



Appeal Decision

Site visit made on 13 February 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Ref: APP/F5730/C/23/3320803

Premises known as 57 Stephenson Street, London NW10 6TX

- 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 Aharon Grosskopf of Angelico Group Ltd against an enforcement notice issued by Old Oak and Park Royal Development Corporation.
 - The enforcement notice was issued on 23 March 2023.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use to 4 self-contained flats.
 - The requirements of the notice are:
 1. Cease the use of the property as 4 self-contained flats;
 2. Remove the fitting and fixtures facilitating the unauthorised change of use, including the kitchen in each flat comprising the counter, sink, fridge and cupboards;
 3. Remove from the Property, in a lawful manner, all debris resulting from compliance with the above steps.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. The Old Oak and Park Royal Development Corporation (OPDC) is a Mayoral Development Corporation and the Local Planning Authority (LPA). Planning powers were transferred from the Council of the London Borough of Ealing in April 2015.

The appeal on ground (b)

3. Appeals on ground (b) are made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred as a matter of fact. The appellant's case is that, at the date the notice was issued, the premises was in use as a House in Multiple Occupation (HMO), not as four self-contained flats.
4. For planning purposes flats are considered to be dwellinghouses, and in *Gravesham*¹ the distinctive characteristic of a dwellinghouse was considered to be its ability to afford to those who used it the facilities required for day-to-day private domestic existence.

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

5. The Town and Country Planning (Use Classes) Order 1987, as amended, distinguishes between Class C3 dwellinghouses and Class C4 HMOs. It defines HMOs as those which accord with the definition in Section 254 of the Housing Act 2004 (except converted blocks of flats).
6. Section 254 of the Housing Act introduces a number of tests, including that two or more of the households who occupy the building must share one or more basic facilities, or that the accommodation must lack one or more basic amenities (such as toilet, personal washing facilities and cooking facilities).
7. Although these are not entirely the same tests, or considerations, they overlap to a degree, and I consider them together.
8. The premises is a two-storey mid-terrace dwellinghouse in a residential area. At the time the LPA visited in January 2023, and at the time of my visit, it comprised four private rooms, each occupied by separate and unrelated individuals, and a communal kitchen. The rooms were individually locked and numbered, and had separate doorbells on the entrance to the building at the time of the LPA visit. The rear garden was only accessible to the occupier of Unit 2.
9. Each room is let under an individual Assured Shorthold Tenancy (AST), and there are separate electricity supplies and water stopcocks for each room, plus the kitchen. The property is split into four units for Council Tax purposes, but an HMO license has been granted by Ealing Council for the premises as a whole.
10. The private rooms are relatively small, with areas of 11-13sqm. Each is a single room with en-suite bathroom and a small area containing a kitchen-style worktop with sink and tiled surround, two kitchen-style cupboards, and a fridge. Notices posted in the communal areas prohibit cooking equipment in private rooms, and the appellant advises there are no power sockets at the worktop areas in individual rooms.
11. The LPA's photographs show some private rooms with kettles, and one with a worktop portable oven, similar in size to a microwave and powered via a trailing power extension lead. At the time of my visit, the portable oven witnessed by the LPA in Unit 4 had been relocated to the communal kitchen. But Section 174(2)(b) of the Act is worded in the past tense, and the question is therefore whether the breach had occurred by the date of issue of the Notice, rather than whether it is occurring at the present time.
12. Although a neighbour has reported smelling cooking through the party wall on the opposite side to the communal kitchen, there are no permanent cooking facilities in any of the private rooms, and some have very limited worktop space for any food preparation. I note the presence of cooked or stored food in some cases, and the storage or presence of pans and crockery, but that is not particularly unusual in private rooms, given the absence of a communal dining area and the limitations of sharing a communal kitchen with others.
13. In relation to Unit 4, a plug-in portable oven may afford the facility for some forms of cooking. But without hob/hotplates that would only be possible to a limited extent. The LPA consider it is possible that further plug-in appliances may, or could, be stored elsewhere in this or other units, but the arrangement of items on the worktop at that time suggests any other appliances are not

- regularly used. Only two power sockets were available in the extension lead, and both were in use by the oven and a kettle at the time of the LPAs visit.
14. In relation to Unit 2, the LPAs photographs appear to show food which had been cooked in a slow cooker on a small table by the window. But it is not clear where that food had been prepared, and the photographs show there was no room to have done so on the worktop area at the time.
 15. In my judgement, the facilities for food preparation witnessed in Units 2 and 4 facilitate the cooking of only a very limited range of meals. Alone, they are not sufficient to meet the requirements for day-to-day food preparation in the circumstances before me.
 16. The communal kitchen contains an oven and hob, fridge and freezer, larger worktop areas, a greater number of cupboards, and a washing up area with drying rack. At the appeal site visit, and the LPAs earlier visit, it also contained a washing machine, microwave, toaster, kettle and coffee machine. The hob and extractor fan showed signs of use, and the presence of cooking pans in private rooms without any facilities there for using them, suggests some use is made of the kitchen.
 17. Elements of the use therefore demonstrate a degree of independence of the units, including those such as doorbells, tenancies, utilities and local taxation. However, it has not been demonstrated that any of the private rooms have afforded those who use them all the facilities required for day-to-day private domestic existence. The communal kitchen provides essential facilities for users of all units, and the way the property is used relies on them.
 18. As a result, the units were not dwellinghouses as they did not afford to those who used them the facilities required for day-to-day existence. Consequently, at the date the notice was issued, the material change of use of the premises to four self-contained flats had not occurred.
 19. The appeal on ground (b) therefore succeeds.

Conclusion

20. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
21. In these circumstances, the appeal on ground (g) does not fall to be considered.

Peter White

INSPECTOR