



Appeal Decision

Inquiry held on 6-8 November 2024

Site visit made on 7 November 2024

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2024

Appeal Ref: APP/F5540/C/24/3338679

108 Hibernia Road, Hounslow TW3 3RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Link-Estates Limited against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The notice was issued on 11 January 2024.
 - The breach of planning control as alleged in the notice is unauthorised change of use from a Mixed Use Doctors Surgery (Class E (e) use) & as a separate self-contained residential unit on the first floor (Class C3) to a Mixed Use House of Multiple Occupation (Sui Generis use) and as two separate self-contained residential units (Class C3 use).
 - The requirements of the notice are: i. Cease the use of the property as a House of Multiple Occupation and as two self-contained residential units; ii. Remove kitchen and kitchen associated facilities (including cooker, extractor fan, worktop, kitchen sink, benchtop and cabinets etc) in all but one of the units. In addition to the above items all water and gas supply piping and all waste connections; and iii. Remove all resultant debris from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The enforcement notice is corrected by:
 1. The deletion of 'first floor' in the breach of planning control in section 3 of the notice and the substitution instead of 'first and attic floors';
 2. The deletion of brackets in requirement ii. in section 5 of the notice.
 2. The enforcement notice is varied by:
 1. The deletion of 'and as two separate self-contained residential units (Class C3 use)' in section 3 of the notice;
 2. The deletion of 'and as two self-contained residential units' in requirement i. in section 5 of the notice;
 3. The deletion of the second sentence in requirement ii. in section 5 of the notice;
 4. The deletion of '3 months' in section 6 of the notice and the substitution instead of '6 months'.
 3. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.
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Procedural matter

4. Two applications for costs have been made by the Appellant against the Council, and one by the Council against the Appellant. These applications are the subjects of separate Decisions.

Reasons

5. 108 Hibernia Road is a two storey plus attic detached building at the junction of Hibernia Road and Grove Road. The lawful use of the property was established on 23 January 1985 by the grant of planning permission 00603/108/P3 for 'use of premises as doctor's surgery (with residential accommodation above)'.

The ground (e) appeal

6. The Appellant's Agent was served with the enforcement notice on the date of its issue and an appeal was subsequently submitted. The freeholder of the property was also served with the notice, by post, on the same date and, also on the same date, copies of the notice were posted by hand to the occupants of the property. All copies of the notice were served in accordance with Sections 172 and 329 the Town and Country Planning Act 1990 (as amended). Furthermore, even if it was found that the notice had not been properly served neither the Appellant nor any other party associated with the Appellant, in the terms set out in Section 176(5) of the Act, has been substantially prejudiced. The interests of vulnerable persons living in the property have been protected by the Appellant's submission of the appeal, and reference by the Appellant's Agent to the National Assistance Act 1948 is misplaced. The ground (e) appeal thus fails.

The ground (b) appeal

7. The Appellant maintains that the property is in use as a House in Multiple Occupation (HMO) and does not include two self-contained flats. Both units of accommodation, units 2 and 7, are on the ground floor of the property and include en-suite facilities, with a shower, toilet and wash hand basin, and kitchen facilities. There have been three previous planning appeals. In the most recent appeal (Ref. No. APP/F5540/W/21/3288952) the Inspector found that, for the two units which are the same now as they were then, "...the presence of such facilities does not automatically make these rooms separate, self-contained, dwellings...".

8. The Inspector in the first appeal (Ref. No. APP/F5540/W/20/3255558) reached a different conclusion on the two units which "...are self-contained, would be occupied by one household, would not share any facilities or living accommodation..." and would therefore be "...independent forms of accommodation...". Notwithstanding plans that describe the two units as being 'self-contained' it is the conclusion reached by the most recent Inspector that is favoured. Occupants of the two units are not prevented from using the communal kitchen in the property and could use the bathroom facilities.

9. Consistent with the conclusion reached in the most recent planning appeal it is a conclusion of this decision that units 2 and 7 are not, as a matter of fact, self-contained flats. The ground (b) appeal thus succeeds and, without causing prejudice to either main party, the alleged breach of planning control set out in section 3 of the enforcement notice has been varied by the deletion of 'and as two separate self-contained residential units (Class C3 use)'.

The ground (c) appeal

10. No claim is made that the change of use of the property to an HMO is not a breach of planning control. Planning permission has not been granted for the change of use and it is not development permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015. The ground (c) appeal thus fails.

The ground (d) appeal

11. To be immune from enforcement action the change of use of the property must have occurred, in accordance with the provisions of Section 171B(1)(a) of the Town and Country Planning Act 1990 (as amended), more than ten years before the date of issue of the enforcement notice. The lawful use of the property ceased when the Doctor who had occupied the Doctor's Surgery retired on 21 November 2015. The property was first used as an HMO in 2020. The use of the property as an HMO has therefore subsisted for less than ten years and is not immune from enforcement action. The ground (d) appeal thus fails.

The ground (f) appeal

12. The Appellant has made no claim that the first and third requirements of the enforcement notice are excessive. It was ruled at the Inquiry, and accepted by the Council, that the second sentence in the second requirement is excessive and should be deleted, because compliance with this part requirement would leave the property without a water supply and heating, and without functioning sanitary and kitchen facilities. With regard to the first sentence of the second requirement the reinstatement of the Doctor's Surgery would not be compromised by the removal of kitchens in all but one of the units. The ground (f) appeal succeeds in relation to the second sentence in the second requirement and the enforcement notice has been varied accordingly.

The ground (g) appeal

13. Compliance with the requirements of an enforcement notice should be achieved as soon as is reasonably possible. The Council issued an HMO licence on 7 May 2020 for a period of five years; the licence therefore expires on 7 May 2025, less than six months after issue of this Decision. Residents of the property are either subject to Assured Shorthold Tenancy (AST) agreements or are placed at the property by Local Authorities on Occupancy Agreements. The Appellant has provided only three ASTs; for units 1, 9 and 10. The ASTs contain a break clause that can be invoked by either party six months after signing of the AST giving one month's notice to leave the property. Only the resident of unit 1 would not be able to comply with a compliance period of three months as set out in the notice.

14. Whilst residents may be reluctant to comply with a notice to leave the property it would be a criminal offence for them not to do so, and the Appellant can be expected to do everything possible to secure compliance with the requirements of the enforcement notice, otherwise they would be guilty of an offence under Section 179(2) of the Town and Country Planning Act 1990 (as amended). But the notice requires works to be carried out after all residents have left and three months would be insufficient time to comply with all requirements of the notice. Furthermore, it is recognised that at least one resident has specific health issues and is vulnerable. It would be compassionate to provide additional time for arrangements to be made to provide alternative housing for such a person.

Inspector

FOR THE APPELLANT:

He gave evidence and called:

Representative of Appellant Company

Representative of Appellant Company

Barrister instructed by Mr M Ahmed of HB Public
Law

Ms I Visagie LLB MBA

Partner at Ivy Legal Ltd

1 Occupancy Agreement for Unit 4.

2 Closing Statement on behalf of the Local Planning Authority.