



Appeal Decisions

Inquiry held on 18 July 2023

Site visit made on 18 July 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal A: APP/T5150/C/22/3300242

3 Flamsted Avenue, Wembley HA9 6DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Properties UK 1948 Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 22 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use to a sui generis House in Multiple Occupation.
 - The requirements of the notice are:
 - 1) Cease the use of the premises as 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 partition separating the ground floor and the first floor, one of the doorbells, and one of the gas meters.
 - The period for compliance with the requirements is 6 months after this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2) (a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/T5150/C/21/3288345

3 Flamsted Avenue, Wembley HA9 6DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991
 - The appeal is made by Properties UK 1948 Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 25 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to a flat and a House in Multiple Occupation (HMO).
 - The requirements of the notice are:
 - 1) Cease the use of the premises as a House in Multiple Occupation (HMO).
 - 2) Cease the use of the premises as flats.
 - 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.
 - 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, a separate lounge on the ground floor, 2 bedrooms on the first floor, a bathroom on the first floor, and a WC on the ground floor.
 - 5) Restore the land to its condition before the breach took place.
 - The period for compliance with the requirements is 6 months after this notice takes effect.
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- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by deleting Step 2 set out under the heading Schedule 4, and is reworded, as follows:

"Dismantle and remove from the premises all internal partitions which preclude free movement between the ground and first floors, and also remove one of the two gas meters."
2. Subject to this correction the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Appeal B

3. The enforcement notice is invalid and is therefore quashed.

Applications for costs

4. Separate applications for costs were made by both main parties against each other. These applications are the subject of separate decisions.

Preliminary matters

5. The appeal property's landlord, Pravin Patel, appeared at the Inquiry on behalf of the named appellant, Properties UK 1948 Ltd.
6. At the Inquiry the appellant confirmed that the appeal lodged under ground (g) had been withdrawn.
7. Extraneous to the Town and Country Planning Use Classes Order 1987 (as amended) a HMO is a legal category of housing defined in part 7 of the Housing Act 2004 and section 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.
8. The standard HMO is essentially a residential property rented out by at least three people who are not from the same 'household' and is not, or not entirely, made up of self-contained flats. A household is basically a family unit; it can be made up of a person living on their own, a couple who live together, or members of the same family.
9. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence. From the evidence adduced at the Inquiry and also my site visit observations, despite the partition installed in the hall with separate entrance doors for the accommodation on both floors, the property would appear to be in use as a shared house.
10. At the Hearing the appellant indicated that the ground floor was occupied by four students, whilst the first floor was occupied by a family of six persons.

11. There is no legal definition of a 'shared house' and so this term can sometimes cause confusion. The key point of a shared house HMO is that the occupants are known to each other and, accordingly, there is a level of interaction between them that resembles the way in which a family would be living together, with shared space.
12. In terms of statute s254(1)(a) of the Housing Act provides that a building is a HMO if it meets the conditions of 'the standard test' of which criterion (f) is that two or more of the households who occupy the living accommodation share one or more of the basic amenities or the living accommodation lacking in one or more basic amenities.
13. In this particular instance I note that the upper floor tenants, being without kitchen facilities themselves, also utilise the ground floor kitchen.

The Planning Position

14. The Council's case is that the property was used as a single family dwellinghouse until early 2020 when the appellant purchased it. To strengthen this assertion the sales particulars prepared by the estate agents, Foxtons, at this time refers to 'this substantial 4 bedroom semi-detached house'. There is also evidence to this effect in the form of Valuation Office details and Energy Performance Certificates.
15. The sale particulars mention a double reception room, and good sized double bedrooms. However, I note that two of the first floor rooms are not labelled as bedrooms. Instead a 'kitchen' is shown as one of the front rooms and a room labelled as a 'conservatory' is shown at the rear of the upper floor. A possible explanation for this is described in correspondence from the property's previous owner, Mrs Joan Tench, which was produced in evidence by the Council.
16. The first letter, dated 27 August 2019, was between Mrs Tench and Mr Gytis Grikevicius from LB Brent's Private Housing Services, and related to a Discretionary Disabled Adaptation Grant for 3 Flamsted Avenue. The letter asked a series of questions as to whether Mrs Tench wished to afford herself of the Council's recommended adaptations. In response, Mrs Tench handwrote her answers, saying she did not wish for a stair lift installation as she did not intend to go upstairs. Accordingly, it would appear that she only used the facilities on the ground floor and, to this end, she indicates that only her family would use the upstairs when they came to stay.
17. A second letter followed, handwritten by Mrs Tench – it is in the same handwriting as her responses on the earlier letter – was addressed to Mr Grikevicius, and received by the Council on 4 September 2019. The contents indicates that she was a wheelchair user and mentions that she had not been upstairs for years, explaining that she uses the washing facilities on the ground floor.
18. In the second letter Mrs Tench also says that her carer of many years had just died and I would envisage that this was the reason that the property was put up for sale.
19. In taking account of the factors already discussed I consider that the distinction between HMOs and self-contained flats lies in the physical and social separation of the living areas with HMOs characterised by having certain facilities shared between separate households occupying bedrooms or bedsits. In contrast,

- self-contained flats are characterised by having exclusive use of all facilities contained within their own physical envelope.
20. The crucial factor in this particular instance is that the ground floor kitchen has been used communally since the first floor kitchen was removed in 2020. The ground floor unit in isolation, and as a single entity, might be termed a 'flat' but, when taken together with the first floor accommodation and the interaction between the occupants on the two floors, the characteristics of the property as a whole changes. The ground floor cannot then be considered as a self-contained unit in its own right, and the property takes on the form of a shared house and, moreover, one in multiple occupation.
21. Despite therefore that there is a defined degree of separation between the upper and lower floors, given the context I have described, the two doorbells and gas meters, although facilitative, are an irrelevance to the fact that a HMO is in existence.
22. The appellant indicates that the unauthorised development was carried out in three stages; firstly, from a single family dwellinghouse to two flats, secondly, with the ground floor flat taking the form of a HMO, and, finally, the use of the whole property as a HMO.
23. HMO's are licensable and a property is a HMO if a 'HMO declaration', served by the local housing authority (LHA), is in force in respect of it under s255 of the Housing Act. This confirms that the LHA is satisfied that the building meets the necessary tests. Importantly, a HMO Licence was issued by Brent Council for the appeal property on 6 December 2021. Although it refers to '*premises at 3 Flamsted Avenue*', at the Inquiry the appellant's witness remarked that the officer who issued the licence knew it was for the ground floor only. This comment is not only uncorroborated, it also lacks credibility as, if the licence related only to the ground floor, I consider this would have been specified, accordingly.
24. Nonetheless, even if the licence had been issued in respect of the use of the ground floor this would not have altered the planning position which relates to different statute.
25. Given the evidence submitted to the Inquiry I must conclude that there has been only one material change of use; that which took place following the appellant purchasing the property, namely that from a dwellinghouse (C3) to a HMO (*sui generis*). As such, the appellant's comment in paragraph 8.2 of the written statement that "*The property existed lawfully as two units of self-contained accommodation...*" is not only unsubstantiated, but is incorrect.

Matters concerning the Enforcement Notice, the subject of Appeal A

26. The notice's requirements relate to the cessation of use and also the removal of fixtures and items which have facilitated the use. That is the correct approach, but I find the wording of Step 2 to be somewhat vague, and I have reworded this requirement to better target the purpose of the enforcement notice and, in this regard, the essential remedial steps.
27. I find the specific requirement that one of the doorbells be removed to be excessive, and unnecessary, almost punitive. This should remain a matter for the property's owner when complying with the main thrust of the notice's requirements.

28. It would be inconceivable, should all the notice's requirements be complied with, save for both doorbells remaining, that such a minor irregularity could be the subject of a potential prosecution, and I find it an unreasonable and onerous imposition.

29. Accordingly, the notice will be corrected to exclude this particular requirement.

Matters concerning the Enforcement Notice, the subject of Appeal B

30. At the Inquiry the appellant's witness, Mr German, indicated that he began carrying out works to the property in March 2020, which involved radiators being removed and boilers installed, along with the removal of the first floor kitchen due to its age.

31. On 21 January 2021 the Council's HMO Licensing Officer had written to Properties UK 1948 Ltd and also the tenants saying, together, that information had been received by the Council which indicated that the property was in use as a HMO and, if so, a necessary licence was required.

32. The Council's case management notes, submitted in evidence, which have a series of entries running from 21 January to 5 October 2021, are informative as to the planning position. In particular, the entry dated 16 September 2021, mentions that the first floor tenants are "*...without a kitchen at the moment.*"

33. The first enforcement notice, the subject of Appeal B, was issued by the Council on 25 October 2021 and, although the upper floor accommodation was partitioned off due to the internal alterations carried out, the absence of the first floor kitchen means that the upper floor cannot be considered as a self-contained residential unit. Instead, the evidence given from both main parties confirms that the first floor occupants afford themselves of the ground floor kitchen and its cooking facilities.

34. I note the appellant does indicate that the dependence on such is not constant, as the occupants are said to rely on other neighbours, friends and family for such. However, whilst this might be the case occasionally, I would expect that frequent reliance on persons elsewhere in the area for meals would be impracticable, inconvenient and less than credible.

35. This arrangement also has implications for the students occupying the ground floor, as this floor cannot then be termed a household within the meaning of s258 of the Housing Act 2004. I am also more significantly more inclined to accept the Council's assertion that those persons occupying the first floor are continually reliant on the ground floor occupiers for use of their kitchen facilities. This strongly suggests that the property has a significant degree of interaction and informality.

36. Following on from this, due to the total number of occupiers, the property must constitute a sui generis HMO, being one which involves more than six persons living together. In the circumstances I do not accept that the first enforcement notice, which alleges the property's unauthorised use as a flat and a HMO, properly reflected the actuality of the use in October 2021 when the notice was issued.

37. Accordingly, had there been an appeal lodged under ground (b), in other words, one claiming that the breach alleged by the Council had not occurred as

a matter of fact, I would have allowed that appeal and quashed the enforcement notice.

38. Under the provisions of section 176(1) of the 1990 Act, as amended, it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms provided if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing. However, I consider that here injustice would be caused if I were to attempt to make the significant corrections necessary.
39. It is not therefore open to me to correct the errors in accordance with my powers under s176(1)(a) of the 1990 Act, as amended, in this instance. In other words, this enforcement notice is incapable of correction.
40. This enforcement notice is therefore invalid and will be quashed. In these circumstances the appeal under the various grounds (a), (c), (d) and (g) as set out in in section 174(2) of the 1990 Act, as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered.
41. Accordingly, Appeal B falls away.

Appeal A

The appeal on ground (c)

42. An appeal under ground (c) is that those matters, if they occurred, do not constitute a breach of planning control. The matters alleged will not constitute a breach if planning permission is not required.
43. Development is defined in s55(1) of the 1990 Act, as amended and includes, in addition to operations in, on, over or under land, the making of any material change in the use of any buildings or land.
44. S55(2) draws a distinction in saying that the carrying out for the maintenance, improvement or other alteration of any building or work which affect only the interior of the building will not constitute development. However, in this particular instance, the various internal works carried out in 2020 have facilitated a material change in the property's use.
45. The concept of a material change of use is not defined in statute, but the basic approach is that, for this to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. Here, I consider that the use of the property prior to the appellant purchasing it in 2020, which involved Mrs Tench using the ground floor of the dwelling and the first floor apparently lying vacant unless family members came over to stay, would have been significantly different to the manner in which the property is currently used.
46. Having found that the property is in use as a HMO, with over six persons resident, I am satisfied that a material change of use has taken place, requiring the benefit of planning permission. No permission has been granted for such, nor sought and, in the circumstances the HMO use is unauthorised in planning terms.

47. Accordingly, the appeal on ground (c) must fail.

The appeal on ground (d)

48. The appeal on ground (d) is that, at the date the enforcement notice was issued, it was too late for the Council to take formal action as the development which constituted the breach of control had already acquired immunity from such in planning terms.

49. The second enforcement notice was issued on 22 April 2022 and, due to the nature of the identified breach – a material change of use from residential (class C3) to a HMO (sui generis) – the material date will be ten years immediately prior to this ie. 22 April 2012. Accordingly, to demonstrate immunity from enforcement action the appellant must demonstrate that the property has been in continued use as a HMO – the breach specified in the enforcement notice – since this date.

50. The onus is on the appellant to prove his case, with the burden of proof being on the balance of probabilities. Accordingly, my decision has to be based on evidential fact and, where applicable, case law.

51. Given my findings that the current use commenced in 2020 the requisite immunity cannot be realistically demonstrated.

52. As such, the appeal on ground (d) cannot succeed.

The appeal on ground (a) – the deemed planning application (DPA)

53. The DPA is only in respect of the HMO use specified in the enforcement notice. As such, any planning permission granted would relate only to this identified breach. Accordingly, no planning permission could be granted, or even considered, for any alternative schemes such as the scheme including a three-bed unit which was put forward by the appellant.

54. This applies equally to the point made by the Council witness that the property's gross internal floor area would likely satisfy its conversion to two self-contained flats. For this to lawfully occur a planning application for the same must firstly be made to the Council, and permission granted.

Main Issues

55. The main issues in this appeal are:

- 1) whether the development involved provides for a satisfactory standard of residential accommodation for the property's occupiers;
- 2) the effect of the use on the character and appearance of the surrounding area and the property itself; and
- 3) the effect on the borough's housing stock of family-sized dwellings.

Standard of accommodation

56. In essence this is a shared house with a total of ten persons in occupation, significantly disproportionate to the number of bedrooms that existed prior to the appellant's purchase in 2020. Similarly, one single kitchen shared between the occupiers is also a disproportionate arrangement. Both these factors are at

odds with the aims and requirements of policy BH7 of the Brent Local Plan 2019-2041 (BLP), which was adopted in 2022.

57. In particular, proviso b) of policy BH7 requires that the HMO is of an acceptable quality, meeting appropriate standards for the needs of its occupants. In this particular instance I find that the occupants' reasonable needs, as a whole, are not being provided for.
58. The development is also in general conflict with the advice provided by the Council's Supplementary Planning Document 'Houses in Multiple Occupation' (SPD) and paragraph 130(f) of the National Planning Policy Framework (the Framework) in terms of the standard of amenity for existing and future users.

Character and appearance

59. From my site visit I am not of the view that the appearance of the appeal property within the street scene nor the manner in which it is used is demonstrably harmful to the surrounding area. The management of refuse waste could be properly administered and the generously sized rear garden is more than adequate for the residents' purposes. A cycle storage facility could also be installed within the garden areas. My concerns, as described, relate instead to the property's internal arrangements.
60. Neither do I share the Council's view that the use of the property as a HMO would necessarily lead to any significant demand for on-street car parking. It is likely that the occupiers, generally, would not need the use of a car given the nearby bus services and also the proximity of Wembley town centre.
61. Accordingly, whilst I acknowledge the importance of observing normal local parking standards I am satisfied that the particular HMO use here, and in this location, does not compromise the objectives of BLP policy BT2 or LP policies T6 and T6.1.

Housing stock

62. The development has resulted in the loss of a family-sized dwelling which is contrary to the objectives of BLP policy BH10. This has to be balanced with policy H9 of the London Plan (LP) which says that boroughs should take account of the role of HMOs in meeting particular housing needs, and also that HMOs should be protected where they are of a reasonable standard.
63. Given my findings, and what are relatively limited internal facilities at the property, I have concluded that BLP policy BH10 should predominate in this instance.

Conclusions

64. Although I am satisfied that the character and appearance of the immediate area is not harmed by the use this is significantly outweighed by the resultant harm I have identified from the other two main issues. The development is also inconsistent with the Council's SPD, relevant advice within the Framework and, fundamentally, the development plan, as a whole.
65. Accordingly, for the above reasons, and having regard to all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the said correction and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

66. An appeal on ground (f) is that the enforcement notice's requirements go beyond what is reasonably necessary to remedy the breach.

67. I have already explained why I have reworded Step 2 and, having taken into account the appellant's representations on this ground, I am satisfied that the enforcement notice is now on a sound footing.

68. The appeal succeeds to this extent.

Timothy C King

INSPECTOR