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# Appeal Decision

Site visit made on 23 January 2024

**by H Davies MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 February 2024**

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**Appeal Ref: APP/Y5420/C/22/3309464**

**17 St Pauls Road, London N17 0NB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Mr Kypros Kyprianou or Goldeneye Estates Limited against an enforcement notice issued by London Borough of Haringey.
- The notice was issued on 20 September 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use to mixed use, comprising of 4 self-contained flats and a small House in Multiple Occupation (C4 HMO), and the erection of a rear dormer on the main roof and outrigger roof.
- The requirements of the notice are to:
  1. Cease the use of the property as a mixed use incorporating self-contained flats and an HMO;
  2. Cease the use of the property as self-contained flats;
  3. Cease the use of the property as an HMO;
  4. Remove from the property all but one of the kitchens, doorbells and any internal dividing doorways and partitioning facilitating the use of the property as self-contained flats and an HMO;
  5. Remove from the property all but one supply of electricity, gas and water;
  6. Remove the rear dormer (main roof and outrigger) in its entirety;
  7. Reinstate the roof profile to what it was before the unauthorised works were carried out;
  8. Remove from the land all debris arising from compliance with steps (1 to 7) above.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(b),(c)&(g) of the Act.

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

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## Preliminary Matters

1. No appeal on ground (a) has been made with this appeal, so it is not open to me to grant planning permission. I am aware that an application was made (ref HGY/2022/4521) for the property, seeking planning permission for a change of use to a House in Multiple Occupation (HMO) (use class C4) for 5 persons. This was refused by the Council in March 2023. An appeal against the refusal was made (ref APP/Y5420/W/23/3323481). The appeal was allowed on 26 January 2024 and planning permission was granted for a change of use to an HMO (Use Class C4) for 5 persons at 17 St Pauls Road.
2. The appellant has made reference to matters such as the property being well managed, affordable and car free. The Council say the alleged use results in the loss of family housing, with substandard, undersized accommodation, and

that the dormer is excessive in scale, so out of character with the area. As a result, the Council say the development does not comply with housing and design policy requirements. These matters would be material considerations under an appeal on ground (a), but as one has not been made, these matters are not relevant to this appeal.

### **The appeal property**

3. 17 St Pauls Road is a semi-detached dwelling in a residential street. It has been extended, including into the roof space and rear dormer. At the time of my site visit, the property was set up with 5 rooms as bedrooms, across the first and second floor. 4 of these had their own small en-suite toilet and shower. The remaining small bedroom lacked en-suite facilities but had access to communal wc/shower/bathroom next to it. Most bedrooms had a kettle and some also had a fridge, microwave and/or toaster, but none had a cooker. I do not consider the provision in these bedrooms to constitute a full kitchen.
4. The ground floor front and middle rooms were communal living space, which appeared underused. To the rear of the ground floor there were two rooms set up as communal kitchen/dining/laundry areas. On the evidence of the content of the cupboards and fridge, and the condition of the cooker, the first room seemed to be actively used by residents but the second room seemed less used. The layout I observed during my site visit differs from the previous layout observed by the Council, which is detailed below.

### **The appeal on ground (b)**

5. An appeal on ground (b) is that the matters stated in the notice have not occurred, as a matter of fact. The notice might not have been issued until sometime after the alleged breach was detected and subsequent changes may have taken place on site. Regardless of any subsequent changes, the question is whether the breach *had* occurred, at some point, by the date of issue of the enforcement notice.
6. The appeal on ground (b) relates only to the use of the property, and not to the rear dormer. The appellant contends that the property has not been divided into a mixed use comprising self-contained flats and an HMO but that it is just an HMO, falling under use class C4. As such, this appeal on ground (b) turns on the question of what constitutes a self-contained flat.
7. In planning terms, a self-contained flat is a separate dwelling whereas an HMO is a single dwelling in use by people sharing (or having access to) at least one shared facility. *Gravesham*<sup>1</sup> is the lead case on defining a dwelling, which sets out that a dwelling ordinarily affords the 'facilities required for day-to-day private domestic existence'. Section 254 of The Housing Act 2004 deals with HMOs and creates several tests, including that those who occupy the building must share one or more basic amenity (or their accommodation must lack one or more basic amenities). Basic amenities are defined as a toilet, personal washing facilities and cooking facilities.
8. The starting point for consideration is the facilities in each of the rooms within the appeal property. The Council have provided a comprehensive set of photographs taken during a site visit conducted on 13<sup>th</sup> May 2022. The photographs indicate which room they relate to and are supported by

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<sup>1</sup> Gravesham BC v SSE [1984] 47 P&CR 143

explanatory text. The photographs show 4 rooms (front and middle rooms at first floor and both rooms at second floor) set up with a bed, wardrobe, small table and chairs, an en-suite toilet and shower and a kitchen area. The kitchen area in each of these 4 rooms consisted of a sink with storage beneath, overhead storage, a work surface, a fridge, a free standing oven/cooker with hob and a selection of smaller items (such as kettle / toaster / microwave). The second floor rooms also had washing machines. On the evidence of the photos, the kitchen areas in these rooms were well used. I consider the facilities in these 4 rooms to constitute a full kitchen, enabling occupants to cook, eat and clean up, all in their own room without the need to share any facilities.

9. The Council photos show a room at the front on the ground floor and a small room at the rear of the first floor both without an en-suite and with a fridge but no kitchen area. The photos also show communal living space, and 2 full kitchen/diners at ground floor, along with a communal toilet at ground floor and shower/bath/toilet at first floor. The living space seemed unused while there was some evidence of limited use of one of the communal kitchens. This layout indicates that 2 rooms had to, and in fact did, share one or more basic amenity.
10. The appellant has also provided photographs but these are undated and unannotated, so it is not clear when they were taken or which rooms they relate to. In addition, the photographs of bedrooms show only part of the room and seem to omit the areas which contain kitchen facilities in the Council photographs. I can therefore give the appellant photographs minimal weight in my considerations.
11. On the evidence before me, it seems that at the time of the Council visit the property was in mixed use. It consisted of 4 units, each containing all of the facilities required for day-to-day private domestic existence. I have no substantive evidence that the occupants of these 4 units would have needed to, or in fact did, share one or more basic amenity. As a result, these 4 units each met the Gravesham test to be considered individual dwellings/self-contained flats. The 2 bedrooms without their own en-suite and kitchen, lacked the facilities required for day-to-day private domestic existence and would need to have shared one or more basic amenity, as available in the communal areas, and hence were used as a C4 HMO.
12. Consequently, as of May 2022, the property was in mixed use, comprising of 4 self-contained flats and a small C4 HMO. Therefore, the matters stated in the notice had occurred by the time the notice was issued in September 2022.
13. The timing of when the appellant claims the property was changed to use just as an HMO is unclear and not supported by substantive evidence. Observations made during my site visit show that the layout has changed since the Council visit and the current layout could indicate that the property is now in use just as a C4 HMO. Notwithstanding this, it does not alter the fact that, as set out above, the change of use alleged in the notice had taken place by the time the notice was issued.
14. In addition, even if the property is currently in use as a C4 HMO, it is located in an area covered by an Article 4 direction. This removes the permitted development rights set out under Article 3(1) and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015. Consequently, a change of use from a C3 dwelling to a C4 HMO

would require express planning permission. Permission has recently been granted for a HMO use, but this was not in place at the time the notice was issued, and/or when the change of use took place.

15. The appellant states that the property has only one meter for gas, electricity and water. This factor is not determinative on its own of how a property is used. Letters from tenants are not dated or in any way certified so are of limited value as evidence. I acknowledge that the property has an HMO licence, but this is a separate matter, albeit related, to any necessary planning permission, and they sit under different legislation. Overall, I attach little weight to these factors and they do not impact significantly on the conclusion I have reached.
16. In reaching my conclusion I have had regard to the various appeal decisions referenced by the appellant, in so far as they are relevant. However, each case must be decided on its own merits and circumstances.
17. I conclude that the matters stated in the notice had occurred by the time the notice was issued, as a matter of fact, so the appeal on ground (b) fails.

### **The appeal on ground (c)**

18. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In this case, the appellant has set out an appeal on ground (c) related only to the rear dormer.
19. A Certificate of Lawful Use or Development (LAW) (ref HGY/2016/1270) has been granted for a rear dormer extension. Images presented by the Council indicate that the dormer was constructed at some point between March 2019 and February 2022. The Council do not claim that the dormer deviates from the plans presented under the LAW and I have no reason to question this. However, the Council raise questions about whether the property was in use as a dwelling, and hence able to benefit from the permitted development rights of a dwelling, when the dormer was constructed.
20. The use of the property at the time the dormer was completed and the use at the time the notice was issued are not relevant in determining if the LAW is still applicable. The relevant consideration is the use of the property when construction of the dormer commenced. It has been confirmed by caselaw<sup>2</sup> that an HMO falling within use class C4 benefits from permitted development rights for dwellings.
21. Notwithstanding the alleged changes of use at the property, the Council have provided no substantive evidence which would lead me to conclude that the dormer was commenced at a time when the property was used other than as a dwelling. Therefore, I have no reason to conclude that the dormer is not lawful.
22. Consequently, I conclude that the matters stated in the notice with regard to the dormer do not constitute a breach of planning control and the appeal on ground (c) succeeds to this extent. I shall uphold the notice but exercise my powers under s176(1) of the Act to correct the allegation and requirements of the notice accordingly, as set out below in the formal decision.

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<sup>2</sup> London Borough of Brent v SSHCLG & Yehuda Rothchild [2022] EWHC 2051 (Admin).

### **The appeal on ground (g)**

23. This ground of appeal is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of 6 months after the notice takes effect. The appellant sets out that more time would be needed to allow the tenants to move out and requests a period of 12 months.
24. I note the recent grant of planning permission, on appeal, for a HMO use at the site. Notwithstanding this, the permission may not be implemented, and/or its implementation may require changes to the layout and to current tenants. This may mean that tenants would need to be given notice to vacate the property, and reasonable affordable housing can be difficult to find in London. To allow sufficient time for this to take place, without causing undue stress and harm to the current tenants who find themselves in this situation, 6 months may well not be sufficient. However, I need to balance this against the need to secure a prompt resolution to the breach, so a period of 9 months is reasonable.
25. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. It would be reasonable to extend the compliance period to 9 months and the appeal on ground (g) succeeds. I shall uphold the notice but exercise my powers under s176(1)(b) of the Act to vary the notice, accordingly, as set out below in the formal decision.

### **Conclusion**

26. I conclude, on the balance of probabilities, that the change of use alleged in the notice had occurred by the date the notice was issued. Consequently, the appeal on ground (b) fails and the notice is upheld with regard to the use. The rear dormer does not constitute a breach of planning control, so the appeal on ground (c) succeeds with regard to the dormer. Finally, the period for compliance with the notice falls short of what is reasonable so the appeal on ground (g) succeeds to that extent. Therefore, I shall correct and vary the notice prior to upholding it.

### **Formal Decision**

27. It is directed that the enforcement notice is corrected as follows:
- In section 3, 'The breach of planning control alleged', delete the words 'and the erection of a rear dormer on the main roof and outrigger roof'.
  - In section 5, 'What you are required to do', delete requirements 6 and 7 in their entirety; renumber requirement 8 accordingly; and delete the words 'steps (1 to 7) above' and substitute the words 'the steps above'.
28. It is also directed that the enforcement notice is varied as follows:
- In section 6, 'When this notice takes effect', delete the words 'Six (6)' and substitute the words 'Nine (9)'.
29. Subject to the corrections and variation the appeal is dismissed and the enforcement notice is upheld.

*H Davies*

INSPECTOR