



Appeal Decision

Site visit made on 5 December 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8 January 2025

Appeal Ref: APP/T5150/C/23/3314313

29 Gladstone Park Gardens, LONDON, NW2 6LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Gladstone Park Holdings Limited against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 30 November 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the material change of use of the premises to flats*.
- The requirements of the notice are to: (1) cease the use of the premises as flats; (2) remove from the premises all partitions, fixtures and fittings that facilitate the unauthorised change of use, and restore the internal layout of the premises to that of a single dwelling, including the removal of all kitchens, in excess of one, and all bathrooms, in excess of two; and (3) remove all items, debris and materials associated with the removal and unauthorised works.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. The appeal was originally brought on grounds (f) and (g) with the appellant subsequently confirming that ground (a) was to be added, to seek planning permission. However, upon reviewing the papers, it was evident that the appellant disputed the accuracy of the allegation, contending that the property was not in use as individual flats but as a house in multiple occupation ('a HMO'). Further to that contention, the appellant claimed that planning permission was not required for the change, on the grounds that at the time it took place it was permitted development. I therefore canvassed the parties' views about the implied further grounds of appeal under paragraphs (b) and (c) of section 174(2) of the 1990 Act; which is to say that (b) the matters alleged have not occurred and (c) that no breach of planning control has arisen. Their responses, where given, have been accounted for below.
2. National planning policy was altered on 12 December 2024. I have not found it necessary to refer back to the parties because I consider that the main issues in the case are unaffected by the changes.

Main Issues

3. The main issue arising under ground (b) is whether the matters alleged have occurred. Under ground (c) the main issue is whether planning permission is required or has already been granted by a permitted development order.

Under ground (a) the Council's reasons for issuing the notice principally concerned a policy objection to the loss of family housing within the borough, and an objection to the resulting quality of accommodation for both the occupiers of the property and their neighbours. These are the main issues in the appeal.

4. If all those grounds of appeal fail then the appellant contends under ground (f) that the requirements of the notice are excessive, and under ground (g) that more time should be given to achieve compliance.

Reasons

The appeals on grounds (b) and (c)

5. I take these grounds together, because if the allegation is made correctly then the appellant's contention that express permission is not required falls away. It appears that at the relevant time, an Article 4 Direction withdrawing permitted development rights (found in the Town and Country Planning (General Permitted Development) (England) Order 2015, the '2015 Order') to make a change of use of a dwellinghouse from Class C3 to a Class C4 HMO had not yet come into effect. However, any relevant permitted development right would only have applied to a material change from Class C3 to Class C4: it would not apply to a change of use from a dwellinghouse into flats.
6. Moreover the permitted change, if material (and if not withdrawn by an Article 4 Direction) is to change from a Class C3 dwellinghouse to a 'small' HMO, described by the Use Classes Order as use of a dwellinghouse by not more than six residents as a "house in multiple occupation". The use asserted by the appellant here would not fall within this description. His response to a Planning Contravention Notice ('PCN') issued in November 2022 describes the property as being divided into six 'units' and occupied by a total of nine persons.
7. Thus the appellant's reference to the later date of the Article 4 Direction is somewhat irrelevant, because on his own case the change that took place was not in any event permitted by the 2015 Order. There is no dissent from the proposition that changing the use of the property from a Class C3 dwellinghouse into a HMO would here have been a material change requiring permission (whether or not such permission was granted by the 2015 Order). Subdividing a dwellinghouse into flats is expressly described by section 55(3) of the 1990 Act as a matter constituting development, and no permitted development right applies to such a change.
8. The appellant describes his intention to have converted the property into a HMO. Having researched the issue of HMO conversions, he received a 31 page document from the Council. This, dated October 2019, is entitled 'Conditions for the mandatory/additional HMO property licensing scheme'. It appears that this was issued in the Council's capacity as the relevant licensing authority, rather than by the planning department. Nonetheless, as the appellant points out, it is encouraging of HMO rooms having their own kitchenette facilities. It also envisages that bedrooms may come with en-suite bathroom or shower facilities (Appendix 1 (v)).
9. The onus of proof in 'legal' grounds of appeal lies on the appellant, to the standard of probability. This means that the appellant must demonstrate that it is more likely than not that the property was not in use as flats when or

before the enforcement notice was issued. Although the appellant draws my attention to the Council's HMO licensing document in which kitchenettes in bedrooms are envisaged, he does not draw my attention to any factors that seriously suggest that the property was not in use as flats at the relevant date.

10. The property has been reconfigured since the notice was issued, and hence my site visit was of limited benefit in this regard. The Council describes each flat, or unit, as having had its own external doorbell and lacking shared facilities. The appellant himself states that each of the 'units' had its own living space with all occupiers having access to their own kitchen and washing facilities.
11. It therefore appears on the balance of probabilities that each of the six 'units' was equipped with the necessary facilities to enable day-to-day living, and that each such unit was being used independently of the others. In these circumstances the appellant has not disproved the correctness of the Council's allegation. I find that the allegation was correctly made, and that planning permission was required. Therefore the appeal on grounds (b) and (c) will fail.

The appeal on ground (a)

Loss of family housing

12. Policy BH11 of the Brent Local Plan of 2022 recognises the importance of retaining family housing to meet local needs, and provides that the conversion by subdivision of family sized housing (of three or more bedrooms) will only be permitted where certain criteria are met, including that at least one three-bedroomed dwelling results from the change. This criterion is not met here. I therefore find that the conversion of the property is contrary to the development plan for the area in this important respect.

Living conditions of the occupiers and of neighbours

13. The appellant's response to the PCN indicates that the units had at that stage internal floor areas each of between 12 and 22 square metres. Whilst these might be acceptable for HMO purposes, as indicated by the Council's 2019 licensing document, these floor areas fall well short of the bare minimum of 37 square metres required by the London Plan in respect of independent dwellings. As I have found the relevant units to have constituted flats (therefore amounting to such independent dwellings) then their sizes are contrary to the development plan for the area in this respect.
14. The appellant does not answer the Council's other complaints arising from the lack of management plans for waste disposal and garden maintenance, a lack of personal, bin and cycle storage and a lack of outdoor private amenity space for the occupiers of all but two of the units, or its complaint about the impacts of increased demand for on-street parking. Therefore I find no reason to dissent from its analysis of the adverse impacts upon residential amenity in respect of these matters.

Conclusion on ground (a)

15. Therefore I find the development to be contrary to the provisions of the development plan for the area and no material considerations have been brought to my attention that might indicate a different decision. The appeal on ground (a) will fail.

The appeal on ground (f)

16. The appellant has expressed his willingness to work constructively with the Council to secure a satisfactory resolution to the matter. Whilst this is admirable, it does not suggest what any alternative outcome might consist of. It does not appear to me that the steps required to be taken by the notice do any more than what is required to remedy the alleged breach of planning control. Therefore the appeal on ground (f) does not succeed.

The appeal on ground (g)

17. At the time the appeal was made, the appellant considered that the notice did not give the existing tenants sufficient time to find alternative accommodation and for relevant alterations to be carried out. That situation has since been superseded by events, because at the time of my site visit I observed that all but one of the units were unoccupied and renovation works were under way. In these circumstances I do not think that six months is an inadequate period within which to comply with the notice. Therefore the appeal on ground (g) also fails.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Laura Renaudon

INSPECTOR