



Appeal Decision

Site visit – none carried out; considered unnecessary given the withdrawal of the majority of the appellant's grounds of appeal.

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2025

Appeal Ref: APP/T5150/C/24/3350714

45 Chaplin Road, London NW2 5PP

- 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 Mr Sunit Badiani (on behalf of SAB Healthcare Limited) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 17 July 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to short-term letting accommodation; and Without planning permission, the material change of use of the premises to flats.
 - The requirements of the notice are to:
 - (i) Cease the use of the premises as short-term letting accommodation;
 - (ii) Cease the use of the premises as flats;
 - (iii) Remove all internal partitions, items, materials and debris associated with the unauthorised change of use from the premises, including the removal of all kitchens except ONE, and all bathrooms, except THREE.
 - The period for compliance is 6 months after this notice takes effect.
 - The appeals are proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Formal decision

1. It is directed that the enforcement notice be varied by extending the period of compliance from 6 to 9 months. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Application for Costs

2. An application for an award of costs was made by the Council of the London Borough of Brent against Mr Sunit Badiani (on behalf of SAB Healthcare Limited). This application is the subject of a separate decision.

Preliminary Matters

3. This appeal, coupled with a s195 appeal (*APP/T5150/X/24/3352395*) against the Council's decision not to issue a lawful development certificate (LDC) for the existing use of the premises as 8 x self-contained flats, was scheduled to be heard by means of an Inquiry in January 2025. However, following my Pre-Inquiry Note in December last, which was primarily aimed at the Council being able to justify the enforcement notice's content, the appellant decided to withdraw the LDC appeal and also grounds (a), (b), (c), (d) and (f) that had been initially claimed in relation to the s174 appeal.

4. Given the turn of events the Inquiry was cancelled and the appeal changed to the Written Representations procedure. The matters remaining relate to the appellant questioning the legal validity of the enforcement notice itself and, in the circumstances, I have invited representations from both main parties on this matter. In addition, the appeal made on ground (g), whereby the appellant considers that the stipulated time period for compliance is unreasonably short, still falls to be determined.

Matters concerning the Enforcement Notice

5. The appellant disputes the validity of the enforcement notice which alleges a material change of use of the premises to short-term letting accommodation, and also the material change of use of the premises to flats. Following on from this the notice's remedial steps require that both said uses cease with an additional step requiring for the removal of works that have facilitated the breach, including the removal of all but one kitchen and all but three bathrooms.
6. Turning to case law the *Murfitt* principle allows for the removal of items which facilitate a material change of use, and even when those items are immune or are not, themselves, development. The appellant considers that the wording of the third step is unclear, but I disagree. Such wording is standard for remedial requirements in enforcement notices and it need not be more descriptive as it is self-explanatory. Accordingly, I am satisfied that the third step is legitimate, and it is not necessary that I make a detailed analysis of the wording or extent of this particular requirement.
7. In view of the notice's allegation that a dual breach of control has occurred the essence of the appellant's case is that principles from the judgement of *Miller-Mead v MHLG* [1963] 2 QB 196 apply in, it is claimed that, he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches and, as a result, the notice is bad on its face and is a nullity.
8. The contemporary approach to the question of nullity is to be found in the judgement of *Oates v SCLG and Canterbury* [2017] EWHC 2716 which drew extensively upon preceding case law on the subject. A number of principles emerge from this judgement, including that the test in relation to nullity is best understood not as one of 'hopeless ambiguity' but rather as a failure to tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it.
9. Importantly, though, *Oates* also indicates that a degree of uncertainty does not necessarily render it non-compliant with statute and that the notice should be read as a whole. Further, the above judgement held that it was open to an Inspector to conclude that whilst one section of an enforcement notice was too uncertain and could not stand, taken as a whole the notice did comply with the statutory requirements.
10. I have assessed the likelihood of the appellant being uncertain as to what must be done to remedy the unauthorised use of the property, and have examined the background to the case in an attempt to understand why the Council considered it expedient to issue the enforcement notice and why it takes the form it does, with particular reference to the dual allegation put forward. To assess this it has been necessary to consider the property's documented planning history.

11. In the above connection, although not directly concerned with the validity of the notice, the appellant indicated that a change of use to short-term letting accommodation does not constitute a material change of use. The appellant actually goes further in saying that this is a matter of law. That is not correct as, in the judgement of *Moore v SSE and New Forest DC* [1999] 77 P&CR 114 – the leading case law on this issue – the judge warned against two opposite and equally erroneous extremes: that any holiday or commercial letting use will inevitably amount to a material change of use, and the opposite that such a use can never in any circumstances amount to a material change of use. Instead, it was stressed that the character of the use of the house and the effect of that use on the character of the area remain important indicators of when a material change of use may have occurred, and when a house, arguably, is no longer a home.
12. However, given the limitations of the appeal in this instance – with grounds (b) and (c) having been withdrawn – there is no requirement for me to consider the planning position in this regard in relation to the actual use of the appeal property. Besides, by way of the s195 appeal, the appellant was claiming that the use of the property as eight self-contained residential flats was immune from planning control due to the passage of time. Admittedly, this appeal was withdrawn, but with existing floor plans having been submitted to the Council at the application stage to show the layout configuration and the existence of the eight self-contained flats, it is clear that this is not a single family dwellinghouse in use for short-term lets. Instead, the 'lets' are facilitated by the internal partitions and are, in effect, self-contained flats.
13. It follows, therefore, that with the enforcement notice requiring for the use as flats to cease, the allegation referring to the property's use as short-term living accommodation becomes something of a sideshow.
14. If an enforcement notice does not comply with the various statutory requirements set out in s173 of the 1990 Act, as amended, it will then be a nullity and cannot be saved by the curative powers contained in s176(1). In other words, such a failure would mean that, in effect, there is no notice and it has to be a nullity. Here, I am satisfied that the enforcement notice at issue contains all the relevant entries so as not to disqualify it at the outset.
15. In contrast, an enforcement notice can be considered invalid if its contents are confusing to the point that any person on whom a copy of it is served would not know what those matters are. In this instance, I am of the view that the enforcement notice is less than precise, given the two allegations, and it is thereby open to interpretation. To assist my interpretation, I have referred to correspondence from the appellant and also the content of a previous application form, completed on behalf of the appellant by the current agent, along with particulars relating to the property, submitted as appendices by the Council. These tend to explain why the authority took the approach it did.
16. First, I have been provided with a letter, dated 31 October 2017, from the current appellant to Brent Council's Property Licensing team. Written in response to a letter from the Council who had identified the property as possibly operating as a House in Multiple Occupation (HMO) the appellant made the following statement:

'As the property is used exclusively for short-term Air BnB style lettings, we do not believe the property is subject to licensing. Typically, guests will stay anywhere from 1-4 weeks.'

17. The Council has also submitted 'Booking.Com' particulars, dated 10 January 2019 which refer to the property as 'Chaplin Apartments', include photographs of the premises, and describe one of these as affordable, self-catering and one of nine rooms within three floors of a Victorian house.

18. Next, on 26 March 2019, a planning application (ref 19/1154) was submitted by the current agent on behalf of the appellant for a 'Retrospective change of use from a self-contained single-family dwelling to sui generis short-term let accommodation.' Moreover, in describing the existing use the application form states:

'The lawful use of the site is as a single-family dwelling C3. The current use of the site is as a sui generis short term let accommodation.'

19. Subsequently, as a precursor to the Council potentially issuing an enforcement notice, and in an attempt to ascertain the property's use, a Planning Contravention Notice (PCN), was served by the Council. The appellant responded by e-mail dated 23 May 2024, indicating that the short-term letting use ended on 25 March 2020, since which time the property has been used as 8 self-contained flats. In his response the appellant also mentions that, since this date, the self-contained flats have been rented to the London Borough of Ealing.
20. Further to the above, the Council has provided correspondence from LB Ealing's Housing Demand Manager (HDM) which refers to a Temporary Accommodation Agreement and mentions 'house rules and hotel management' and, moreover, has given details of placements made in 2020. The HDM arranged rooms for prospective tenants and has provided copies of Tenancy Agreements, albeit redacted, dated 28 April, 4 May, 11 August and 9 November.
21. I can only assume the various facts highlighted influenced the drafting of the enforcement notice and why two distinct uses were cited.
22. Indeed, the use of the property is highlighted again in particulars relating to 'Chaplin Apartments' dated 5 November 2024, also supplied by the Council, which refers to 'guests' and 'the hotel'. Admittedly, this is after the enforcement notice's issue but would have been a consideration should the Inquiry had gone ahead, which would have necessitated all the evidence adduced to be explored.
23. Given that all grounds of the s174 appeal, save for ground (g) were withdrawn, and with the additional withdrawal of the s195 appeal I cannot take into account the parties' individual assertions, as were originally submitted regarding, for instance, merit and impact or the immunity from planning control as was first claimed. In view of this I only need make a ruling as to the validity of the enforcement notice itself and, in this regard, the above does give an insight as to the appellant's position and understanding when faced with the enforcement notice and its requirements.
24. As I have mentioned, the purpose of my Pre-Inquiry Note was to ascertain why the Council had cited two alleged breaches, and I concluded the note by saying that should the Council decide to continue with the enforcement notice, as

issued, then I would expect its witness at the then scheduled Inquiry to provide full justification for the notice taking the form it currently does. With the subsequent representations from both parties I have since gained a full understanding of the case and the Council's approach has now become clear. The property has been subdivided to form a series of self-contained flats which, in turn has facilitated its use for short-term lets. Accordingly, it is the subdivision and creation of self-contained residential units that is the crux of the matter.

25. In such circumstances, whether the units are being let on a short-term basis as furnished flats or whether they are used as self-contained flats on a short-term tenancy basis, I am of the view that the enforcement notice's requirement to cease the use as short-term living accommodation is superfluous. Moreover, compliance with the third requirement which requires, amongst other things, the removal of all internal partitions, items and materials will achieve the notice's purpose.
26. In summary, I therefore consider that the enforcement notice, when read as a whole, is sufficient to tell the appellant or, for that matter, any recipient, with reasonable certainty what the breach of planning control is and what must be done to remedy it.
27. Accordingly, I am satisfied that the notice has valid legality.
28. Under the provisions of s176(1) of the 1990 Act it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice to the parties. In this instance, it would appear that representatives from both parties met on 10 December 2024 to discuss the case but were unable to reach any common ground as to whether the notice should be amended as regards the allegation of short-term living accommodation and its corresponding requirement.
29. Moreover, following on from this, in an e-mail dated 15 December 2014, the appellant indicates an objection to such a course of action. Nonetheless, given my findings and reasoning, it is not crucial to the validity of the enforcement notice that I correct it and strike out all references to the said use. Accordingly, I shall make no changes to the main part of the notice.

The Appeal on ground (g)

30. The appeal on ground (g) is that the stated time period for compliance in the enforcement notice falls short of what is reasonable in the circumstances. In this regard the appellant has produced a sworn statement which indicates that the current occupiers of the eight flats are vulnerable families who, if relocated, would need to be provided with appropriate accommodation.
31. Furthermore, it is said that gaining vacant possession of the eight flats will take longer than the six month period stipulated. In view of this an extended period of between twelve to eighteen months is requested.
32. I have not been provided with any corroborative evidence to this end, and I have also taken into account the Council's representations which aim to counter the appellant's claims. Nonetheless, on balance, given all relevant circumstances, and in good faith, I am satisfied that the period of compliance can reasonably be extended to nine months.

33. The appeal succeeds to this extent.

Timothy C King

INSPECTOR