a shared garden and one kitchen (with 2 ovens & hobs and 2 sinks) for future occupants...' The building is laid out in accordance with the plans and that is significant in terms of meaning that there is a separate kitchen. However, the plans showed no fittings or furnishings in the bedsits whatsoever – beyond those of the shower rooms – and therefore do not make it probable that none would be used as flats.
34. On 3 March 2017, the appellant registered the bedsits with the Valuation Office so that the occupiers would be liable for Council Tax. Beyond the 'units' being addressed as 50A-50F, these records do not tell me whether the bedsits were to be used as HMO shared rooms and/or self-contained flats. Council Tax records are not generally determinative or always reliable evidence of use.
35. On 24 April 2017, the appellant applied for an HMO licence for the building. It was granted on 5 June 2017 on the basis that, while the bedsits varied in size, each would contain a 'bedroom with WC & shower or bath'. In other words, they would have toilet and personal washing but no cooking facilities. To that extent, the HMO application and licence weigh against the Council's case, but they do not make it probable that cooking facilities were not later installed.
36. Conditions on the licence restricted occupancy of each bedsit to a maximum of two persons, occupancy of the building to a maximum of ten and use of

⁷ Appeal ref: APP/T5150/C/15/3137960

⁸ The Council referred in representations to Policy D6 of the London Plan 2021, and Policies BH7, BH10, BH11 and BH13 of the Brent Local Plan 2019-2041 since both were adopted after the notice was issued.

shared kitchen facilities to a maximum of five. They required that 'no shared kitchen should be more than one floor distant' from any bedsit 'except where suitable dining (room) facilities are provided'. However, there is no claim that licence conditions have been breached in relation to the use or location of the kitchen, and that would not demonstrate the actual use of any bedsit anyway.

37. On 5 May 2017, the appellant appointed an accredited energy performance assessor to provide Energy Performance Certificates (EPCs) for what were described as three x ground floor, two x mid-floor and one x top floor 'flats' within the building. I understand that, while EPCs are not provided under planning legislation, the assessors can and do distinguish between self-contained flats and shared accommodation.
38. I do not know why the appellant sought EPCs for each room as a 'flat', except that – as shown below – they subsequently sought to maximise their rental income. However, the EPCs themselves refer to 'community' or shared heating and water schemes⁹, and do not describe any cooking facilities in the bedsits. The EPCs also do not tell me the actual use of the bedsits which indeed were still unoccupied on 5 May 2017.
39. The bedsits were let later that month and in June 2017, as shown by six assured shorthold tenancy (AST) agreements. Six different tenants signed the agreements, but it is not clear which one relates to which bedsit¹⁰. I also note that the agreements do not specify the fixtures and fittings in any bedsit, and I have not been provided with schedules of such. Each AST was for a 12-month period and the appellant has not shown whether the agreements were rolled forward or there has been any tenant turnover since.
40. Thus, the AST agreements do not make it probable that the building was not in a mixed use as alleged on the material date of 18 December 2019 for Appeal A, or that C4 HMO was the existing use on 30 April 2020 for Appeal B. However, the agreements do suggest that all six of the initial tenants at least were liable for the exact same rent and service charge. The above documents generally make no distinction between any of the bedsits except in terms of their size and location within the building.
41. The Council has submitted copies of applications for housing benefit made firstly on 12 May 2017 by the occupier of '50 Village Way, Neasden Room 4', and secondly on 11 June 2017 by the occupier of '50F Village Way'. Both applicants declared that there was no shared kitchen or other shared room in the building. That was also the situation in the Humber Road appeal decision cited by the Council, and I agree with the Inspector there that the tenants would have had no reason to provide misleading information, given that housing benefit is paid direct to the landlord¹¹.
42. However, my impression is that the occupiers of 'Room 4' or '50F' did not entirely understand the housing benefit forms. Both said that they had a one

⁹ Self-contained flats are normally metered separately for electricity if not also gas and/or water. There do not appear to be separate meters in this building, and it would be surprising if there were, given that the kitchen is not attached to any one bedsit. However, I do not take utility arrangements as decisive of use, and I also state for the avoidance of doubt that the boiler and cleaning cupboards, fire extinguishers, noticeboards, mail rack and shared gardens could all be present whether the building is used as an HMO, flats or both.

¹⁰ In each case, the property is named as 50 Village Way, but there is an extra character space which looks tippexed after the '50'. Given the numbering used on other documents, I find it probable that the agreements originally related to '50A' etc, but I do not know which agreement related to which room.

¹¹ APP/T5150/C/15/3138227

kitchen as well as one bedroom which was used solely by them, but there is no suggestion that could be true, even if there were 'cooking facilities' in the bedsits. Neither occupier appeared to know how many rooms were in the property as a whole and that is not surprising because, on the dates of their housing benefit applications, their tenancies had scarcely begun.

43. The applications do confirm, however, that both tenants were charged the same rent as each other and as described in the six AST agreements. The Council notes that the rent was 'precisely set at the Local Housing Allowance housing benefit cap for a self-contained unit. Housing benefit for a room in a shared house is capped at less than half that'. The appellant has not shown that this contention by the Council is wrong.
44. A sworn declaration was made by the managing director (MD) of the appellant company on 29 April 2020. They stated that, after obtaining the 2017 LDC, they 'let the property from May 2017 as a small HMO'. That statement is precise and unambiguous, but the MD otherwise gives little information as to – for example – what facilities were in the bedsits, why rent was charged at the housing benefit level for flats, or how the premises had been used by the occupiers on the dates of the notice or LDC application.
45. The copies of checklists used by the appellant for room inspections do not cast more light on the use of the building. The 'legal checks' specified were the same for each bedsit and omit to mention cooking facilities, but they do not positively show what the use or uses of the building might have been. The checklists appear to have been prepared by as well as for the landlord, and they were completed on 26 June 2020, after these appeals had been made.
46. In their costs application, the Council referred to a 'roof extension and roof lights installed to create flat 6'. Aerial photographs submitted by the Council indeed show that roof lights were fitted between October 2015 and April 2017, presumably at around the same time the extension was built. However, the works do not show whether Bedsit 6 is used as a self-contained flat or bedroom in an HMO. Overall, I find that none of the documents discussed clearly points to the probable use.
47. As discussed in relation to ground (c), a change of use from C3 to C4 is 'permitted development'. I can construe from the documents that the appellant sought the easily obtainable approval for use as a C4 HMO (via the 2017 LDC and then HMO licence) before proceeding, armed with EPCs, to charge rents for the bedsits as though they were flats. That irregularity in the company's actions undermines the credibility of their representations.
48. Even if I set that observation aside, the documents do not make it probable that the alleged change of use has not occurred. Individually and together, they are not sufficient for Appeal A to succeed on ground (b). Equally, however, that the documents are contradictory also means they are not fatal to the appeals. The charging of rent for 'flats' does not make it probable that any bedsits was a flat as defined under s254(8) of the HA04 or used as such.

Observations of the Facilities and Use

49. No past or present occupier of the building is party to Appeal A or B. There is no first-hand evidence from any tenant as to how they used the building on or before the material dates. However, when the Council visited the site on 3

December 2019, they spoke to all occupiers except that of Bedsit 4. The tenants stated that they or the housing benefit paid rent of 'approx £200 per week' or £800-900 per month. It appears probable that all were paying pretty much the same amount as set out in the AST agreements.

50. The Council also recorded that the occupier of Bedsit 2 'was annoyed she was paying Council Tax as a flat, and the room had been sold/rented to her as a flat, but this was not a flat but just a small room'. That complaint is not reliable evidence of the actual use of the bedsit or building, but it is consistent with my point that the level of rent is not necessarily dependable either.
51. The clearest evidence of use is found in the Council's contemporaneous notes of and photographs from their site visit on 3 December 2019. I shall consider that evidence alongside photographs taken by the appellant in June 2020 and my own site visit records, while remaining mindful that the question is what change(s) of use had occurred by 18 December 2019 and 30 April 2020.
52. The separate kitchen is equipped with a single dishwasher, microwave oven, toaster and kettle, plus two sinks, hobs, ovens, extractor fans, washing machines and tumble dryers. There are sufficient kitchen cupboards for each of the six bedsits to be allocated one above and one below the worksurfaces. The room also contains a dining table and chairs, plus a refuse and a recycling bin. The bedsits are furnished with a bed, a fridge, shelves, drawers and a wardrobe or cupboard for storage and perhaps a desk and chair.
53. In the photographs and on the date of my visit, the occupied bedsits were often crammed with belongings, to the extent that tenants used their floors for storage, but the separate kitchen was always clean and tidy to the point of looking under-used. However, it does not follow that the occupiers do or did not cook in the kitchen. The appellant employs cleaning staff and, as discussed below, not every HMO occupier likes to socialise or spend more than the minimum time in communal areas.
54. In Bedsit 1, in December 2019, the Council observed a fridge and microwave oven, but the latter was unplugged, on the floor and said to be awaiting removal. That may not have occurred since a microwave and toaster can be seen in the appellant's photographs of Bedsit 1 taken in June 2020. However, the Council saw no other cooking facilities and no kitchen sink, worktop or cupboards in Bedsit 1. I saw that the occupier ate in Bedsit 1 but not that they necessarily cooked.
55. The appellant's photographs of Bedsit 1 specifically show three shelves above the fridge; the top one held jars and cleaning items; the next was occupied by the microwave and the third – the only one at working height – was used to store the toaster and crockery. Whether or not the microwave was provided by the landlord, and even if it was supplemented by a toaster, kettle and fridge, there was no space or facility for the preparation of food for cooking.
56. The Council saw fridges but no cooking facilities or kitchen sink, worktop or cupboards in Bedsits 2 and 3. They were unable to access Bedsit 4, but the appellant's photographs show the same – fridges (and a kettle in Bedsit 3) but



no cooking facilities or kitchen sink, worktop or cupboards in any of these three bedrooms¹². I saw none either.

57. In Bedsit 5, the Council saw 'cooking facilities, halogen oven/cooker on shelves which was cooking chicken when we visited, a kettle, a fridge, the tenant was clearly cooking in his room'. However, the Council's photographs do not show cooking facilities plural; the halogen oven was the only one, and it looked to be a portable plug-in hob with integral medium-sized pan. It occupied most of the shelf it was placed upon while, as in Bedsit 1, the shelves above and below were filled with other belongings.
58. No halogen oven is shown in the appellant's photographs of Bedsit 5 or was there on the date of my visit. That does not help the appellant in that the question is whether the alleged change of use had occurred when the notice was issued. However, the occupier of Bedsit 5, when asked by the appellant to comment on the Council's evidence, said they took the halogen oven to their room because there was no space for it in their designated kitchen cupboards and they could not leave it out in the kitchen. They said they used it to warm food in their room, but 'there are times when I will cook the food down stairs' and they would use the kitchen to cook 'other things to go with whatever is been [sic] cooked in the oven'.
59. It is highly likely that the occupier cooked in Bedsit 5 before the notice was issued. However, it does not follow that they had exclusive use of such cooking facilities to make Bedsit 5 self-contained. The evidence is that the accommodation included no kitchen sink, workspace or other facilities beyond the portable hob for the activity of cooking. The occupier needed to and did also use the separate kitchen. It is probable that Bedsit 5 is not and has not been a self-contained flat in terms of use or amenities.
60. Similarly, the Council recorded 'cooking facilities, microwave, kettle, shall shelves forming a small kitchenette' in Bedsit 6. The occupier of Bedsit 6 explained to the appellant that they had borrowed the microwave from a friend when they had back problems, so they would not need to walk up and down to the separate kitchen. They used to do 'bulk cooking' in the kitchen, however, and only used the microwave for warming food in their room.
61. As above, I find that the occupier probably did use the microwave in Bedsit 6 for cooking. However, the Council's photographs show that the microwave was placed upon and occupied most of the shelf right above the fridge, while a shelf above that was used to store crockery, a chopping board and mugs. I could not describe the area as forming a kitchenette when again there was no sink or workspace. Even when the microwave was there, it is likely that the occupier also used facilities in the shared kitchen facilities as they said.
62. The appellant suggests that some tenants may spend much time in their rooms because of their personal circumstances. It strikes me that any individual may find living in a shared home difficult particularly where – as is increasingly common – they need to do so for a prolonged period. I agree with the appellant that occupiers may choose to not just make cups of tea, but also heat and eat food in their bedsits for comfort or privacy, and the property may still be used as an HMO.

¹² Albeit that it looks like Bedsit 2 was unoccupied in June 2020.

63. Overall, the evidence of use and facilities, at its highest for the Council, is that Bedsits 1, 5 and 6 had one microwave or halogen oven at most at any time. Kettles, toasters and fridges are not facilities for cooking food. Each bedsit has a basin as well as shower for personal hygiene, plus shelves above the fridge, but there is no evidence of any bedsit ever having had a sink or surface for the preparation of food for cooking.

Other Appeals

64. The Council has referred to other enforcement and LDC appeal decisions where the Inspector had to decide whether a building was used as an HMO or flats with regard to documentary, photographic and other evidence bearing on physical layout, facilities, use and occupation. While I take the same approach in determining the use or uses of the site, none of the other cases strikes me as so factually similar that the same decision must be reached.
65. In the Mascotts Close decision letter cited above, each of the alleged flats seems to have included an open plan room fitted with kitchen style cupboards, metal sinks with taps and a small area of worktop as well as a fridge, and there was sworn evidence that microwaves were made available in each room before any was occupied. Similarly, at The Vale, five of the six alleged flats contained kitchenettes with sinks and microwaves¹³. More substantive cooking facilities were recorded in some or all rooms at Manor Way, Stonebridge Park, Woodhey Road, Church Road, Burgos Grove and North Circular Road than in any bedsit before me¹⁴.
66. In the Clifton Gardens case, the Inspector found that AST agreements for 'flats' as well as housing benefit applications undermined the claim that the building was used as an HMO¹⁵. In the Humber Road case cited above, there were such gaps and inconsistencies in the evidence that the appellant did not discharge the burden of proof. In the Chamberlayne Road and Brentfield Close appeals¹⁶, the appellant did not ultimately contest that there had been a change of use as alleged.

Conclusion on Appeal A on Ground (b)

67. In paragraphs 4.8-4.19 of their statement of case, the Council suggested that there might have been more than one unauthorised change of use of the appeal building, firstly from use as a single dwellinghouse to use as six self-contained flats and then a mixed HMO and flats use.
68. The Council also argues that 'there [now] appears to be some fluidity in the use of the units and the use of the remaining communal accommodation, with varying levels of self-containment.' The Council cites the case of *Westminster CC v SSCLG* [2015] EWCA Civ 482 where the Court of Appeal held that a mixed use could subsist where the different elements were not strictly associated with particular parts of the premises.
69. In *Westminster*, the building was held to be in a mixed use as a hostel and hotel even though some rooms could have been used for either purpose and, on any given occasion, one element of the mixed use might have been

¹³ Appeal ref: APP/N5090/C/18/3204349

¹⁴ Appeal refs: APP/A5270/C/18/3193115, APP/T5150/X/15/3138588, APP/T5150/C/17/3176717, APP/T5150/C/17/3183003, APP/E5330/X/12/2189661 and APP/T5150/C/20/3244766

¹⁵ Appeal ref: APP/N5090/C/17/3190564

¹⁶ Appeal refs: APP/T5150/C/16/3155655, /3175229 and /3162309, and APP/T5150/C/18/3219015

minimal compared to the other. I accept that it is possible in principle for *Westminster* to apply to cases such as this and certainly for some occupiers of an HMO to make more use of communal spaces than others. However, unlike rooms in hostels, hotels or HMOs, self-contained flats are normally considered distinct planning units.

70. In any event, the Council's claims that there has been more than one change of use, and there is now a fluid mixed use, seem to be based on '...parts [of the property] containing all the facilities required for private day to day domestic existence', as they said in an email to the appellant on 16 July 2020. In fact, all the Council saw on their 3 December 2019 site visit was one microwave or plug-in halogen oven in three bedsits.
71. The only other evidence that any bedsits in this building have been used as flats are the EPCs and the high rental levels shown by the ASTs and housing benefit applications. If they are not cancelled out by the 2017 LDC and HMO licence, they are at odds with the reported comments by the occupier of Bedsit 2, as well as the size, layout and facilities in the bedsits themselves.
72. I find that all three basic amenities – as a matter of fact and degree – are not and have not been available in any bedsit for the exclusive use of the occupants. None of the bedsits has afforded to their users all the facilities required for day-to-day private domestic existence. Their occupiers have relied on facilities in the separate or shared kitchen for some or all cooking even if they have carried all other 'main activities of day-to-day private domestic existence' in their bedsits.
73. Notwithstanding my concerns about the appellant's credibility, it is probable that none of the bedsits meets the s254(8) definition of a flat and none is used as such. By contrast, the whole building is likely to meet the standard test for an HMO as set out in s254(2) of the HA04 and be used as an HMO falling within use class C4.
74. I conclude, on the balance of probabilities, that the change of use alleged by the notice has not occurred and, moreover, there had only been one change of use when the notice was issued and the LDC application was made: from use as a dwellinghouse (use class C3) to use of the dwellinghouse as an HMO (use class C4). Appeal A succeeds on ground (b) in respect of the alleged use and the notice should be corrected to delete all references to flats.

APPEAL A ON GROUND (C) AND APPEAL B

The HMO Use

75. The Council has explained with reference to case law that a change of use from use as a single dwellinghouse to use as an HMO and/or to separate self-contained flats is normally a material change that requires planning permission. However, it is not necessary for me to determine materiality in this case; planning permission is granted anyway for the change of use that I have found took place.
76. As set out above, the bedsits were first let in May or June 2017. At that time, planning permission was granted under Article 3(1) and Part 3, Class L of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for a change of use of a

building from a use falling within [use class] C3 (dwellinghouses) to a use falling within [use class] C4 (houses in multiple occupation).

77. The Council introduced an 'Article 4 Direction' to remove the permitted development rights set out under Part 3, Class L with effect from 1 November 2022. However, that cannot apply retrospectively. On the date that the notice was issued, the change of use that had occurred – and shall be described in the notice as corrected – was probably not in breach of planning control. Appeal A succeeds on ground (c) in respect of the use.
78. Likewise, in respect of Appeal B, the existing use of the building by not more than six residents as a house in multiple occupation as defined by use class C4 of Schedule 1 to the UCO was lawful for the purposes of s191(2) of the TCPA90 on 30 April 2020.

The Extension

79. The appellant claims that the existing single storey rear extension to the appeal building is lawful for one reason, namely that it was subject to the 2015 prior approval.
80. Under Article 3(1) and Part 1, Class A of Schedule 2 to the GPDO, planning permission is granted for the enlargement of a dwellinghouse subject to limitations and conditions. Under paragraphs A.1(g) and A.4(2) of Part 1, where a single storey extension would extend beyond the rear wall of the original [terraced] dwellinghouse by more than six metres, the developer must – before beginning the development – provide specified information to the local planning authority.
81. Paragraph A.4(2) is a planning condition that must be complied with before development is commenced. There is no dispute that the 2015 prior approval pertains to an application properly made by the appellant for 'a single storey rear extension to the dwellinghouse' before the operations were begun.
82. When the Council determined that their prior approval was not required, 12 August 2015, the planning permission granted by the GPDO was 'crystallised'. Permission was granted not merely for a theoretical 'enlargement of a dwellinghouse' as described under Part 1, Class A, but for the proposed 'single storey rear extension to the dwellinghouse' at 50 Village Way.
83. The Council contends that the extension does not benefit from the 2015 prior approval because it was built not to enlarge a dwellinghouse, but to facilitate the change of use of the premises. The appellant refutes that claim, saying that the building was still occupied by a family when the extension was begun, and the decision to change the use of the premises was only made later. I find the appellant's version of events improbable given their own evidence.
84. The family who had lived in the building were moved out during the course of the works. The appellant has not explained why the construction of a rear extension would have been so disruptive as to make the whole property uninhabitable, but the answer is likely to be that the building was altered throughout. The contract signed with GS Builders (London) Ltd was for 'refurbishment' of the building as well as the construction of the extension. While the works were completed by a different firm, the end result was plainly an extended dwellinghouse laid out for use as a C4 HMO.

85. The appellant suggests that the extension was completed by the end of 2016 but that was not long before they applied, in February, March and April 2017, for the 2017 LDC, to register six units for Council Tax and for an HMO licence respectively. Those applications must have taken earlier preparation. On the balance of probabilities, the extension was constructed to facilitate the change of use of the building.
86. However, that does not matter because the change of use was not to flats or to a mixed use¹⁷. For an extension to be permitted under Part 1, Class A, there is no condition that the 'dwellinghouse' to be enlarged must be of a particular type. Even though the appeal extension facilitated a change from use as a dwellinghouse (use class C3) to use of the dwellinghouse by not more than six residents as an HMO (use class C4), the works still amounted to the enlargement of a dwellinghouse for the purposes of Part 1.
87. Moreover, the Council does not dispute that, in terms of size and design, the extension was built in accordance with the 2015 prior approval. Physically, the only difference between what exists and what was shown on the plans is the internal layout of the extension, and that information did not even need to be provided to the Council under paragraph A.4(2)¹⁸.
88. The different internal layout of the extension would matter if that meant the works could not be permitted development. It would matter that the extension contains Bedsits 2 and 3, rather than a dining room/kitchen as shown on the 2015 plans if those bedsits were self-contained flats. However, the appellant provided information detailing an extension to a dwellinghouse for the purposes of Part 1, Class A, and that is what was built.
89. On the balance of probabilities, the extension was constructed to facilitate the change of use of the building (in short) from C3 to C4, but nonetheless with the benefit of planning permission granted under Article 3(1) and Part 1, Class A of the GPDO. The appellant properly provided information to the Council before beginning the development, and the Council found that their prior approval was not required, whereupon the permission was crystallised, and the extension was built in accordance with the requisite details.
90. I conclude that the single storey rear extension was not constructed in breach of planning control and Appeal A succeeds on ground (c). The extension is lawful for the purposes of s191(2) of the TCPA90 and Appeal B also succeeds in respect of the extension.

Conclusion on Appeal A on Ground (c) and Appeal B

91. I have found that the change of use of 50 Village Way that occurred, from a use falling within use class C3 (dwellinghouses) to a use falling within use class C4 (houses in multiple occupation), benefits from planning permission granted under Article 3(1) and Part 3, Class L of Schedule 2 to the GPDO. The

¹⁷ Under Article 2(1) of the GPDO, the term 'dwellinghouse' does not include a building containing one or more flats, or a flat within such a building, for the purpose of Part 1 of Schedule 2.

¹⁸ At the time of the 2015 prior approval, paragraph A.4(2) required the developer to provide to the local planning authority (a) a written description of the proposed development including—(i) how far the enlarged part of the dwellinghouse extends beyond the rear wall of the original dwellinghouse; (ii) the maximum height of the enlarged part of the dwellinghouse and (iii) the height of the eaves of the enlarged part of the dwellinghouse; and (b) a plan indicating the site and showing the proposed development. There are additional information requirements today, but they also do not bear on internal layout or type of dwellinghouse.

erection of the single storey rear extension benefits from the planning permission granted under Article 3(1) and Part 1, Class A of the GPDO.

92. I conclude that Appeal A should succeed on ground (c) and I should quash the enforcement notice as corrected. The grounds of appeal (a) and (f), and the application for planning permission deemed to have been made under s177(5) of the TCPA90, do not fall to be considered – and it is unnecessary for me to make any corrections to the requirements of the notice.
93. I also conclude that the Council’s decision to refuse to grant an LDC was not well-founded, and Appeal B should succeed. I will exercise the powers transferred to me under s195(2) of the TCPA90 to issue a certificate in respect of the erection of a single storey rear extension and the use of the dwellinghouse by not more than six residents as a house in multiple occupation as defined by Use Class C4 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987.

FORMAL DECISIONS

Appeal A: APP/T5150/C/20/3245073

94. It is directed that the enforcement notice be corrected by deleting ‘and flats’ from the text of Schedule 2. Subject to the correction, Appeal A is allowed and the enforcement notice is quashed.

Appeal B: APP/T5150/X/20/3256854

95. Appeal B is allowed, and attached to this decision letter is a certificate of lawful existing use and development describing the extent of the existing use and operational development that are found to be lawful.

Jean Russell

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that the use and development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate were, on 30 April 2020, lawful within the meaning of s191(2) of the Town and Country Planning Act 1990 for the following reasons:

The enlargement of a dwellinghouse is permitted by Article 3(1) and Part 1, Class A of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 subject to paragraph A.4(2) which requires that, before beginning development described in paragraph A.1(g), the developer must provide specified information to the local planning authority.

On application (ref: 15/2829), the Council determined on 12 August 2015 that their prior approval was not required for a single storey rear extension to the dwellinghouse, whereupon the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 was crystallised. The extension was subsequently constructed in accordance with the requisite details and to facilitate the change of use described below, meaning that the building was a dwellinghouse for the purposes of Part 1, Class A to Schedule 2 of the Order.

The use of the building was changed from a dwellinghouse falling within use class C3 as described in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 to use of a dwellinghouse by not more than six residents as a house in multiple occupation. The building contains a shared kitchen plus six bedsits, none of which are self-contained flats as defined under s254(8) of the Housing Act 2004 or used as such. The building is a 'house in multiple occupation' as defined under s254(2) of the Housing Act 2004, and it is used as such, so as to fall within use class C4 as described in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987.

Development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation) is granted planning permission under Article 3(1) and Part 3, Class L of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Jean Russell

INSPECTOR

Date 11 August 2023

Reference: APP/T5150/X/20/3256854

First Schedule

The erection of a single storey rear extension and the use of the dwellinghouse by not more than six residents as a house in multiple occupation as defined by use class C4 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 as amended.

Second Schedule

Land at 50 Village Way, London, NW10 0LL

NOTES

This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (TCPA90) as amended.

It certifies that the use and operational development described in the First Schedule taking place on the land specified in the Second Schedule were lawful on the certified date and was not therefore liable to enforcement action under s172 of the TCPA90 on that date.

This certificate applies only to the extent of the use and operational development described in the First Schedule, and to the land specified in the Second Schedule and identified on the attached plan. Any use or operational development which is materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated:
11 August 2023

by Jean Russell MA MRTPI

Land at 50 Village Way, London, NW10 0LL

Reference: APP/T5150/X/20/3256854

NOT TO SCALE

