
Appeal Decision

Inquiry Held on 8 October 2024

Site visit made on 9 October 2024

by R J Perrins MA

appointed by the Secretary of State

Decision date: 11 December 2024

Appeal Ref: APP/T5150/C/24/3340317

**Ground Floor entrance way and Upper Floors of Crown House 187-193
Kilburn High Road, London, NW6 7HY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Rengen Crown Limited against an enforcement notice issued by London Borough of Brent.
 - The enforcement notice was issued on 29 January 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a mixed use as offices and flats, and short-term lettings.
 - The requirements of the notice are:
 - STEP 1 Cease the use of the premises as offices.
 - STEP 2 Cease the use of the premises as flats.
 - STEP 3 Cease the use of the premises for short-term lettings.
 - STEP 4 Cease the use of the premises as a mixed use of offices and flats, and short-term lettings.
 - STEP 5 Restore the premises to its previous condition, and remove all items and materials associated with the unauthorised change of use for 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), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended
-

Decision

1. The appeal is dismissed, and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Preliminary & procedural matters.

The enforcement notice

2. At section 3 of the enforcement notice it states the 4-year immunity period. However, the parties agreed at the Inquiry that s171B sub(3) applies to a mixed-use change of use of land or buildings and that enforcement action may be taken after the end of the period of 10 years, beginning with the date of the breach. I am satisfied, given the appellants argue the use started in 2008 in any event, that no prejudice would occur if I were to correct the notice to refer to the 10-year period.
3. At the Inquiry the Council also accepted, on the evidence now available, that any office use of the premises by the appellants would have been ancillary to

the use as flats and short-term lettings. From all that I have seen and heard, I see no reason to disagree and will amend the allegation to reflect that. In so doing I accept that would change the case put forward by the appellants in respect of the appeals on ground (b) and (a).

4. However, removing the office use reduces the matters alleged and refines the matters to be considered. I fail to see how any prejudice can arise in such circumstances given both parties' arguments embrace the amended allegation. My deliberations therefore focus on the amended allegation of *'without planning permission, the material change of use of the premises to a mixed use as flats and short-term lettings'*.
5. In addition, it was agreed that in section 5 of the notice that the requirement STEP 4 brings together STEPS 1, 2 and 3 which renders them somewhat superfluous. In the interests of clarity, I shall delete STEPS 1, 2 and 3 and amend STEP 4 to reflect the amended allegation, again to do so would not lead to prejudice.
6. A signed Unilateral Undertaking (UU), concerning parking, cycle storage and restriction on use was submitted at the Inquiry.
7. Following the site visit, described below, the appellants submitted a revised sworn statement regarding the use of two of the first-floor flats which was in contradiction of the sworn evidence given at the Inquiry. The Council were given the opportunity to comment on the new statement and I have considered it as part of my deliberations.
8. All of the oral evidence was heard by sworn affirmation.

Background

9. The property is accessed on the ground floor, from the west side of Kilburn High Road. A short hallway leads to stairs to first, second and third floors. Off the hallway is a storeroom which was empty save for a couple of standard black refuse bins.
10. Planning permission¹ ('the 2019 permission') was given for *a 20-room hostel with ancillary offices and services in 1999*. Condition No 5, attached to that permission, restricted the accommodation to short stay accommodation for homeless persons and no other purpose. There is no dispute that up until 2019 the premises were in multiple occupation with 20 bedsit units sharing bathroom facilities. Although, it is not clear whether the site was used solely for homeless persons during the period. The property was then vacant between 2019 and 2022. In 2023 the property was refurbished by the appellants.
11. That refurbishment included removal of a number of communal bath and shower rooms, along with the refurbishment of rooms including new kitchens and ensuite bathrooms. At the time of my site visit, I observed that the refurbishment was of high quality; the kitchen and bathroom facilities all of good standard. On the first floor, I saw rooms including those labelled² TV room, communal kitchen and offices, laid out as such, along with a separate disabled access toilet. There were two rooms being lived in and whilst I have been informed that was temporary it was clear to me given, food items,

¹ Ref:98/224

² The labels are taken from drawings by CW Architects dated Feb '23 – Appellants' Appendix SM4

washing up and domestic items, in and out of cupboards, that they had been lived in for a not insignificant time. One room was being used for storage.

12. On the second floor there were eight rooms two of which could not be accessed but there is nothing to suggest they were any different in layout or provision as the others in the building. A separate toilet and shower along with a laundry room were found off the main corridor. The third floor, in the main, reflected the layout and provision found on the second.

The appeal on ground (b)

13. An appeal on ground (b) is that the breach of control alleged has not occurred as a matter of fact. The onus is on the appellants to demonstrate the change of use has not occurred, on the balance of probabilities.
14. In simple terms, the matter to be considered under this ground of appeal is the difference between the parties. Namely, whether or not the use of the premises, at the time the notice was served, was as a House in Multiple Occupation (HMO) or hostel, or as flats/short-term lets as the Council contend. Given the notice will be corrected to exclude the reference to offices, that has not formed part of my deliberations.
15. As set out above, the improvement works saw the provision of refurbished rooms with all the facilities required for day-to-day living. There is no dispute that each of those rooms were surveyed for EPC purposes and were described by a letting agent in an email dated 12 December 2023 as 'tenanted units'. They were marketed as studio apartments and there is nothing to suggest that there was any requirement to share facilities with other occupiers of the building, other than access being available to 'on-site laundry facilities'.
16. In light of that, it seems reasonable to me to come to the view that anyone living in one of the rooms would not see themselves as living as part of an HMO. Whilst separate toilets and showers are available on each floor, there would seem to be little point (or requirement) in them being used, save perhaps for visitors. That was reflected by there being little sign of any of the separate showers or toilets having been used with any regularity.
17. The rooms that are labelled/put forward as communal kitchen/TV rooms have little to differentiate them from the other units save for a number of tables and chair sets, and other furniture, of the type found in many cafes and restaurants. By simply removing some of that furniture, and installing a bed, those rooms would reflect the others being used for living accommodation. In addition, the occasional large screen TV does not, in itself, lead one to conclude that the room has been designed/built or used as something for communal use.
18. In addition to this, there is nothing before me from anyone who has occupied the property. Nothing by way of tenancy agreements or witness statements to corroborate the view that those who were living in the premises were of the understanding that they were in a shared house or HMO. The evidence of the Council concerning the EPC certificates for each unit is unexplained as is the argument that the rooms have been let out as flats for less than 90 days.
19. In addition, I accept the evidence given at the Inquiry, which was contradicted by what I saw at the site visit, came about as Mr Lewis was unaware that rooms on the first floor were being used for accommodation. I also heard that the letting agents had not advertised the rooms as requested and other

management matters had not been carried out to the appellants' satisfaction. Be that as it may, the evidence contradicts the view of Mr Lewis as to how the premises were being used and to my mind demonstrates a lack of knowledge of how the premises were actually being operated. Moreover, the letting agents have not given evidence to explain how this misunderstanding occurred.

20. Therefore, having considered all matters raised I find, as a matter of fact and degree, that the change of use to flats and short-term lets has occurred. Each of the units has the ability to afford those who occupy them the facilities for day-to-day private domestic existence behind a locked door. Since no planning permission has been granted for such a use it constitutes a breach of planning control.
21. In coming to that view, I have also considered the arguments that the property was never used in accordance with Condition 5 of the 1999 Permission and no enforcement action was taken for over 20 years. Whilst I recognise the appellant has submitted a Freedom of Information request in that regard the onus still lies with them and the appeal on ground (d) has been withdrawn.
22. The appellant has not demonstrated with clear and unambiguous evidence that the alleged breach of planning control has not, on the balance of probability, occurred as a matter of fact. Thus, the appeal on ground (b) fails.

Main Issues

23. The deemed planning application under ground (a) comes from the matters alleged, as rehearsed in *Ioannou*³. Namely, the change of use to flats and short-term lettings. On plain reading therefore, the planning merit arguments advanced regarding any HMO use should not fall to be considered. Nevertheless, case-law demonstrates that whether an alternative scheme forms part of the matters is a matter of planning judgement. Any differences in the use of the land or building can be relevant but not necessarily determinative factors. My focus will therefore be on the matters alleged although, I shall consider the HMO arguments advanced in order to come to a view on an HMO use as an alternative scheme.
24. In that light the main issues are:
- The effect of the development upon the living conditions of occupiers of the premises with particular regard to the size of accommodation and amenity space. Also, upon the living conditions of those living nearby with particular regard to the lack of bin and cycle storage.
 - The effect on highway safety.
 - The effect on the provision of specialist accommodation with shared facilities or additional support.

Reasons

Living Conditions

25. Policy DMP1 of the Brent Local Plan 2019-2041 (BLP) requires development to achieve high levels of internal and external amenity space. Policy D6 of The London Plan 2021 (LP) sets out the housing and quality standards and the

³ *Ioannou v SSCLG & Enfield LBC* [2013] EWHC 3945 (Admin), [2014] EWCA Civ 1432

minimum standards that self-contained accommodation should achieve. Those standards are reflected in the requirements found in the *Technical housing standards – nationally described space standard*. In this case, for a one person dwelling, the minimum gross internal floor area is 37 square meters.

26. The figures put forward for the self-contained units as constructed of 14 to 25 square meters are undisputed. I saw on site that many of the units had long corridors with little natural light and some with awkward layout arrangements. The smallest unit (numbered 3.08) was labelled as a Plant room and store, on the layout drawings, and it was clear that it would be more suited to that use, the space was contrived, and the layout restricts free circulation and movement. There was little, if any, space for domestic furniture which would further reduce circulation space. There is insufficient space to store possessions or undertake normal activities such as socialising, given the overall dimensions.
27. Whilst many of the units improve on that space and are able to accommodate a desk and chair, bed and wardrobe, given the general sizes there is a lack of circulation space and any further furniture would need to be minimal and further encroach into the space. That adds to an unacceptable sense of enclosure and would not meet the standards which one would reasonably expect to enjoy. The accommodation is restricted, and space limited which would lead to unacceptable harm to the living conditions of occupiers of the units. That is corroborated by the appellant's planning witness, who concludes on this; that to comply with the London Space Standards the accommodation would need to be limited to approximately 10 apartments.
28. I am asked though to consider a restriction on the use of the units (by way of the UU) to students. I have also considered the student developments put forward in Bath and Bristol. I'm in no doubt that these developments have been built to a high standard and are successful in their own right. In addition, the accommodation may be of a similar size (18 to 23 square meters in Bristol) to that found in this case. I also accept that students may not have the same expectations as other tenants given they tend to occupy premises for shorter periods of time. Although, whilst students may accept lower space standards, that does not make it right.
29. Furthermore, those schemes came about from planning applications, it is reasonable to assume they would have taken into account local planning policies and student accommodation need. In any event I do not have full details of how they compare to the scheme proposed here. For instance, I do not know what amenity space was available to occupiers of those developments. In this case that is also a matter of concern, whilst there may be several pocket parks locally there can be no doubt the the units, when assessed against Policies D6 and BH13 of the BLP, do not meet the standard of 20 square meters of private amenity space per unit. Furthermore, no communal amenity space is offered. That adds further to my finding of harm to the living conditions of occupiers of the premises.
30. Nevertheless, I recognise if the use was restricted to students, and considered as specialist student accommodation, Policy BH7 of the BLP could apply. That is to say the accommodation should be of a quality meeting the appropriate needs of its occupants. I am asked to consider that in light of the *Brent Houses in Multiple Occupation* SPD. The SPD reiterates the need for adequately sized living spaces, particularly where no communal amenity space is provided.

31. I need not rehearse those space standards as they are set out in the appellant's planning witness's evidence. I accept that the rooms would meet the standard for single bedrooms, and they would meet many of the other recommended tests. However, it seems to me that those standards are borne out of consideration of an HMO use. Such a use should have shared communal spaces for people to congregate and spend time together. The appellant recognises there is a shortfall in such provision even if the lounge, kitchen, TV rooms, WCs and showers are recognised as communal space.
32. To that end I accept the appellant is currently unable to use the first floor entirely because of power supply issues and the rooms identified as offices, communal kitchen and TV room could remain as such. Along with others on second and third floors. However, as I have previously found, these spaces are somewhat contrived, being for all intent and purpose, the same as those that would be let to students. I fail to see how the introduction of a few chairs and TV screen would provide any sort of attractive, or fit for purpose amenity space, that would be used by tenants of the units to congregate and spend time together. Even if I were to accept the spaces would be used communally the amount of amenity space, internally or externally, would be insufficient when judged against the SPD.
33. The accommodation, in its current layout, and when viewed as either self-contained units or specialist student accommodation, would lead to unacceptable harm to the living conditions of occupiers of the premises. That is contrary to the aforementioned policies that seek to protect living conditions.
34. Turning to the effect on those living nearby, there was no dispute that issues have arisen because of uncontrolled waste spilling onto the pavement creating unacceptable hazards to those wishing to use the footpath. I accept that a waste management condition might ensure waste was dealt with adequately and I recognise the room on the ground floor has been allocated as a refuse store.
35. However, I saw that it was a relatively small space and without any detail of the capacity of that store, or how it would be laid out, I am not convinced it would be large enough to accommodate the waste requirements needed and whether or not the appellant would be able to comply with such a condition. In that light I cannot be confident that the harm to the living conditions of those living nearby, or conflict with policy in that regard, would be resolved.

The effect on highway safety

36. The property has no off-street parking. However, save for the reasons on the enforcement notice, the Council have failed to put forward any evidence as to why that would result in harm to highway safety. There is nothing before me to contradict the appellants' submissions that the location is highly accessible, occupiers are unlikely to have a car, and a condition to restrict parking permits would dissuade occupiers in any event. There is nothing therefore to corroborate the view that the change of use has (either as self-contained units or a HMO) resulted in an increase in the demand for on street parking. Moreover, a condition to prevent parking permits would further ensure parking demand would not lead to harm.
37. The development is not therefore, contrary to Policies DMP1 and BT2 of the BLP and Policy T6.1 of the LP in respect of highway safety and the requirement to

minimise the effects of parking. I will address the matter of cycle storage under my consideration of planning conditions and the UU.

Specialist accommodation

38. I recognise, as set out above, there is little information regarding the historic use of the site and whether Condition 5 of the 1999 permission was complied with or not. However, on the information currently before me, it is clear that there was use as specialist accommodation. It is common ground that the site was used from 2008 until 2019 by a Mental Health Pathway Scheme which was decommissioned in 2019.
39. In simple terms the change of use, with the improvements that have been made, has resulted in the loss of the premises for specialist accommodation with shared facilities or additional support. That is contrary to the objectives of, Policy BH7 of the BLP and Policies H8 and H12 of the LP (Loss of existing housing and estate redevelopment) and H12 (Supported and specialised accommodation) of the London Plan, 2021
40. However, Policy BH7 sets out that the loss of existing accommodation will only be acceptable where it is demonstrated that there is no need in Brent for the accommodation type, or residents' needs can be better met by other existing accommodation. In that regard, I am told there is much need for specialist accommodation in Brent, and the Council's Statement of Case suggested that statistics would be provided that would demonstrate the need for homeless and temporary accommodation in the Borough. That was not forthcoming.
41. The Council point to a paragraph in a report of its own submitted by the appellant and dated March 2019. That simply states that demand shows there is a need for additional homelessness provision across the borough and "Brent has seen a 40% increase in homelessness based on the same period this time last year". In the face of that, the appellants' planning evidence points to, amongst other things, the site being decommissioned with evidence that Crown House was in a poor state of repair and there was some evidence that people are refusing hostel provision as they no longer wish to share bathrooms.
42. That, along with the appellants' view that the Council decided not to proceed with the use of the property as it is too large for use as a homeless hostel, or accommodation for persons with support needs, goes unchallenged. There is some inevitability therefore that I find, on the evidence before me, that the development would not conflict with that part of Policy BH7 concerning the loss of existing accommodation. Nevertheless, for the reasons set out above, it would not meet the requirements of the policy in respect of providing appropriate standards for the needs of its occupiers.

Planning Conditions and the Unilateral Undertaking (UU)

43. A number of planning conditions were discussed at the Inquiry and both parties produced amended conditions following the close of the Inquiry at my request. I have considered all of those put forward, and the UU, in the light of the Framework (paragraphs 56 and 57) and the advice in the *Planning Practice Guidance*. As set out above, either a condition or the UU would resolve concerns over the effect of on-street parking on highway safety. A landscaping condition would not be reasonable given there is nowhere on site that could incorporate landscaping. Moreover, the effect of the development on the

character and appearance of the locality was not a reason for issuing the notice.

44. For the reasons set out above, I am not satisfied that a condition for details of bin storage and refuse management would be achievable given the size of the development and space currently available. In the same way there is nothing before me to suggest that a condition to secure cycle storage would be achievable within the site.
45. I recognise the UU would provide £10,000 towards the provision of additional cycle storage hangers or racks within the vicinity of the site and I was shown a site nearby. However, there is no scheme before me and nothing to suggest such a scheme could be secured. I recognise there are already some racks nearby but again I cannot be certain that those racks are not already at capacity or would be attractive to those living at the premises. Therefore, I cannot be confident that the contributions would make this aspect of the development acceptable.
46. I do recognise though that the UU would secure contributions towards membership/subscription of the *Cyclehoop Scheme* for a period of five years. These seem to me to be laudable aims and may reduce the demand for residents to have their own bikes. Nevertheless, it seems reasonable to me, given the nature of the accommodation, to assume that private cycle ownership will be high. To that end there is no dispute that there is no space within the premises, and I cannot be confident that the UU or a planning condition would secure sufficient useable cycle storage elsewhere. There would therefore be conflict with Policy T5 of the LP which sets out the standards required for cycle parking. That adds to the harm I have found above.
47. A condition to secure disabled access would ensure the development was accessible and homes futureproofed. Such alterations may require installation of a lift. Securing the right sound insulation between units would also ensure any effect on living conditions was minimised. However, neither of these matters have formed part of the Council's case. There is no policy argument or other justification for conditions requiring such alterations or improvements. A condition concerning short-term letting has not formed part of my deliberation given no permission is granted.
48. For these reasons, I do not consider planning conditions, or the UU would overcome the harm I have found.

Other Considerations and Planning balance

49. The National Planning Policy Framework (the Framework) encourages the development of underutilised buildings and that is reflected by policies in the London Plan. There is also no dispute that the premises has excellent access to public transport. The Strategic Housing Market Assessment in 2018 stated that single person households are expected to represent 30% of the overall growth for the Local Plan period. There can be no doubt that premises in either form (HMO or self-contained units) would contribute to that need. These are matters that weigh moderately in favour of the development.
50. I recognise the conversion into self-contained flats, that meet space standards and policy requirements, may bring about significant challenges. However, I

am not aware of any such scheme being considered in detail and as such the challenges carry no weight.

51. Finally, the site forms part of the setting of the Gaumont State Cinema, a Grade II Listed building which adjoins the appeal premises to the north. It is agreed that the use does not affect the significance of the designated heritage asset. I see no reason why I should find otherwise.
52. Overall, I have found the use has resulted in unacceptable harm to the living conditions of those living in the premises and nearby. That is contrary to the Framework and the development plan as a whole. That harm is not outweighed by any other considerations in favour of the use as flats and short-term lettings. Furthermore, the harm would subsist even when considering the HMO use as an alternative. The benefits therefore are insufficient to justify granting planning permission, contrary to the development plan policies referred to above.

Conclusion

53. For all the above reasons and having considered all matters raised the appeal on ground (a) fails.

The appeal on ground (f)

54. My deliberations focus on the amended requirements as set out above namely amended STEP 4, and STEP 5.
55. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. The Council have confirmed that should include removal of the facilities installed that were integral to the breach of planning control and not reasonably required to sustain any lawful use.⁴ That is embraced by STEP 5 in the notice. In this case therefore, the steps specified seek to achieve the restoration of the land to its condition before the breach took place.
56. I recognise that the previous use would have included kitchen and bathrooms and that an alternative use may well utilise some of the existing fittings. I also accept that the last set of floor plans approved for the site was the Hostel consent and since then there may have been internal configuration changes to the building prior to the refurbishment carried out by the appellant.
57. However, it is not for me to determine what the lawful use of the site looked like or to amend the requirements to reflect what may have been before, what features should be retained, or what the previous condition was. I do not have that information before me; there is no suggested alternative scheme, and the appellant is best placed to know what the previous condition of the premises was in any event.
58. What is clear, is that the alterations and improvements carried out by the appellant facilitated the material change of use. In that light, the requirements, which aim to return the premises to its original condition before the

⁴ The Council point to two judgements in aid of that position but have not submitted copies or arguments as to why they may be relevant.

unauthorised change of use took place, do not therefore, exceed what is necessary to remedy the breach.

59. The appeal on ground (f) fails.

Overall Conclusion.

60. For the reasons given above, and having considered all matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision.

61. It is directed that the enforcement notice is corrected and varied by:

- In Schedule 2 of the notice by the deletion of the words 'offices and flats, and short-term lettings', and the replacement therefor with the words 'flats and short-term lettings.'
- In the first line of the reasons, in Schedule 3 of the notice, by the deletion of '4 years', and the replacement therefor with '10 years'.
- In Schedule 4 of the notice by the deletion of STEP1, STEP2 and STEP3 in their entirety. The deletion of the words 'offices and flats, and short-term lettings' from STEP4 and the replacement therefor with the words 'flats and short-term lettings.'
- Following the above, the renumbering of STEP4 and STEP5 as STEP1 and STEP2 respectively.

62. Subject to the correction and variations, 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.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Lord Charles Banner KC
He called
Iestyn Lewis
Christopher Stokes

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wickes
He called
Ross Coulter

DOCUMENTS

1	Unilateral Undertaking
2	Copy of notification letter
3	<i>Valentino Plus Ltd</i> judgment.
4	Mental Health Act 1983 extract
5	Greater London Council (General Powers) Act 1973 extract
6	<i>Nelsovil v MHJG</i> summary