



Appeal Decision

Site visit made on 14 August 2024

by Jean Russell MA FRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 23 October 2024

Appeal Ref: APP/T5150/C/24/3340336

84 North Circular Road, Stonebridge, London, NW10 0QS

- The appeal is made by the Company Secretary of Home Holdings 2 Limited under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (E/23/0397) issued on 29 January 2024 by the Council of the London Borough of Brent.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats.
 - The requirements of the notice are to:
STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO).
STEP 2 Cease the use of the premises as flats.
STEP 3 Cease the use of the premises as a mixed use of a House in Multiple Occupation (HMO) and flats.
STEP 4 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, except ONE, and all bathrooms/shower rooms and toilets, except TWO, from the premises.
STEP 5 Restore the internal configuration to the original layout before the unauthorised change of use took place.
STEP 6 Remove all debris, materials and items, arising from compliance with the above STEPS, from the premises.
 - The period for compliance with the requirements is: six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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FORMAL DECISION

1. It is directed that the enforcement notice is corrected by:
 - The insertion of the words 'mixed use comprising use as a' between the words 'a' and 'House' in Schedule 2.
 - The deletion of STEP1 and STEP2 set out under Schedule 4.
 - The renumbering of STEP3, STEP4, STEP5 and STEP6 set out under Schedule 4 as STEP1, STEP2, STEP3 and STEP4 respectively.
2. Subject to the corrections, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

THE APPEAL BUILDING AND FLOOR PLANS

3. The enforcement notice and this appeal concern a semi-detached two storey building with a loft extension plus front and back gardens. The appellant acquired the building as part of a portfolio of rental properties on 27 July 2022, although they were unable to take possession until around September 2023¹.

4. The appeal building was constructed for use and first used as a single family home. That means, in planning terms, the original use of the building fell within 'use class C3' as defined in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (the UCO) and was use as 'a dwellinghouse...by a single person or by people to be regarded as forming a single household'.
5. While the appellant refutes the allegation set out in the enforcement notice – that the building is used as a House in Multiple Occupation (HMO) and flats – there is no dispute that the use as a single dwellinghouse has ceased and there are now five units of accommodation in the property. Without prejudice, I shall refer to the units as 'bedsits' since that term could equally describe an HMO bedroom or a flat.
6. The appellant has submitted two floor plans purporting to show the building as laid out today; the Council has submitted a different plan again. The plan provided at Appendix D to the appellant's statement of case shows six bedrooms as well as shared facilities and it is incorrect².
7. The Council's floor plan shows five bedrooms with private shower rooms, and no shared WC or bathroom in the building³. The plan shown under paragraph 6.11 of the appellant's statement is much the same except it shows Bedsit 4 opened up for communal use. At my site visit, I was unable to inspect Bedsits 1 or 5, but I still saw enough to find the Council's plan the clearest.

SERVICE OF THE NOTICE

8. The appellant has not appealed the enforcement notice on ground (e), which is that copies of the notice were not served as required by s172 of the Town and Country Planning Act 1990 (TCPA90). In paragraph 3.3 of their statement, the appellant acknowledged that the notice was served on the owner and occupiers of, and any others having an interest in the land in accordance with s172.
9. However, the appellant suggested in paragraph 6.11 of their statement that the notice 'was **served** incorrectly' [my emphasis] because the Council 'has not conducted a site visit to verify the use of the property, resulting in the incorrect classification of the use'.
10. The Council has shown that the building was visited by their Principal Housing Officer on 28 September 2023. More to the point here, whether the use was properly investigated or described in the notice is not relevant to whether the notice was properly served. It follows that there is no ground (e) question to answer in this decision letter.

THE APPEAL ON GROUND (B)

11. An appeal on ground (b) is that the matters alleged by the notice have not occurred; that is a question to be addressed on a fact and degree basis. As with grounds (c) and (d) considered below, the onus is on the appellant to make their case on the balance of probabilities.
12. The appellant suggests that the allegation is incorrect because the building does not contain any flats and is therefore not in a mixed use. Rather, the appellant claims, the building is used solely as a 'C4 HMO'. Under Schedule 1 the UCO, use class C4 is defined as 'use of a dwellinghouse by not more than six residents as [an HMO]'. For the purposes of the UCO, a building or part of a building will be an HMO if⁴:

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats.
 - (b) the accommodation is occupied by persons not forming a single household.
 - (c) those persons occupy the accommodation as their only or main residence.
 - (d) their occupation 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; and
 - (f) two or more of the households share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
13. Criteria (b) to (e) are met, since the appeal bedsit occupiers are not related to each other, live in the building as their only or main residence, do not carry out any non-residential use, and pay rent. The questions are whether (a) the building includes any self-contained flats and (f) any households share, or any bedsits lack any basic amenities.
14. The relevant definition of a 'self-contained flat' is a separate set of premises (a) which forms part of a building; (b) which lies in whole or material part above or below some other part of the building; and (c) in which 'all three basic amenities are available for the exclusive use of its occupants'. The 'basic amenities' are a toilet, personal washing facilities and cooking facilities⁵.
15. In this case, for the appellant to make out their claim that the alleged change of use has not occurred, they would need to show that none of the bedsits have had the three basic amenities and been used as self-contained dwellings where the occupiers carry out all activities related to private day-to-day living.
16. It is worth reproducing the Council's floor plans of the building here:

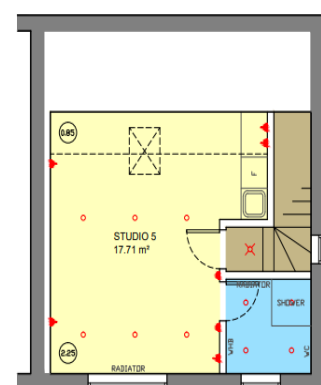
Ground floor



First Floor



Loft Accommodation



Bedsit 1

17. The floorplan above shows Bedsit 1 shaded in yellow and blue on the right hand side of the image to the left. It also shows that Bedsit 1 can be accessed via an internal 'front door' or a private door to the back garden on the site, and it has lounge/bedroom, kitchen and bathroom windows to the garden.
18. I was unable to go inside Bedsit 1 on the date of my visit. Curtains were drawn across the lounge window and the bathroom window was obscurely glazed. However, the openings were all in the same position as shown on the above plan and I could look through the kitchen window from the garden.
19. I am satisfied that Bedsit 1 probably includes a lounge/bedroom, kitchen and shower room. The plan does not identify any bathroom fittings apart from a shower, but it shows enough space for a full suite. Since the appellant does not claim otherwise, Bedsit 1 probably has a toilet and personal washing facilities.
20. The floor plan shows that the kitchen in Bedsit 1 contains a sink plus an item marked 'F', which may be a refrigerator if the 'FF' in other bedsits denotes a fridge freezer. The plan does not show an oven or cupboards and I note that the kitchen loses usable floorspace to three inward opening doors plus a doorway to the lounge/bedroom. However, the appellant has not shown that Bedsit 1 lacks cooking facilities and, when I looked in from the garden, I saw multiple, well-used utensils on the kitchen window ledge.
21. It follows that Bedsit 1 is probably occupied, and that was the situation when the appellant bought the building, since a schedule of tenants appended to the 'report on title' shows that 'Flat 1' was let to 'SH' and 'RP' from 15 July 2020⁶. In response to a planning contravention notice (PCN) from the Council, the appellant stated that tenants including SH had lived in the premises during the year ending 30 October 2023⁷. Bedsit 1 is probably laid out as a self-contained studio flat with the three basic amenities and used as such.

Bedsit 2 and the Ground Floor Kitchen

22. I saw that Bedsit 2 conforms to the floor plan submitted by the Council. It has a shower room which, although smaller than that in Bedsit 1, contains a toilet plus personal washing facilities in the form of a basin and shower.
23. The lounge/bedroom in Bedsit 2 accommodates assorted items of furniture, including a bed and seating. I also saw personal effects throughout Bedsit 2, but no designated kitchen, cooking facilities or space for preparing food. There was not even a kettle in Bedsit 2 on the date of my visit.
24. The floor plan shows, shaded in grey, a kitchen adjacent to Bedsit 2. I saw that it contains an oven and hob, fridge freezer and cupboards, washing machine, microwave, kettle, bin, sink and a worktop. The fridge and cupboards were stocked, dishes had been recently washed, and the cooker, pans and utensils were likely to be used routinely. With no lock to the door, this kitchen is probably used by the occupier of Bedsit 2 for preparing and cooking food.
25. I will return to the question as to whether the ground floor kitchen is used by any other occupier of the building. However, I can already make a finding that Bedsit 2 is probably not a self-contained flat because it lacks basic cooking facilities, and it is not used or capable of being used for cooking food.

Bedsits 3 and 4

26. Bedsit 3 is on the right hand side of the middle image in the Council's floorplan above. I saw that, in accordance with the plan, Bedsit 3 contains a kitchen, bathroom and lounge/bedroom so that it has the three 'basic amenities' of a toilet plus personal washing and cooking facilities. I also saw that Bedsit 3 is occupied and contains furniture and personal effects. This unit is laid out and probably used as a self-contained studio flat.
27. Bedsit 4 likewise contains a kitchen, bathroom and lounge/bedroom. The 2022 schedule of tenants shows that 'Flat D' was let out to an occupier with the initials 'SCH' from 24 March 2021. The same person was listed by the appellant in their response to the PCN as one of those who had lived in the premises during the year to 30 October 2023.
28. For the purposes of the appeal on ground (b), I find that the alleged matters probably 'have occurred' insofar as Bedsit 4 has been in residential use. Given its layout, fixtures and fittings, with the three basic amenities, I find that Bedsit 4 was probably used as a self-contained studio flat rather than HMO bedroom.
29. Bedsit 4 is now unoccupied and the lock and number '4' have been removed from its 'front' door, so it is available for use by other bedsit occupiers. And Bedsit 4 was indeed being used on the date of my visit for storage, with there being a pushchair, nappies and other household items in the lounge, plus food and laundry in the kitchen. Since the adjacent Bedsit 3 is occupied by a couple with at least one young child, it is probably they who use Bedsit 4 for storage.
30. However, I saw no evidence of Bedsit 4 being used for any primary residential purpose, that is, for personal hygiene, cooking, eating, relaxing or sleeping, as one would expect for a communal bathroom, kitchen or lounge in an HMO. I saw a sofa and screen as well as kitchen fittings in Bedsit 4, but no pots, pans, utensils, crockery, cutlery or other signs of ordinary private domestic activity; a clothing drier stood in the way of its shower room door.
31. That the occupiers of Bedsit 3 store items in Bedsit 4 does not alter my finding that both units are self-contained flats on the balance of probabilities. Bedsits 3 and 4 both contain the three basic amenities, and they have, according to the schedule of tenants, been let out at the same time to separate tenants.

Bedsit 5

32. I was unable to access Bedsit 5 and so rely on the floor plans to ascertain its layout. Bedsit 5 clearly has a bathroom, which again I would expect to contain a WC and basin as well as shower. The plan also indicates that Bedsit 5 contains a kitchen sink and cupboards in the lounge/bedroom, but it does not show any cooking facilities or a room which could be used as a kitchen.
33. The schedule of tenants and PCN show that Bedsit 5 has been occupied as 'Flat 5'. Nonetheless, and although this is the largest unit in the building, Bedsit 5 appears to lack one of the basic amenities – cooking facilities – so that it cannot be described as a self-contained flat.

Conclusion on Ground (b)

34. I have had regard to the 'affidavit' from the Asset Manager of AEW Ltd, who claims that the building is used simply as an HMO. However, his statement is

not signed, dated or witnessed by a solicitor and, more importantly, it is contradicted by the other evidence described above.

35. Bedsits 1, 3 and 4 provide the three basic amenities and have probably been used as self-contained flats. Bedsit 2 is not a flat because it lacks cooking facilities but, whether or not the same is true of Bedsit 5, the appellant has not shown that the building is only used as an HMO.
36. I conclude that, on the date the notice was issued, a material change of use of the appeal building to a mixed use comprising an HMO and flats had probably occurred. The appeal fails on ground (b) but, in the interests of precision, I shall correct the notice so that the allegation includes the term 'mixed use'. This correction will clarify the notice, not change it in substance, and so there will be no injustice to the appellant or Council.

THE APPEAL ON GROUND (C)

37. Ground (c) is that the matters do not constitute a breach of planning control. The appellant claims there is no breach because planning permission is granted for a change of use of a building from C3 to C4 use under Article 3(1) and Part 3, Class L(b) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
38. The Council made an 'Article 4 Direction' to remove 'permitted development rights' set out under Part 3, Class L(b) across the Borough. The Direction came into effect on 1 November 2022 and does not apply retrospectively. However, I do not need to address whether the alleged change of use took place before that date because, either way, and by contrast with the Bertie Road appeals cited by the appellant⁸, the use of the building was not changed from C3 to C4.
39. The change of use that occurred was from C3 use to a mixed use as a HMO and flats. Whenever that change of use happened, it was not permitted under any Part or Class of the GPDO. It is apparent that planning permission is not otherwise granted for the development, and so it follows that there has probably been a breach of planning control. The appeal fails on ground (c).

THE APPEAL ON GROUND (D)

40. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters, because it was too late for the Council to issue the notice when they did.
41. The time limits for taking enforcement action are set out under s171B(1) of the TCPA90. Subsection (a) relates to building operations and is not relevant to this appeal. Subsection (b) relates to a change of use of a building to use as a single dwellinghouse and, while that would encompass a change of use to flats, it cannot encompass the introduction of a mixed use as occurred here.
42. Thus, the relevant time limit is that set out under s171B(3): no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach of planning control. Since the notice was issued on 29 January 2024, the appellant would need to show that the use of building as a HMO and flats was begun by no later than 29 January 2014 and then took place without significant interruption for a ten year period.

43. In this case, ground (d) was pleaded on the erroneous basis that the immunity period would have been four years; the appellant does not attempt to show that the use had taken place for ten years by the date that the notice was issued. That is unsurprising and not just because the appellant only acquired the property in 2022.
44. There are records of how the building was used after March 2014 because a previous owner applied for a lawful development certificate (LDC) on 12 November in that year in order to ascertain that the construction of a “proposed hip to gable roof extension, rear dormer window and front rooflight **to dwellinghouse**” [my emphasis] at 84 North Circular Road would be lawful.
45. The LDC application (ref: 14/4413) confirmed that the building was then in use as a ‘house in single family occupation’, while the submitted plan showed the building laid out as such. The Council’s report stated that ‘a site visit was carried out on 23 December 2014. The [use of the] property was confirmed to be a dwellinghouse’. The LDC was granted on the basis that the works would have been permitted under Part 1 of Schedule 2 to the GPDO which then (and now) relates to works within the curtilage of a dwellinghouse.
46. The schedule of tenants records the earliest letting as starting on 1 May 2019. Whether or not any flat or HMO existed before then is a moot point. The property was probably used as a single dwellinghouse, and not as an HMO plus flats, at least as late as December 2014. The mixed use had probably taken place for less than ten years by the date that the notice was issued on 29 January 2024. The appeal fails on ground (d).

THE APPEAL ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

Main Issues

47. I consider that the main planning issues in this appeal are:
- The standard of living conditions within the HMO and flats.
 - The effect of the mixed use on the living conditions of neighbours.
 - Its effect on the character and appearance of the local area.
 - Its effect on the supply of family-sized accommodation in the local area.
 - The effect of a refusal of planning permission on the HMO and flat occupiers.
48. In my reasoning on these issues, I must have regard to the development plan, which comprises the London Plan 2021 and the Brent Local Plan 2019-2041. I shall also have regard to the National Planning Policy Framework (NPPF) and other Government guidance.

Living Conditions in the HMO and Flats

The Size of the Bedsits

49. The Council objects that occupiers of the building will experience unacceptable living conditions in part because the bedsits – whether self-contained or not – are too small. The Council’s floor plan includes a schedule of the ‘net areas’ provided in each bedsit, while ‘total floor areas’ are set out in Energy Performance Certificates (EPCs) granted on 27 April 2022.

	Floor plan 'net areas'	EPC 'total floor area'
Bedsit 1	18.59 square metres (sqm)	24sqm
Bedsit 2	19.61sqm	23sqm
Bedsit 3	18.84sqm	26sqm
Bedsit 4	16.42sqm	19sqm
Bedsit 5	17.71sqm	27sqm

50. I shall adopt the more favourable EPC estimates since there is no dispute that the assessor visited the site. London Plan Policy D6 and Table 3.1⁹ require any 'one bedroom one person' flat with a shower room should have a minimum floor area of 37sqm (including 1sqm built-in storage). Bedsits 1, 3 and 4 are barely two thirds of that size despite being laid out as studio flats.
51. I saw that Bedsits 1 and 3 appear as cramped in practice as one would expect from the lack of room on plan. While I could only inspect Bedsit 1 through the kitchen window, that room was cluttered with everyday items for which there was plainly insufficient storage space. The same was true of Bedsit 3 despite the fact that its occupiers use Bedsit 4 while they can for storage. As noted above, Bedsit 3 is occupied by a couple with at least one child who must all sleep, eat and relax in one substandard and overcrowded lounge/bedroom.
52. Bedsit 2 has much less than 37sqm floorspace and my guestimate is that the same would be true even if its occupier(s) could treat the ground floor kitchen as their own. However, it is not a self-contained flat and I take the appellant's point that London Plan space standards do not encompass rooms within HMOs. The appellant has not provided a copy of the Houses in Multiple Occupation Supplementary Planning Document (HMO SPD) but I accept for the sake of argument that Bedsit 2 meets the Council's minimum HMO space standards¹⁰.
53. Nonetheless, and even if there is only occupier of Bedsit 2, I saw that their accommodation and the adjacent kitchen were again crammed with ordinary personal belongings, some of which – such as toiletries on the coffee table – were incongruously placed, presumably for lack of anywhere more appropriate. I did not see inside Bedsit 5 but its occupier(s) will have to use whatever kitchen facilities are shoehorned into that unit – which again is much smaller than 37sqm – or carry food upstairs from a kitchen to eat in their room.
54. I consider that the occupiers of Bedsits 1, 2, 3 and 5 live in unacceptably miserable and cramped conditions. To be clear, the ground floor kitchen is not enough to remedy the lack of space in those units, and Bedsit 3 would still be too small if it was occupied by a single person rather than family. I also note that, if this appeal succeeds and planning permission is granted for what is alleged, Bedsit 4 could be let out separately again. As the smallest unit, it would afford wholly inadequate living conditions.

The Number of Bedsits and Shared Facilities

55. I consider that the number of bedsits in the building will compound the harm caused by through insufficient floorspace in each one. Even if just one person occupied each unit, they would be likely to unacceptably disturb each other

- from carrying out normal but noise-generating activities such as cooking, watching TV or taking out rubbish within cramped rooms on top of each other.
56. That the occupiers are likely to experience elevated levels of background noise from the North Circular Road is more reason, not less, to ensure they do not suffer unacceptable disturbance from living in this overcrowded building. The harm caused by noise could not be overcome by imposing a condition because it would be unreasonable to require the expensive sound proofing of each unit.
57. I also note that only Bedsits 1 and 2 have direct access to the private rear garden on the site. The occupiers of Bedsits 3, 4 and 5 can only reach that amenity space via the front door of the appeal building, the front garden and side gate. With external bins for all five householders needing to be stored in the front garden or behind the gate, I consider that occupiers of Bedsits 3, 4 and 5 would in practice find the back garden inaccessible, and that will compound their unacceptably claustrophobic living conditions inside.
58. I would not dismiss the appeal because there are currently no waste and recycling storage facilities. Planning permission could be granted subject to a condition requiring the provision of bins and a bin store where they would be accessible to occupiers and waste collection operatives. A condition could also require that the landlord implements an approved waste management plan, though I share the appellant's reservation as to whether that would be needed.
59. I also disagree with the Council that permission could be refused on the basis that there are no on-site bicycle or car parking spaces. Again, a condition could be imposed to ensure the provision in the rear garden of seven secure cycle parking stands – one for each bedsit plus two for visitors – as required by London Plan Policy T5. Meanwhile, London Plan Policy T6 and Brent Local Plan Policy BT2 encourage car-free development. The site has a public transport accessibility level of 3, so there should be a maximum provision of 0.25 off-street car parking spaces per dwelling but that does not have to be achieved.
60. Brent Local Plan Policy BT2 also states that development should not add to on-street parking where existing demand cannot be met. However, I would be surprised if the mixed use causes any noticeable increase in parking demand given that the bedsits are small and likely occupied by low income households, while buses run along North Circular Road. The lack of car parking spaces will not unacceptably harm the living conditions of the occupiers of the building.

Conclusion

61. I have found that the lack of any off-street parking spaces does not impair living conditions within the building, and the lack of external refuse storage and cycle parking facilities could be remedied through the imposition of conditions. The mixed use does not therefore conflict with Brent Local Plan Policy BT2 or London Plan Policies T5 or T6. I shall also disregard the Council's concern that the property is poorly managed; that is not a planning matter, and it may in any event have been a problem caused by the previous landowners.
62. However, those findings merely point to absences of harm and my overriding conclusion on this issue is that the bedsits are unacceptably under-sized. The lack of internal space will cause the occupiers to suffer unacceptably cramped and noisy living conditions. For the occupiers of Bedsits 3, 4 and 5, that harm will be exacerbated by poor access to the private rear garden on the site.

63. A grant of permission would conflict with Brent Local Plan Policies DMP1 and BH13, and London Plan Policy D6, which expect new dwellings to provide high levels of internal and external amenity; not unacceptably increase noise and general disturbance; have a sufficient size and type of external private amenity space to meet the proposed residents' needs; and provide adequately sized rooms with comfortable and functional layouts. It would conflict with the NPPF, which expects development to achieve a high standard of amenity for users.

Living Conditions – Neighbouring Occupiers

64. The Council objects that noise and disturbance related to the comings and goings of the bedsit occupiers will harm the living conditions of neighbouring occupiers. Instinctively, I agree the building is so over-occupied that unacceptable noise probably will carry through the party wall of the semi-pair, and from the front and back gardens on the site. In fairness to the appellant, however, the Council has provided little evidence to substantiate this concern and no local resident has raised concerns through this appeal.
65. Given my findings above that there is no need to provide car parking spaces, and bin and bicycle storage could be secured, I cannot find that the mixed use causes unacceptable harm to the living conditions of nearby occupiers, such that planning permission could be refused on that ground alone. However, my concern that there would probably be some harm from noise adds a little weight to my findings on the first main issue.

Character and Appearance

66. Again, the Council has not properly explained its concern that the mixed use causes harm 'to the area in general'. The bedsits are occupied for residential purposes; in that respect, there is no substantive change – let alone harm – to the character of this residential area.
67. It is conceivable that the provision of enough bins in the front garden for all five households occupying the site would detract from the appearance of the area. However, the Council has not shown that any such visual harm would be so serious on its own as to warrant a refusal of permission, especially when a condition could ensure that details of a bin store are submitted for approval.
68. I conclude that the mixed use need not cause unacceptable harm to the character and appearance of the local area. It need not conflict with Brent Local Plan Policy DMP1 or the NPPF, which expect development to complement the locality and be sympathetic to the surrounding built environment.

Family Housing

69. Brent Local Plan Policy BH10 concerns development causing a net loss of dwellinghouses; that is not relevant because the appeal building includes flats and the change of use gave rise to a net increase in dwellings. However, Brent Local Plan Policy BH11 seeks to protect family-sized homes from changes of use to smaller dwellings. Since the change of use resulted in the loss without replacement of a 3+ bedroom home, and the appellant makes no case that the pre-existing house was deficient, there is a clear conflict with Policy BH11.
70. The appellant has also not shown that the need for small and shared dwellings in this area is so much greater or more urgent as to take priority. For that reason, and since the occupiers of Bedsit 3 plainly need a family-sized dwelling,

I conclude that the change of use has caused the harm to the supply of family housing that Policy BH11 seeks to avoid.

Refusal of Planning Permission

71. The title report shows that the appellant bought the building to accommodate people with learning disabilities or mental health problems, or homeless people, refugees, victims of domestic violence or ex-offenders. However, there is no evidence before me as to the circumstances of the actual occupiers or that the accommodation comes with any kind of specialist support. The building is not used as a refuge, for example.
72. That said, the occupiers of the building will certainly become vulnerable if I refuse permission and uphold the notice, because the use will be required to cease, and they will be made homeless. That would have particularly severe consequences for the child or children living in the building, and I also take the appellant's point that the occupiers may have limited options in looking for somewhere else that is available or affordable to them.
73. The Council suggests that, with their portfolio of properties, the appellant could re-home the occupiers of the building. To my knowledge, however, there is no such legal obligation on the appellant, and I cannot assume that they have four vacant flats or HMO bedspaces available elsewhere anyway. I find that the occupiers of Bedsits 1, 2, 3 and 5 need their homes and would suffer practical, financial and emotional difficulties if the notice is upheld. I attach considerable weight to that conclusion.

Conclusion on Ground (a) and the Deemed Planning Application

74. The change of use of the building to an HMO and flats was carried out such that the occupiers have inadequate living conditions, and so as to result in the loss of a family home. Those considerations carry substantial weight against the appeal, and that finding is reinforced by the likelihood of the development causing some harm to the living conditions of neighbouring occupiers.
75. That the development causes no unacceptable harm in respect of car parking, bicycle or bin storage or to the character and appearance of the area does not count for or against a grant of permission. In favour of the appeal, I have found that the bedsit occupiers will likely become homeless if the notice is upheld. I attach considerable weight to their immediate need for the mixed use, but that benefit does not, in my view, outweigh the collective harms caused by the development. That the occupiers live in wholly substandard conditions is to me a most pressing concern.
76. Dismissing the appeal would interfere with the occupiers' rights to a private and family life and home, under Article 8 as set out under the Human Rights Act 1998. However, Article 8 is a qualified right and interference with it here would accord with the law and be in pursuance of well-established and legitimate aims: protecting the quality and supply of housing.
77. In this case, the bedsits are so cramped that the rights of the occupiers to a private and family life and home are already compromised. I consider that the best interests of the child(ren) living in this building lie in their parents having access to family housing of a kind which not only complies with London Plan standards but was lost through the change of use that took place. I conclude that it is necessary and proportionate to refuse planning permission for the

HMO and flats. The public interest in securing adequately sized homes cannot be achieved by means less interfering with the occupiers' rights.

78. From the appellant's evidence and my site inspection, some or all occupiers of the building are likely to live here as a result, directly or indirectly, of their having a 'protected characteristic' of race, sex and/or disability. But when I have due regard of the need to eliminate discrimination, advance equality of opportunity and foster good relations between people who do and do not share the same protected characteristics¹¹, I again find that the harm caused to the living conditions of the occupiers outweighs the benefits of the development.
79. With regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

THE APPEAL ON GROUND (F)

80. The appeal on ground (f) is that the requirements of the notice are excessive to remedy the breach of planning control that has occurred or the injury to amenity caused by the breach. In this case, the notice alleges that there has been a change of use, and it requires that the unauthorised use is ceased. It follows that the purpose of the notice, or what the Council is trying to achieve, is to remedy the breach of planning control.
81. Accordingly, I can only consider under this ground (f) appeal whether the requirements of the notice are excessive to remedy the breach. I cannot consider whether any lesser steps would remedy the harm caused by the mixed use or secure human rights or equality objectives.
82. I find that it is excessive for the notice to include three requirements that the HMO use, the flats use, and the mixed use are ceased. However, the breach would not be remedied if the latter is allowed to continue. I shall delete the first two requirements of the notice so that the first step is cessation of the mixed use; that correction will cause no injustice to the appellant or Council.
83. It is not excessive for the notice to require that internal partitions, kitchens, bathrooms and other fittings and fixtures installed to facilitate the change of use are removed. By contrast, it is necessary to require that the property is restored to its previous condition in order to remedy the breach. Thus, the appeal on ground (f) succeeds only to the limited extent that the first two superfluous requirements of the notice are deleted.

THE APPEAL ON GROUND (G)

84. Finally, an enforcement appeal on ground (g) is that the period of compliance with the requirements of the notice falls short of what is reasonable. The appellant 'does not believe that 12 months is reasonable' but I take that 'not' as a typo and assume that the appellant is seeking one year for compliance, given that the period set out in the notice as issued is six months.
85. The appellant seeks an extension to the period because they have only recently gained possession of the property. I get how frustrating that situation must have been, but not why it means that the appellant would need more time to comply with the requirements of the notice. The appellant has access to the building now and the period will only start from the date of this decision letter.

86. The crucial question for me is how much time the occupiers would reasonably need to look for somewhere else to live. I accept that they are vulnerable people whose options for suitable or affordable alternative accommodation will be limited. But even if I extended the period for compliance with the requirements to one year, there could be no guarantee that the appellant would give the occupiers more than the statutory two months' notice.
87. I also consider that the occupiers could be given more than the minimum amount of notice even if the period remains as it is. The physical works required by the notice would only affect the interior of the building and be straightforward. They could be completed within two months, if not less time, giving the occupiers four months beforehand to look for a new place to live.
88. Given the unacceptably harmful conditions in which the occupiers are living, I conclude that the period for compliance with the notice is reasonable and proportionate. The appeal on ground (g) does not succeed.

Jean Russell

INSPECTOR

¹ Statement of an Asset Manager at AEW Ltd. I am not aware of his or their interest in the building.

² Plan (13256/01) drawn by Rubix Planning.

³ Unnumbered plan by CHPK Limited at Appendix 6 to the Council's statement.

⁴ This meaning of the term 'HMO' is set out in s254 of the Housing Act 2004.

⁵ Under s254(8) of the Housing Act 2004.

⁶ Appendix A to the appellant's statement of case

⁷ Appendix 7 to the Council's statement of case

⁸ Appeals APP/T5150/X/22/3313869 and /3316167; the Inspector found that the proposed change of use in that case would have been permitted development under Class L because the use was to be from C3 to C4 and would have taken place before the Article 4 Direction came into effect.

⁹ London Plan Table 3.1 accords with the Government's nationally described space standards.

¹⁰ The appellant's statement includes a link to the HMO SPD, but websites are subject to change. Evidence for an appeal should be provided in such a format that the parties and I are sure of seeing the same.

¹¹ In accordance with the public sector equality duty set out under s149(1) of the Equality Act 2010.