The Planning Inspectorate

Appeal Decision

Site visit made on 10 September 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2024

Appeal Ref: APP/T5150/C/24/3343607
Flats 1-8, 14A Central Business Centre, Iron Bridge Close, London NW10 0UR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Hornington Investments Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 27 March 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to eight flats. ("the unauthorised change of use")
- The requirements of the notice are to:
  Step 1 Cease the use of the premises as flats.
  Step 2 Restore the premises to its original condition and internal layout before the unauthorised change of use took place, and remove all partitions, toilets, bathrooms and kitchens from the premises.
  Step 3 Remove all items, materials and debris, associated with the residential use, from the premises.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) 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.

Decision

1. It is directed that the enforcement notice is varied at Schedule 4, Step 2, by the deletion of the words ', and remove all partitions, toilets, bathrooms and kitchens from the premises', so that Step 2 reads 'Restore the premises to its original condition and internal layout before the unauthorised change of use took place.'

2. Subject to the variation above, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

3. Applications for costs were made by Hornington Investments Ltd against the Council of the London Borough of Brent and by the Council of the London Borough of Brent against Hornington Invetments Ltd. These applications are the subject of separate decisions.

Preliminary Matters

4. The Council has requested that the appeal is determined by way of an Inquiry and the appellant has requested it is dealt with by the written representation procedure. I conducted a Case Management Conference (CMC) with the parties

and raised whether it was necessary to test the evidence under oath. Following the CMC the procedure was changed.

5. The appeal form identifies Mr Deepak Chainrai as the appellant and the first line of their address as 'Hornington Investments Ltd'. Within their Proof of Evidence, Mr Chainrai advises that they have known the site and uses of it by virtue of being the director of the company, Hornington Investments Ltd, who is the owner of the site since August 1996. A director of a company has no right of appeal on the Company's behalf. I therefore raised whether the banner heading of the appeal decision and costs decisions should refer to Hornington Investments Ltd, rather than Mr Deepak Chainrai. It has been confirmed the appeal and costs decisions should refer to Hornington Investments Ltd.

Ground (d)

6. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.

7. Section 171B(2) of the Act concerns a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse. In this case, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach. For the appeal to succeed under ground (d), the appellant would need to show, on the balance of probabilities, that the material change of use occurred on or before 27 March 2020[1] and, if so, that it continued without significant interruption for at least 4 years thereafter.

8. The appellant has drawn my attention to *Sage v SSETR & Maidstone BC* [2003] UKHL 22, which concerned operational development and whether a building was substantially completed and therefore immune from enforcement action due to the passage of time. However, the enforcement notice does not allege a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations, rather it alleges a material change of use of the premises to 8 flats.

9. The main thrust of the appellant's case is that the 'conversion' works on the property were substantially completed by 27 March 2020 and that, while the properties were not occupied until late 2023, the use of the premises was exclusively residential. The appellant, in this case, relies heavily upon the case of *SSCLG & Anor v Welwyn Hatfield Borough Council* [2011] UKSC 15. That case concerned a building which had been constructed as a dwelling and, after a limited period, the owner of the property moved in. The Court had to decide whether the four year time limit for taking enforcement action in section 171B(2) was applicable, or the 10 year rule provided in section 173B(3).

10. In *Welwyn Hatfield*, it was held that in dealing with "change of use of any building to use as a single dwelling house", it is (more) appropriate to look at the matter in the round and to ask what use the building has or of what use it is. This analysis considered the case of *Impey v Secretary of State for the Environment* (1980) 47 P & CR 157, where it was held that change of use to residential development can take place before the premises are used in the

[1] Namely 4 years prior to the issue of the enforcement notice.

ordinary and accepted sense of the word. How much earlier there can be a change of use will be a question of fact and degree.

11. In support of its case, the appellant has provided a series of statutory declarations, as well as photographs, which are asserted to show the property as 'virtually complete' on 13 March 2020. The photographs show bathroom fittings, which have been installed in one of the bathrooms. Light fittings appear to be hanging from the ceiling and works to convert the building appear to be on-going. Nevertheless, it is possible for the works to have been completed by 27 March 2020 and Mr Chainrai has confirmed works were completed on 24 March 2020, when they did a site visit.

12. My attention has been drawn to a previous appeal decision made in respect of the site, reference APP/T5150/W/19/3224535. That appeal was made under section 78 of the Act and concerned an application for prior approval for a proposed change of use of the first floor of Block 3 from office use (Class B1(a)) to dwellinghouses (Class C3). The Inspector visited the site on 2 November 2019 and explained that, during their visit, work as well advanced on the conversion of the office units to create the 8 flats shown in the plans.

13. The Inspector went on to describe the work as including the erection of walls to sub-divide the floor space, plumbing, electrical and insulation works and found that these works clearly equated to the commencement of the development. Since Class O of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) concerns development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule, it is reasonable to conclude the Inspector was concluding that the change of use had begun.

14. From the evidence, it seems likely, on the balance of probabilities, that the building provided viable facilities for living, with regard to the *Gravesham*[2] characteristics of a dwellinghouse by 24 March 2020. It is clear from the evidence, including the previous appeal decision[3], that the appellant's intention was to let the units out as self-contained dwellings. The appellant suggests lockdowns affected its ability to get certificates issued and that domestic electrical and fire alarm certificates were not issued until 7 April 2021 and 8 November 2021. The appellant received the Council Tax notices at the end of September 2023, at which point the property was let.

15. The appellant states that, following completion of the works, there was no interruption or abandonment. The use of the premises between the physical conversion works and residential occupation was not offices, because the premises had been turned into studio flats. It is suggested it was not a 'nil' or 'no use' because the previous Inspector in respect of the Prior Approval appeal found that the works which had, at that time, been carried out, equated to the commencement of the development.

16. However, as established in *Swale BC v First Secretary of State* [2005] EWCA Civ 1568, a lawful use must be 'affirmatively established'. A use can only

[2] Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142; [1983] JPL 307
[3] APP/T5150/W/19/3224535

become lawful if it continues throughout the four[4] year period, to the extent that the Local Planning Authority could have taken enforcement action at any time[5].

17. *Bansal v SSHCLG & Anor* [2021] EWHC 1604 concerned a two-storey semi-detached residential dwelling house which had been divided into two flats. In this case, it was held that it was rational for the Inspector to require the appellant to establish that both flats had been occupied as separate dwelling houses throughout the four year period, so as to demonstrate that the Council would have been able to take enforcement action during that time. I recognise the facts of that case are different to the appeal before me, however, I see no reason why a different approach should be taken because the appeal site was not in residential use prior to the material change of use.

18. While *Welwyn* is a decision of the Supreme Court, it was concerned with an initial change of use, rather than an interruption in continuous use. The Supreme Court did not consider the test for establishing four years continuous use under section 171B(2) and there is no suggestion that the Court intended to overrule *Thurrock* and *Swale*. In *Swale*, it was held that the decision maker is required to consider not the building's availability or suitability for residential use, but whether it was actually put to such use.

19. A building may well not be in continuous use for residential purposes and yet the owner fully intends to resume occupation for such purposes at a future date. The existence of such an intention would not by itself entitle the planning authority to serve an enforcement notice when the building is not being residentially used. If a structure is not in established use as a dwellinghouse at the start of the material period, such use has to be affirmatively established, not merely at the start but over the whole period. The fact that it (a building) is not put to some alternative use does not demonstrate that it was in residential use. Here, logically, discontinuous residential use is not continuous residential use.

20. The appellant has drawn my attention to the case *Hedges v SSHLG & Anor* [2021] EWHC 2392 (Admin) which concerned an alleged material change of use of land from a field used for agricultural purposes to holiday use for the stationing of caravans and tents. In that case, the need to consider factors other than actual use was reaffirmed in relation to when a material change of use has occurred. While this is consistent with *Welwyn*, it does not assist in terms of continuity and whether the Council could have taken enforcement action during the relevant period.

21. Decisions about immunity are fact specific. Whether any break in occupation, for example for redecoration/renovation or changeover between tenants/occupiers, resulted in an interruption in continuous use will be a matter of fact and degree. While I accept the proposition that an enforcement notice can lawfully be issued notwithstanding that at the moment if issue the activity objected to is not going on, because it is a weekend, for example, I do not consider the Council could have taken enforcement action throughout the relevant period in this case. The units were not occupied for a period of more than 3 years. This is not *de minimis.* The fact that the period of occupation

[4] The relevant immunity period
[5] *Thurrock BC v SSETR* [2002] EWCA Civ 226 and Swale BC v FSS & Lee [2005] EWCA Civ 1568; [2006] JPL 886, cited in Islington LBC v SSHCLG & Maxwell Estates [2019] EWHC 2691 (Admin); [2020] JPL 532

occurred after the works were carried out does not affect my conclusion on this.

22. Thus, even if the material change of use had occurred on or before 27 March 2020[6], it has not been shown that it continued without significant interruption for at least 4 years thereafter. Consequently, the appeal under ground (d) must fail.

Ground (a)

23. In support of their appeal, the appellant has provided a plan which shows the appeal site laid out with 6 flats instead of 8. The appellant states they are willing to undertake the work required to provide this reduction, should it be deemed more acceptable. Section 177(1) gives the power to 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. However, the 6 flat scheme does not form the whole or any part of the matters stated in the enforcement notice. Planning permission cannot be granted under section 1711(1) for a scheme that is not part of the matters and so I shall not consider the 6 flat scheme further.

24. The enforcement notice cited the absence of an Air Quality Impact Assessment (AQIA) and a Sustainability and Energy Statement (SES) within its reasons for issuing the notice. The appellant has submitted an AQIA and SES in support of its appeal. The Council confirmed during a Case Management Conference that as these documents have been submitted, these matters are no longer in dispute and do not need to be considered as main issues.

Main Issues

25. The main issues of the appeal are:

- Whether the flats provide satisfactory living conditions for their occupants, having regard to the provision of internal floor space, external amenity space, provision of bin and cycle storage, provision of wheelchair accessible units or lifetime home compliant units.
- The effect of the appeal scheme on the site as a designated Significant Industrial Location (SIL) and its effect on the provision of land to meet current and future demands for industrial and related functions;
- Whether the appeal scheme makes appropriate provision for affordable housing; and
- The effect of the appeal scheme on the provision of family sized (3 bed or more) dwellings.

Reasons

Living conditions

26. Policy D6 of the London Plan (2021)(the LP), seeks housing development which provides adequately sized rooms, which are fit for purpose and meet the needs of Londoners. The policy states that housing developments are required to meet certain minimum standards, which apply to all tenures and all residential

[6] Namely 4 years prior to the issue of the enforcement notice.

accommodation that is self-contained. For a 1 bedroom, 1 person single storey dwelling, the minimum gross internal floor area required is 37 square metres (sqm) where there is a shower room instead of a bathroom and for a 1 bedroom, 2 person single storey dwelling, the requirement is 50sqm.

27. The Sustainability Appraisal identifies the floor area of each of the units –

    Flat 1: 21.49sqm

    Flat 2: 24sqm

    Flat 3: 23.89sqm

    Flat 4: 18.9sqm

    Flat 5: 13.9sqm

    Flat 6: 16.39sqm

    Flat 7: 16.95sqm

    Flat 8: 14.99sqm

28. The appellant does not dispute that the units all fall below the requirements set out in policy D6 of the LP. The appellant suggests that as the units provide low cost affordable single room accommodation and that the rooms exceed the size requirements for single room accommodation. However, there is no suggestion that facilities, such as a bathroom or kitchen, are shared between the users of the flats. Each unit has its own lockable front door and provides the facilities needed for day to day living and is, in my view, self-contained. Consequently, the minimum standards set out in policy D6 of the LP apply.

29. The floor space provided by each of the units falls well below the minimum requirements set out in policy D6 of the LP for a 1 person 1 bed dwelling. Furthermore, I saw that a number of the units appeared to accommodate more than one person.

30. The appellant suggests the lack of partition walls and 'wasted space' means that there is sufficient space for the residents to live comfortably. However, the requirements set out in the LP are the minimum considered to meet the needs of occupants. Occupants cook, eat, sleep and relax in the same, very modest space. This, in my view, does not provide satisfactory living accommodation contrary to policy D6 of the LP, the requirements of which are set out above.

31. With respect to private outside space, policy D6 of the LP advises, where there are no higher local standards, a minimum of 5sqm of private outdoor space should be provided for 1-2 person dwellings. Policy BH13 of the Brent's Local Plan states that all new dwellings will be required to have external private amenity space of a sufficient size and type to satisfy its proposed residents' needs. This is 50sqm for family housing at ground floor level and 20sqm for all other housing.

32. The Brent Design Guide SPD1 (the SPD)(November 2018) advises where sufficient private amenity space cannot achieve the full requirement of the policy, the remainder should be provided in the form of communal amenity space. In particular, it seeks communal amenity space which is well-designed.

33. The appellant advises that the site has approximately 246sqm of outside space to the side and rear of the property. I saw that there is a modest area to one side of the building which has been fenced off and provided with a seat. Fixed to the side of the building, is some sort of air conditioning unit, which generated significant noise during my visit. As a consequence, I consider occupants of the flats are unlikely to wish to spend time in the outside space. To the rear of the building was an area which appeared to be used by the occupants of the ground floor for business use, and a further modest area to the side and rear, which could be used by occupants of the flats.

34. However, there is no private space for occupants of the units. Furthermore, the businesses located on the ground floor of the building are likely to have requirements for outside space, including waste management requirements. The appellant has proposed some of the space is used for bin storage and cycle storage, which would limit the useable outside space. I therefore consider it unlikely the entirety of the 246sqm will be available for occupants of the flats.

35. I also have concerns regarding the quality of the outside space, due to siting of air conditioning units, which are likely to generate noise and may deter individuals from using the space. I acknowledge that the appeal site is within walking distance of allotments, however, there is no evidence to show plots would be available to occupants of the appeal site.

36. While there may be other green areas within walking distance of the appeal site, public open space would not provide for activities such as hanging out washing and are therefore not a satisfactory alternative to on-site provision. The appeal scheme fails to provide any private amenity space and fails to provide communal amenity space which is well designed, contrary to policy D6 of the LP, policy BH13 of the BLP and the advice contained in the SPD.

37. The appellant suggests the occupants of the flats are happy with their accommodation and they have received no complaints. The appellant has also drawn my attention to Block 1 and Block 3 which have both been converted to flats and are of a similar size and layout to the flats at the appeal building. Some of the tenants in Block 1 are stated to have stayed for nearly 8 years. However, the absence of complaints is not necessarily an indicator that the accommodation provides satisfactory living conditions.

38. Blocks 1 and 3 have been developed under permitted development rights, using the prior approval procedure. There is now an Article 4 Direction in place which prevents such a change of use. Moreover, from 6 April 2021, Article 3(9A) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) provides that Schedule 2 does not permit any new dwellinghouse where the gross internal floor space is less than 37sqm or the dwellinghouse does not comply with the nationally described space standard issued by DCLG on 27 March 2015.

39. Policy D5 of the LP seeks to ensure development achieves the highest standards of accessible and inclusive design. The flats are located at first floor level and are accessed via stairs. The appellant does not dispute that the proposal does not provide for disabled access and states this is due to the existing site constraints. There is no suggestion that accessibility could be addressed by condition. The appeal scheme is therefore contrary to policy D5 of the LP.

40. Policy T5 of the LP seeks to remove barriers to cycling by securing the provision of appropriate levels of cycle parking which should be fit for purpose, secure and well-located. For dwellings, a requirement of 1 space per studio or 1 person 1 bedroom dwelling is identified and 1.5 spaces per 2 person 1 bedroom dwelling. Policy D6 E states that housing should be designed with adequate and easily accessible storage space that supports the separate collection of dry recyclables and food waste as well as residual waste.

41. The appellant has provided a plan which shows bin and cycle storage could be provided within an area to the side of the building. While this is likely to limit the amount of useable amenity space which is available to occupants of the flats, such provision could be secured by condition. Thus, subject to the inclusion of a condition, there would be no conflict with policy D6 or T5 of the LP.

42. While bin and cycle storage could be secured by condition, for the reasons given above, I find the flats do not provide satisfactory living conditions for their occupants, contrary to policies D5 and D6 of the LP, policy BH13 of the BLP and the advice contained in the SPD, the requirements of which are set out above.

The effect of the flats on the Significant Industrial Location (SIL)

43. The appeal site is within an area designated as a Significant Industrial Location (SIL). Policy E5 of the LP supports industrial-type activities and states that development proposals within or adjacent to SILs should not compromise the integrity or effectiveness of these locations in accommodating industrial type activities and their ability to operate on a 24 hour basis. Policy BE2 of the BLP supports development where it intensifies industrial uses. With respect to SIL, it states any loss or reduction in floorspace will be resisted.

44. Policy E4 of the LP states that any release of industrial land in order to manage issues of long-term vacancy and to achieve wider planning objectives…should be facilitated through the processes of industrial intensification, co-location and substitution set out in policy E7. However, policy E7 states this approach should only be considered as part of a plan-led process or as part of a co-ordinated masterplanning process in collaboration with the GLA and relevant borough, and not through ad hoc planning applications.

45. The enforcement notice refers to policies BP1 and BP5 of the Brent Local Plan (2022). Policy BP1 of the Brent Local Plan is titled 'Policy BP1 Central'. While the policy refers to the SIL, this policy relates to land within the Central Place. The appeal site is located within South Place and so I consider BP5 to be of relevance in this case. However, the policy requirements, with respect to employment, concern locally significant industrial sites and the establishment of a Creative Enterprise Zone within Harlesden, rather than the SIL. I do not find policy BP5 to be determinative in this case.

46. The appellant states it has a vacant unit at Unit 4, the tenants at two of the units are in arrears and another tenant has requested that offices are removed from their rental agreement as they are not able to afford the rent for the whole unit. The appellant suggests this demonstrates that there is a severe lack of demand for premises such as this currently. However, there may be various reasons as to why a tenant is in arrears, or why a unit is vacant. This is not necessarily reflective of a lack of demand.

47. The use of the top floor of the building as flats has resulted in the loss of floor space within the SIL. As set out within the supporting text of policy E5 of the LP, SILs are given strategic protection because they are critical to the effective functioning of London's economy. The appellant has not shown that the appeal site is no longer able to contribute in this regard. Their use for residential purposes has resulted in the loss of such floor space, contrary to policy BE2 of the BLP and policy E5 of the LP, the requirements of which are set out above.

48. I saw that there are already residential properties at units 1-5 within Central Business Centre. The appellant advises that Unit 18 has also been converted to residential under prior approval and has drawn my attention to a travellers site at Lynton Close, Flats at 1-10 Sapphire Court and residential development adjacent to the SIL.

49. While existing residential development within and adjacent to the SIL may already constrain operations within the SIL, the extent to which activities are constrained will depend upon the precise location of the new residential development relative to the industrial activity. Noise, for example, attenuates with distance and is likely to be affected by intervening barriers, such as fencing and buildings.

50. Though the presence of a residential user within or adjacent to the SIL may already constrain industrial activities within the SIL to some extent, the introduction of residential development in a different part of the site may constrain uses which are currently unaffected by it. Although an office use may be unlikely to generate noise which adversely affects living conditions of residential occupiers, the SIL appeared to comprise a mix of industrial uses.

51. Moreover, even an office use, if operated on a 24 hour basis, has the potential to generate noise and disturbance which occupants of the dwellings would find harmful, contrary to policy E5 of the LP.

52. Thus, I find the residential use of the appeal premises is contrary to policy BE2 of the BLP and policies E4, E5 and E7 of the LP, the requirements of which are set out above.

Affordable Housing

53. Policy BH5 of the BLP states that developments of between 5-9 dwellings will be required to make a financial contribution for the provision of affordable housing off-site. The appellant states that they are willing to enter into a legal agreement for the provision of affordable housing off site, which could be conditioned as part of any approval.

54. I have reservations regarding the use of a condition to secure affordable housing contributions. Works to the building have already been carried out and the units occupied. It would therefore not be possible to use a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into.

55. The National Planning Policy Framework (December 2023)(the Framework) advises that provision of affordable housing should not be sought for residential developments that are not major developments[7], other than in designated rural areas. The BLP was adopted prior to the publication of the Framework and is

[7] For housing, development where 10 or more homes will be provided, or the site has an area of 0.5ha or more.

inconsistent with it in this regard. I therefore afford the conflict with policy BH5 very limited weight.

Family sized dwellings

56. The Council states that the appeal scheme fails to provide family sized (3 bedrooms or more) dwellings, contrary to policy BH6 of the Brent's Local Plan. Policy BH6 states the Council will seek to deliver a target of 25% of new homes as family sized (3 bedrooms or more) dwellings. For every four dwellings included within developments, at least one must be 3 bedrooms or more. Exceptions to this will only be allowed where the applicant can show that a) the location or characteristics of the development are such that it would not provide a high quality environment for families, or b) its inclusion would fundamentally undermine the development's delivery of other local plan policies.

57. Residential accommodation within the site is located at first floor level, with no private amenity space and limited communal amenity space provided. Families are likely to require private outside space so that children can play. Furthermore, a family with young children may find accessing accommodation at the first floor level difficult, due to the need to navigate the stairs with a buggy or pram. I consider the characteristics of the development are such that it would not provide a high quality environment for families and so it falls within one of the exceptions set out under policy BH6.

58. Thus, I find there is no conflict with policy BH6.

Ground (a) conclusion

59. The Framework sets out the Government's objective of significantly boosting the supply of homes. While the appeal site provides 8 units of residential accommodation in an area which is within walking distance to amenities, as set out above, I have found that the accommodation falls well below the minimum size requirements set out in policy for both internal and external space.

60. Furthermore, the appeal scheme has resulted in the loss of floor space within a SIL and would compromise the ability of other users of the SIL to operate on a 24 hour basis. The harms I have identified above greatly outweigh the modest benefit associated with the provision of 8 additional units of residential accommodation.

61. Thus, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

62. An appeal under ground (f) is made on the basis 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.

63. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms… of any planning permission…, 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. The Council states that the purpose of the notice is to remedy the breach of planning control.

64. The appellant suggests the internal separation of the building does not require planning permission and if the residential use ceases, could be retained to provide separate office use. Likewise, it is suggested, the retention of some toilet and kitchen facilities to serve the office space would also not require planning permission and therefore the removal of all eight kitchens and bathrooms cannot reasonably be required.

65. However, an enforcement notice concerned with a material change of use, by virtue of section 173(4)(a) of the Act, may require the removal of works which would otherwise be immune, including the removal of those which might not constitute development, or which might have been permitted development if they had not been constructed to facilitate the alleged use[8].

66. Once the appellant has complied with the requirements of the enforcement notice, they would be able to use the appeal site as offices, by virtue of section 57(4) of the Act. I accept that an office would require internal partitions and welfare facilities, which could reasonably include a toilet and cupboard space. However, I consider it highly unlikely an office would require the level of provision which has been made within each of the units.

67. Nevertheless, requiring the removal of all partitions from the premises is likely to be excessive, since there would have been partitions within the building prior to the material change of use which may still be present. Requiring that the premises is restored to its condition and internal layout before the unauthorised change of use took place is sufficient to remedy the breach and so I shall delete the words ', and remove all partitions, toilets, bathrooms and kitchens from the premises'. The appeal under ground (f) succeeds to that extent.

Conclusion

68. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M.Savage

INSPECTOR

[8] *Murfitt v SSE* [1980] JPL 598 and *Somak Travel Ltd v SSE* [1987] JPL 630.