



Appeal Decision

Site visit made on 20 March 2023

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Appeal Ref: APP/T5150/C/22/3296738

The Land or Premises affected 98 Priory Park Road, London NW6 7UU

- 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 1990 Act as amended).
- The appeal is made by Mr Riadh Fnaiech, Atlantic Property Management Ltd, against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/21/0773, was issued on 16 March 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the premises to eight self-contained studio flats. ('the unauthorised change of use').
- The requirements of the notice are to: STEP 1 Cease the use of the premises as eight flats. STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets. STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen and reception rooms on the ground floor, bedrooms and a bathroom with WC on the first floor, and bedrooms and a bathroom with WC on the second floor. STEP 4 Restore the premises to its condition before the breach took place.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Application for Costs

1. An application for costs was made by the Council of the London Borough of Brent, against Mr Riadh Fnaiech, Atlantic Property Management Ltd. This application is the subject of a separate Decision.

Procedural Matters

2. The appeal was originally submitted on grounds (a) and (b) upon which the appellant's grounds of appeal¹ were based. During the course of the appeal the appellant appointed a different agent and, as part of their final comments, additional evidence was submitted. In view of the particular circumstances of the case, this was exceptionally accepted by The Planning Inspectorate². In the

¹ Dated 10 April 2022.

² Final Comments - version dated 10 October 2022 with accompanying a letter dated 17 October 2022.

interests of fairness, the Council was given an opportunity to respond, with the appellant having a right of reply, and the Council having final comment.

3. The additional evidence incorporated a further appeal on ground (f). It also included reference to the enforcement notice (the notice) not being served correctly, and challenged whether there has been a breach of planning control. As such, I consider there also to be hidden appeals on grounds (e) and (c).
4. Consequently and for the avoidance of doubt, I have determined the appeal as proceeding on grounds (e), (b), (c), (a) and (f). As the main parties have had an opportunity to comment on and/or respond to the original and additional matters raised, I am satisfied that their interests would not be prejudiced by me taking this approach.
5. The appellant has challenged the validity of the notice. This principally concerns the lawful use of the property, which they submit is not a single family dwellinghouse as asserted by the Council, but is two Houses in Multiple Occupation (HMO), one 3 bedroom and one 5 bedroom³. They contend that this inaccuracy relates to both the description of the alleged breach of planning control⁴ (the alleged breach) and the requirements⁵, which they state are not clear, significantly over enforce and cannot be amended without prejudice.
6. Section 173(2) of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act as amended) states that an enforcement notice complies with section 173(1)(a) if it 'enables any person on whom a copy of it is served to know what those matters are', being the matters alleged to constitute the breach. Section 173(3) makes clear that the enforcement notice shall specify the steps required to be taken to achieve wholly or partly any of the purposes set out in section 173(4). It is held in settled case law that this concerns whether the enforcement notice tells the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it.
7. With regard to the property's lawful use, the alleged breach as stated in the notice is 'without planning permission, the material change of use of the premises to eight self-contained studio flats'. It makes no reference to any previous and/or lawful use. Where a notice alleges a material change of use, reciting the previous use is beneficial to make it clearer why it is considered that there has been a material change. However, there is no requirement to specify the previous use, and not doing so does not cause the notice to be so uncertain or so fundamentally flawed that it is invalid or a nullity.
8. The requirements of the notice are set out in Schedule 4. Steps 2 and 3 require the removal of elements associated with the change of use and the reversion to the 'original' internal layout prior to the change of use; they do not specify the property's reversion to a specific use. In this respect, I am mindful that there is no scope for an enforcement notice to require reversion to a lawful use, that a lawful use is actively carried out, or prohibit other lawful uses or possible future breaches. Given the alleged breach and the Council's case, I am satisfied that the requirements of the notice are not so vague or defective that the recipient does not know with reasonable certainty how to comply with them in order to

³ Final Comments - version dated 10 October 2022 with accompanying a letter dated 17 October 2022.

⁴ Schedule 2 of the notice.

⁵ Schedule 4 of the notice.

- remedy the alleged breach. As such, the notice is not invalid or a nullity in this respect.
9. I deal with the matter of the lawful use of the property further under the appeals on grounds (c), (a) and (f) below.
 10. Schedule 3 of the notice states that it appears to the Council that the unauthorised change of use took place within the last 10 years. However, the alleged breach is the material change of use of the premises to eight self-contained studio flats. The word 'building' in section 171B(2) of the 1990 Act as amended must be read as defined in section 336(1) as including any part of a building, and flats are dwellinghouses for the purposes of the 1990 Act as amended. As such, each alleged separate flat has the protection of the four year rule. Consequently, in this regard, the notice as drafted is invalid. The parties were given the opportunity to comment on this matter and both agreed that the time limit should be four and not 10 years.
 11. Additionally, Schedule 4, STEP 1 of the notice requires the appellant to 'Cease the use of the premises as eight flats.' However, by including the number of flats as part of the requirement, risks the property being used as a different number of flats. I will therefore correct the notice to require the cessation of the use of the premises as self-contained studio flats, which will also reflect the wording of the alleged breach.
 12. Having regard to the power under section 176(1)(a) of the 1990 Act as amended, I am satisfied that no injustice would be caused by me correcting the notice in the above respects.

Background

13. The appellant is the director of the appellant company, Atlantic Property Management Limited, which bought No 98 Priory Park Road (No 98) in February 2020 and is the current registered proprietor. The Council received a complaint in November 2021 regarding the alleged use of the premises as eight self-contained flats. A Planning Contravention Notice (PCN) was served on the appellant company in February 2022 and a response was received in the same month. The Council undertook a site visit on 8 March 2022, following which the notice was issued on 16 March 2022.

The appeal on ground (e)

14. The appeal on ground (e) is that copies of the notice were not served as required by section 172 of the 1990 Act as amended. On this ground of appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
15. Section 172(2) of the 1990 Act as amended states that, a copy of an enforcement notice shall be served — (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
16. The appellant submits that the notice was not formally served on the appellant company's lender, Bank Julius Baer (Monaco) S.A.M. who they state, 'appears to fall within the category of any other person having an interest in the land

which is materially affected by the notice.’ As such, they contend that the service of the notice falls short of the requirements set out in section 172.

17. It is for the Council to decide who is ‘materially affected’. The notice was served on The Company Secretary/Manager, of Atlantic Property Management Ltd at two separate addresses; and the Owner/Occupier/Anyone with an interest in land at, No 98. These recipients were identified during the Council's investigation process, which included the service of the PCN, and a Land Registry Search.
18. The appellant highlights that details of the appellant company's lender are publicly available to view on Companies House. However, the Council confirm that no charge is registered on the Land Registry where any such interest would be identified and on which they carried out a search. Furthermore, the Companies House records included in the Council's evidence confirm that the ‘charge’ is against the appellant/appellant company, not No 98. I also note that the date on this document is after No 98 is stated to have been purchased.
19. The appellant has not responded to the Council's submissions on this matter. Additionally, mindful of section 174(5) of the 1990 Act as amended, they have not presented any substantive evidence which demonstrates that Bank Julius Baer (Monaco) S.A.M. has been ‘substantially prejudiced’ by the failure of the Council in serving them a copy of the notice.
20. In coming to my decision on this ground of appeal, I have had regard to the appeal decision cited by the appellant⁶. However, in that instance the enforcement notice was not served on an owner of the land affected by the notice. As such, it is not comparable to the circumstances of the appeal on ground (e) before me and so carries little weight.
21. For these reasons I conclude that, on the balance of probabilities, copies of the notice were served as required by section 172 of the 1990 Act as amended. Accordingly, the appeal on ground (e) fails.

The appeal on ground (b)

22. The appeal on ground (b) is that those matters stated in the notice have not occurred. On this ground of appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities.
23. The matters stated in the notice are ‘without planning permission, the material change of use of the premises to eight self-contained studio flats.’ To support its case, the Council has submitted sales particulars of No 98 between 2021 and 2022⁷. These show the property being advertised on different occasions as a ‘mid-terraced house internally arranged to provide eight self-contained studio flats.’ Information has also been submitted by an interested party regarding the property's advertisement through an auction house on a similar basis as eight self-contained studios.
24. Against this, the appellant asserts that the alleged change of use has not occurred, stating that the eight rooms are not self-contained studio flats but, in fact, comprise two HMO, one 3 bedroom on the ground floor and one 5

⁶ Appeal Ref: APP/M5450/C/21/3271955.

⁷ Online property portal ‘Rightmove’ dated added on 18 October 2021 and ‘Zoopla’ dated August 2021 and 20 January 2022.

bedroom on the first and second floors⁸. In response to the sales particulars, they submit that, without their or the appellant company's prior knowledge or authorisation, another company and 'prospective investor' named 'Atlantic Property Holdings Limited'⁹ placed the mobile cooking facilities inside the rooms and in turn advertised the property with a view to an onward sale¹⁰. On being informed of the changes to No 98, the cooking facilities were removed by the appellant, as witnessed on the Council's site visit in March 2022.

25. The 'Rightmove' sales particulars include floor plans and a 3D virtual tour, from which screen shots have been provided. These show each room containing a bed, along with a worktop/sink, cupboard(s), small fridge/freezer and portable dual hotplates or microwave; and an adjacent bathroom, incorporating a shower, toilet and sink. Some of the photos include cooking pots/ pans/ utensils/ food. They also show the property's two kitchens, one on the ground floor and one on the first floor.
26. Section 254(8) of The Housing Act 2004 (the Housing Act) defines a 'self-contained flat' as a separate set of premises (whether or not on the same floor) — (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants. Basic amenities are a toilet, personal washing facilities or cooking facilities. Additionally, as stated above, for the purposes of the 1990 Act as amended, flats are dwellinghouses. There is no definition of the term 'dwellinghouse' in the 1990 Act as amended, but it was accepted in *Gravesham BC v SSE & O'Brien* [1983] JPL 306, that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
27. Alternatively, a building (or part of a building) will be a HMO if it meets the conditions of 'the standard test' set out in section 254(2) of the Housing Act. These are, (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.
28. Having regard to the case cited by the appellant¹¹, I acknowledge that, in determining a 'type' of residential accommodation, decisions turn on the different attributes of a development and a range of factors as matters of fact and degree. So, whilst I note the appeal decisions referenced by the Council, in determining this appeal, I have considered the specific set of circumstances which apply in this case.

⁸ Final Comments - version dated 10 October 2022 with accompanying a letter dated 17 October 2022.

⁹ Although Atlantic Property Holdings Limited has a similar name to the appeal company, it was not, to the appellant's knowledge, related in any way to it. Appellant's Witness Statement dated 17 October 2022.

¹⁰ Appellant's Witness Statement dated 17 October 2022.

¹¹ *Stef and Philips Ltd v Croydon LBC* [2019] P.A.D. 13.

29. In order to fall within the definition of a self-contained flat, the rooms must include all three basic amenities for the exclusive use of its occupants. It is common ground between the parties that the rooms contain a toilet and personal washing facilities, the matter of dispute concerns the presence of 'cooking facilities'. Hotplates and microwaves are generally accepted to constitute 'cooking facilities'.
30. I have given consideration to the reasons advanced by the appellant as to the presence of cooking facilities within the rooms contained within the cited sales particulars, as well as why the property was advertised as incorporating eight self-contained studio flats. I am also aware of the subsequent removal of the cooking facilities, the presence of two communal kitchens and the notices stating that cooking is prohibited within the rooms, all of which I observed on my site visit.
31. However, no evidence that substantiates any of the claims set out in the appellant's witness statement regarding the involvement and actions of 'Atlantic Property Holdings Limited' and/or which adequately challenges the Council's evidence on this matter is before me. I am also cognisant that, even though the written statement is signed, it is not a statutory declaration or witnessed affidavit which reduces the weight it carries in my considerations.
32. Whilst the appellant declares that the sales particulars are 'not reliable proof of the use of the property', being 'purely marketing materials' and 'false sale advertising' using fabricated photos, I question why a separate company would, or how they could, do this without the appellant's knowledge, particularly given that it was on more than one occasion with more than one estate agent/auction house.
33. I am aware of settled caselaw which states that evidence should not be rejected simply because it is uncorroborated¹². However, in my judgement, the appellant's evidence is neither sufficiently precise nor unambiguous on this matter.
34. The removal of the cooking facilities has eliminated a 'basic amenity' which results in the rooms not meeting the definition of a self-contained flat set out in the Housing Act and the *Gravesham* test of a dwellinghouse in the ability to afford to those who use it the facilities required for day-to-day private domestic existence. However, section 174(2)(b) of the 1990 Act as amended is worded in the past tense. Therefore, the question is whether the alleged breach **had** occurred **by the date of issue** of the notice (my emphasis).
35. The evidence provided by the Council and an interested party in relation to the presence and, more likely than not, use of the cooking facilities within the rooms prior to the issue of the notice is compelling. In this respect, in my judgement, as a matter of fact and degree, by the date of the issue of the notice the rooms were not deficient in one or more basic amenities, but instead met the definition of a self-contained flat set out in the Housing Act and the *Gravesham* test as dwellinghouses. As such, the alleged change of use had taken place as a matter of fact.
36. That the cooking facilities had been removed at the time of the issue of the notice and that the alleged breach has ceased in this respect, does not remedy

¹² *Gabbittas v SSE & Newham BC* [1985] JPL 630.

the breach or discharge the notice¹³. An appeal on ground (b) cannot succeed simply on this basis.

37. Similarly, that the property is not registered as eight separate dwellings and none of the tenants receive any bills from third party utility companies; that the tenants share the same postal address; that there are two boilers and two meters for separate utilities; and that there are two communal kitchens, do not prohibit the 'use' of the rooms as self-contained flats/ dwellinghouses and are not determinative.
38. Additionally, that No 98 has been issued with a HMO licence for the whole of the property comprising eight rooms restricted to an occupancy of 10 persons¹⁴ does not establish that is the use to which the premises has been put. Moreover, the licence itself states that it and its conditions do not imply or grant by inference or otherwise any approval or permission for any other purpose including Planning.
39. Drawing all of the above together, on the balance of probabilities, the change of use of the premises to eight self-contained studio flats had occurred by the date of the issue of the notice. On this basis those matters stated in the notice have occurred. Accordingly, the appeal on ground (b) fails.

The appeal on ground (c)

40. The appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. On this ground of appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities.
41. Whilst not recited in the matters stated in the notice, the Council states that it is a matter of fact that the appeal premises was built as a single dwellinghouse and, in the absence of evidence to the contrary, this was assumed to be its lawful use.
42. Conversely, the appellant asserts that the lawful use of the property is as two HMO, one 3 bedroom and one 5 bedroom¹⁵. This arises from that, in or about 2000 (more than 10 years ago), the property was divided into two dwellings and then more recently, in accordance with the Town and Country Planning (General Permitted Development) (England) 2015 Order (the GPDO) of Class L, of Part 3, of Schedule 2, the two dwellings were each changed into HMO within the meaning of Class C4, Schedule 1 of the Town and Country Planning (Use Classes) Order 1987. It is on this basis that they advance there has been no breach of planning control.
43. Additionally, whilst the appellant states that they are in the process of applying for a lawful development certificate (LDC) in respect of the two HMO, they request that as part of the appeal I consider using my powers under section 177(1)(c) of the 1990 Act as amended¹⁶ to grant a LDC for the lawful use of the property as two HMO.

¹³ Section 181(1) of the 1990 Act as amended.

¹⁴ Licence Ref: HMOL/01558/22. Issued 11 April 2022 and in force until 11 April 2027 unless revoked.

¹⁵ Final Comments - version dated 10 October 2022 with accompanying a letter dated 17 October 2022.

¹⁶ Section 177(1)(c) determine whether, on the date on which the appeal was made, any existing use of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue a certificate under section 191.

44. In support of its case concerning the lawful use of the property, the Council include sales particulars of No 98 advertised as an 'unmodernised 3 bedroom mid-terraced period style house' in May 2020; 'The Building Inspectors' initial notice¹⁷ and final certificate¹⁸ for 'Loft conversion with rear dormer extension, removal of internal chimney breasts and internal remodelling'; and aerial images. Representations by an interested party also reference the 'conversion' of the property.
45. In response, the appellant cites their reply to the PCN, their witness statement, including evidence of the introduction of two separate utility meters¹⁹ into the property, additional witness statements²⁰ and the Council's own grant of an HMO licence in respect of each flat (ground floor and first floor).
46. Nonetheless, there are discrepancies, ambiguities and gaps in the appellant's case in justifying their claims. Initially the property was described as being in use as an eight bedroom HMO²¹ not two HMO. This aligns with the PCN response, which simply states the number of en-suite rooms on each floor for residential purposes which is stated to have begun in May 2021, and the HMO licence for eight rooms restricted to an occupancy of 10 persons which dates from 11 April 2022. No licenses for two separate HMO have been submitted by either party.
47. Moreover, whilst I appreciate that the property was only purchased by the appellant in early 2020, potentially restricting access to historic records of the property's use, No 98 is still registered as a single dwellinghouse, and no robust evidence has been submitted which demonstrates the building's subdivision and/or use as two flats continuously for four or more years, and then its use as two HMO.
48. The installation of separate utility meters in 1987 and 2000 is not, of itself, determinative, and references to what is asserted to be a similar use and layout of No 96 Priory Park Road carry little weight in the consideration of the appeal before me. Moreover, as above, given that the witness statements are not in a formal and witnessed format and do not include any associated documentation to validate the claims within them and contradict the Council's evidence, reduces the weight I can attach to them.
49. Drawing all of the above together and again mindful of the *Gabbitas* principle, I consider that the appellant's evidence on the matter of the last lawful use of the property is inadequate in content and what has been submitted is not sufficiently precise or unambiguous. Whilst the Council's evidence is limited, it points towards the use of the property prior to the alleged breach as being a single dwellinghouse or possibly having no lawful use²². Given the deficiencies in both parties' evidence in clearly demonstrating the last lawful use of the property, I am inclined to assess this ground of appeal on the only use of the building that is indisputable, namely its original use as a single dwellinghouse.
50. Crucially to this ground of appeal, I am very aware of the matters stated in the notice and my conclusions on the appeal on ground (b). I have found that the

¹⁷ Dated 5 March 2020.

¹⁸ Dated 12 July 2021.

¹⁹ Exhibit B of the appellant's Witness Statement.

²⁰ Witness statements by Andrzej Wacław Szczucki, Andrzej Berg and Piotr Paweł Lagoda dated 27 July 2022.

²¹ Grounds of Appeal Statement dated April 10 2022.

²² Para 1.9 Council's Final Comments.

change of the premises to eight self-contained studio flats had occurred by the date of the issue of the notice. Section 55(3)(a) of the 1990 Act as amended provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building as a whole and each part of it which is so used.

51. Consequently, on the balance of probabilities, the change of use of the premises from either a single dwellinghouse or two HMO to eight self-contained studio flats does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.
52. With regard to the appellant's request to grant a LDC for the property's lawful use as two HMO, the power under section 177(1)(c) of the 1990 Act as amended is discretionary and only intended to be exercised in exceptional circumstances. Given that the appeal on ground (c) has failed, then it is not open to me to grant an LDC in this respect.

The appeal on ground (a) and the deemed planning application

53. The appeal on ground (a) seeks planning permission for the matters alleged in the notice, namely, the material change of use of the premises to eight self-contained studio flats. The appellant is clear in not seeking planning permission for any self-contained studio flats. Instead, as set out above, they want the lawful use of the property as two HMO to be recognised and to maintain this use.
54. Section 177(1)(a) of the 1990 Act as amended sets out that on the determination of an appeal under section 174, the decision maker may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.
55. Given my conclusions on the appeals on grounds (b) and (c), the use of the premises as two HMO forms no part of the matters stated in the notice. As such, it is not open to me to consider this as part of the determination of the appeal on ground (a). This is acknowledged by the appellant.
56. In addition, the appellant highlights the alternative which they state provides a 'significant fallback position'. This is that even if the lawful use of the property was considered to be a single dwellinghouse, which they refute, the appellant is entitled to rely upon Class L, of Part 3, of Schedule 2, of the GPDO as permitting its change of use to C4 HMO use comprising at least 6 occupants.
57. In the first instance, I must be satisfied whether the development as eight self-contained studio flats would be in accordance with the development plan. Only if the change of use is contrary to the development plan would consideration be given to any fallback position as part of the planning balance.

Main issues

58. The main issues are:

- Whether the development provides satisfactory living conditions for occupants, with regard to the standard of the accommodation, noise and

disturbance, the provision of private amenity space, and arrangements for bin and cycle storage;

- The effect of the development on the character of the area and the living conditions of neighbouring residents, with regard to noise and disturbance, and arrangements for bin and cycle storage; and
- The effect of the development on the supply of family housing.

Satisfactory living conditions for occupants

59. Policy D6 of the London Plan 2021 (the LP 2021) sets out that ensuring homes are of adequate size and fit for purpose is crucial in an increasingly dense city. Table 3.1 of the Policy confirms that a one bedroom, one person occupancy dwelling requires a minimum gross internal floor area and storage of 37m²; and that a one bedroom, two person occupancy dwelling requires 50m². The floor area within the units ranges from a minimum of 11.31m² to a maximum of 21m². As such, the space within each unit falls substantially short of the minimum space standard requirements for a one person or two person occupancy, resulting in a severely cramped living environment for occupants.
60. The occupation of the property by up to eight independent households of one or two individuals likely gives rise to a greater frequency of comings and goings at different hours of the day and night. Furthermore, it is probable that there is a greater number of visitors associated with the unrelated identities of the occupants. This, more likely than not, results in an unacceptable level of noise and disturbance within the property and between adjacent units.
61. Policy D6 and Table 3.2 of the LP 2021 sets out required qualitative design aspects of housing developments. This includes the provision of level access to a private outside space²³. Additionally, Policy BH13 of the Brent Local Plan 2019-2041, 2022 (the BLP) requires all new dwellings to have external private amenity space of a sufficient size and type to satisfy its proposed residents' needs. Only one of the units of the development provides access to private outdoor space. As such, the other seven units are wholly deficient in this respect and fail to meet these policy requirements.
62. The development also has no designated areas for bin storage or cycle storage which contribute to the sub-standard nature of the accommodation for any occupants.
63. Individually and cumulatively, these substantial failings cause significant harm to the living conditions of occupants of the units.
64. Accordingly, I conclude that the development does not provide satisfactory living conditions for occupants, with regard to the standard of the accommodation, noise and disturbance, the provision of private amenity space, and arrangements for bin and cycle storage. This is contrary to Policies DMP1 and BH13 of the BLP and Policies D6 and T5 of the LP 2021 in so far as they seek development which provides high levels of internal and external amenity; and of a high quality which meets required standards. It also does not comply with the objectives of the National Planning Policy Framework, 2023 (the Framework) which require the creation of places with a high standard of amenity for existing and future users.

²³ Including a garden, terrace, roof garden, courtyard garden or balcony.

Character of the area and living conditions of neighbouring residents

65. No 98 is a moderately sized, mid-terrace period property with a modest frontage and rear garden/outdoor space and is located in a residential neighbourhood. The surrounding area is characterised by similar terraced properties which, from the evidence before me and my observations on site, the majority of which are in use as single family homes or subdivided into two flats.
66. The use of No 98 as eight self-contained studio flats is in keeping with the residential nature of the area. However, the occupation of the building by up to eight independent households is a highly intensive use of the premises, which is not in keeping with the general characteristics of residential uses that are prevalent in the neighbourhood.
67. As highlighted above, it is probable that the increased intensity of the use generates a greater frequency of comings and goings by occupants and visitors at different hours of the day and night. This likely gives rise to unacceptable levels of noise and disturbance to neighbouring residents, diminishing their living conditions.
68. The lack of any formal arrangements for bin storage is likely to result in the positioning of bins and/or waste at the front of the property, introducing unsightly clutter into the street scene to the detriment of the character of the locale. Furthermore, to meet the relevant policy requirements of the LP 2021, any provision of secure cycle storage facilities to the front of the property would also add additional visual clutter that would harm the character of the townscape and area.
69. Such an intensive use of the property causes material harm to the character of the area and the living conditions of neighbouring residents, considerably reducing the enjoyment of the properties as their homes. These harmful effects are corroborated by representations submitted by interested parties objecting to the development.
70. Consequently, I conclude that the development has a harmful effect on the character of the area and the living conditions of neighbouring residents, with regard to noise and disturbance, and arrangements for bin and cycle storage. This is contrary to Policy DMP1 of the BLP in so far as it requires development to be of a location, use, concentration, siting, layout, scale, type, density, materials, detailing and design that provides high levels of internal and external amenity and complements the locality; and to not unacceptably increase general disturbance. It also does not comply with the objectives of the Framework which require developments to function well and add to the overall quality of the area; and be sympathetic to local character.

Supply of family housing

71. Policy BH11 of the BLP acknowledges that the conversion of existing housing stock to smaller dwellings provides many additional homes across Brent but highlights that family housing to meet local needs is also a Brent priority. The Policy allows for the conversion of family sized dwellings where specific criteria or exceptions are met, but also seeks to ensure the continued provision of family sized housing.

72. The development involves the loss of a family sized dwelling and there is no evidence before me that it meets all of the criteria or the exceptions set out in Policy BH11. Whilst it results in the net gain of seven new dwellings, as concluded above, these are of a sub-standard quality.
73. Accordingly, I conclude that the development has a harmful effect on the supply of family homes in the area. This conflicts with Policy BH11 of the BLP as referred to above. In addition, it does not comply with the objectives of the Framework in so far as it seeks to deliver a sufficient supply of homes, which meets the needs of the community.
74. The Council cite conflict with Policy BH10 of the BLP. This Policy resists housing loss. Whilst the development results in the loss of a family sized dwelling, it results in a net gain of residential dwellings. As such, I consider that this Policy is not pertinent to the development.

Other considerations

75. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the development fails to accord with up-to-date policies in the development plan in the above respects. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that the determination should be made otherwise than in accordance with the development plan.
76. Upholding the notice would interfere with the existing tenants' rights conveyed under Article 8, and Article 1 of the First Protocol of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998 (Article 8 and Article 1 of the First Protocol). Article 8 is the right to respect for private and family life, home and correspondence and Article 1 of the First Protocol is the right to the peaceful enjoyment of possessions including property. These are qualified rights, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
77. In this case, the interference with the existing tenants' rights under Article 8 and Article 1 of the First Protocol arises from an enforcement notice issued to the appellant under section 171 of the 1990 Act as amended. The interference with the tenants' rights in this regard is therefore lawful.
78. Achieving development which protects the living conditions of the building's occupants and neighbours and responds to and complements the character of the area are legitimate and well-established planning policy aims. The cumulative harm which arises as a consequence of the development is substantial.
79. Against this harm, is that upholding the notice would result in the existing tenants having to find alternative accommodation. The appellant cites use of the property to house Council tenants²⁴ and tenants housed by Brent Sheltered Housing²⁵. However, no supporting information has been provided in either of these regards, nor has any evidence been put before me which demonstrates

²⁴ Grounds of Appeal Statement dated 10 April 2022.

²⁵ PCN Response dated 15 November 2022.

that there is an overriding need for any of the tenants to remain in the property. Moreover, it is reasonable to conclude that the tenants would be aware that they would need to move out at the end of their tenancy. As such, this carries moderate weight.

80. Balancing all these factors, I consider that the interference with the existing tenants' rights under Article 8 and Article 1 of the First Protocol would be proportionate and necessary. In reaching that conclusion, I am satisfied that the protection of the public interest cannot be achieved by means that are less interfering of their rights.
81. I have had due regard to my responsibilities under the Public Sector Equality Duty contained in section 149 of the Equality Act 2010 (the PSED). There is no reference in either of the parties' evidence that any of the existing tenants shares a protected characteristic; although I note the appellant's grounds of appeal²⁶ states that the layout of the property accommodates circumstances such as a single Muslim female occupant who cooks their main food in the communal kitchen but then re-heats it in their room to eat due to concerns over other occupants in the building.
82. Had this been an existing tenant, the identified harm caused by the development would outweigh its benefits in terms of eliminating discrimination against persons with protected characteristics of religion or belief and/or sex, advancing equality of opportunity for those persons and fostering good relations between them and others. Therefore, it is proportionate and necessary to not grant planning permission for the matters stated in the notice.
83. As referenced above, the appellant claims a 'significant fallback position' in that even if the Council's submission that the lawful use of the property as a single dwellinghouse is held to be the case, then they are entitled to rely upon Class L, of Part 3, of Schedule 2, of the GPDO as permitting its change of use to C4 HMO use comprising at least 6 occupants.
84. However, Article 3(5) of the GPDO provides that the planning permission granted by the GPDO does not apply if the existing use is unlawful. In this case, I have found that there has been a material change of use to eight self-contained studio flats which did not benefit from planning permission. Permitted development rights are therefore not available under this or any other Part of the GPDO.
85. In any event, even if this was not the case, having regard to the main issues set out above, whilst the stated fallback would still involve the loss of a single family dwellinghouse, as a matter of fact and degree it would be less harmful in relation to the living conditions of the occupants, the character of the area and the living conditions of neighbouring residents. As such, it carries little weight in my determination of the appeal and does not justify making a decision which is not in accordance with the development plan.
86. I note the appellant's comments concerning the Council's tone and conduct during the course of the enforcement action and the appeal. However, these matters are not within the remit of my considerations in relation to an appeal under section 174 of the 1990 Act as amended.

²⁶ Dated 10 April 2022.

Planning balance and conclusion on the appeal on ground (a) and the deemed planning application

87. I have found that the change of use of the property to eight self-contained studio flats has a harmful effect on the living conditions of occupants; the character of the area and the living conditions of neighbouring residents; and the supply of family homes in this locale. I consider that this harm could not be overcome by the imposition of planning conditions.
88. The appellant recognises the need the Council has identified for family dwellings in the form of houses and family flats, but states that they equally have a clear and evidence based need for HMO housing, including for Council tenants. However, this line of argument relates to the property's use as one or two HMO not as eight self-contained studio flats. In any event, ensuring that sites are suitable for their proposed use and meeting the housing needs of an area are fundamental aims of the planning system.
89. I have had due regard to the material consideration of the implications of the requirements of the notice in relation to the rights of tenants under Article 8, and Article 1 of the First Protocol and under the PSED and consider that the interference is proportionate and necessary. Moreover, given my conclusions in relation to the lawful use of the property and the appeals on grounds (b) and (c), I attach little weight to the appellant's stated fallback position.
90. Drawing all of the above together, I have found the development to be contrary to the relevant policies of the development plan and no material considerations of sufficient weight have been advanced to justify a decision other than in accordance with the development plan. Therefore, I conclude that planning permission ought not to be granted for the matters stated in the notice. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

91. The appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
92. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the 1990 Act as amended sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
93. Having regard to the correction stated above, the notice in this case requires, in summary, the cessation of the use of the premises as self-contained studio flats; the removal of the internal partitions, items, materials and debris associated with the change of use²⁷; the restoration of the internal

²⁷ STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets.

- configuration to the original layout before the change of use took place²⁸; and the restoration of the premises to its condition before the breach took place.
94. The purpose of the notice must therefore be to remedy the breach that has occurred by discontinuing the use of the land for the purposes stated in the notice, as well as restoring it to its condition before the breach took place.
95. The appellant's case on this ground is that the notice and the requirements within it do not reflect the lawful use of the property and that it is prejudicial to the appellant to require the reversion of the property to a single dwellinghouse. On this basis, Steps 1 and 2 at Schedule 4 of the notice are excessive and prejudicially over-enforce. They submit that the removal of these steps from the notice would reflect the lawful use of the property.
96. However, the notice does not state as part of its requirements that the property reverts to a use as a single dwellinghouse. There is no scope for the notice to require reversion to a lawful use, that a lawful use is actively carried out, or prohibit other lawful uses or possible future breaches.
97. I acknowledge that in some instances in a material change of use case, if the purpose of the notice is to remedy the alleged breach, it is sufficient for the notice to require the unauthorised use to cease. However, I am mindful that it may also require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or they would be permitted development or immune from enforcement, so that the land is restored to its condition before the change of use took place.
98. Section 57(4) of the 1990 Act as amended provides for reversion to the last lawful use following compliance with an enforcement notice. However, the appellant has not adequately demonstrated with sufficient precision and clarity that the lawful use of the property is two HMO, stemming from the building's subdivision to two flats.
99. The enforcement regime is intended to be remedial and not punitive. However, if I varied the requirements of the notice as advanced by the appellant by removing Steps 2 and 3, they would not match the alleged breach nor would they remedy it. Given that the purpose of the notice is to remedy the breach of planning control, to require the cessation of the unauthorised use, the removal of partitions/elements associated with the unauthorised use and the reversion to the layout and condition before the unauthorised use took place does not, in my view, exceed what is necessary. I have considered whether there are any other suitable alternatives to the requirements stated in the notice which would achieve the purpose of the notice with less cost or disruption to the appellant, but none are obvious to me. Additionally, full compliance with the requirements would not prevent the appellant from doing what they are lawfully entitled to do in the future once the notice has been complied with.
100. I therefore conclude that the steps required by the notice to be taken do not exceed what is necessary to remedy the breach of planning control, but are proportionate given the purposes of the notice. Accordingly, the appeal on ground (f) fails.

²⁸ STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen and reception rooms on the ground floor, bedrooms and a bathroom with WC on the first floor, and bedrooms and a bathroom with WC on the second floor.

Conclusion

101. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

102. It is directed that the enforcement notice is corrected by:

- In Schedule 3, the deletion of the number and word '10 years' and the insertion of the number and word '4 years'; and
- In Schedule 4, STEP 1, the deletion of the words 'eight flats' and the insertion of the words 'self-contained studio flats'.

103. Subject to the corrections, the appeal is dismissed and 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.

F Cullen

INSPECTOR