



Appeal Decision

Site visit made on 7 March 2025

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal Ref: APP/G5180/C/24/3345576

Flat B, 6 Stembridge Road, LONDON, SE20 7UF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by SE20 DEAL 2 LTD against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 23 May 2024.
 - The breach of planning control as alleged in the notice is without the required planning permission, the material change of use of the land from a self-contained flat (class C3) to a house in multiple occupation (class C4).
 - The requirements of the notice are (a) Cease use of the land as a house in multiple occupation – within 6 months after this notice take effect; (b) Restore the land to its condition before the breach of planning control took place – within 8 months after this notice takes effect.
 - The periods for compliance with the requirements are: (a) 6 months & (b) 8 months
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of the land from a self-contained flat (class C3) to a house in multiple occupation (class C4) at Flat B, 6 Stembridge Road, LONDON, SE20 7UF as shown on the plan attached to the notice and subject to the following condition:
 - i. The property (Flat B) shall provide accommodation for no more than 6 individuals at any one time.

The Appeal on Ground (b)

2. The appellant accepts that if I consider the reference to ‘the land’ in the notice is limited solely to Flat B and not all of No6, then ground (b) cannot succeed. I do so consider. It is not unusual to refer the building or part of the building in question as ‘the land’, which has no wider connotation than the address on the notice which is clearly Flat B. The appeal on ground (b) fails.

The Appeal on Ground (c)

3. The appellant sets out an uncontested version of events that planning permission was granted and implemented for the conversion of No6 into two flats which were complete on 12 July 2022. On this date the building works were finished and an application was made to discharge the pre-occupation conditions. This date is important because the Council had issued an Article 4 direction removing the right

in the GPDO to change the use of a C3 dwelling to a C4 (HMO) use. That direction came into force on 1 September 2022 so the appellant was keen to finish the conversion, create 2 lawful flats (C3 uses) and then convert them to HMOs all before the Article 4 came into force.

4. The flats were kept vacant so the HMO use could be begun as soon as possible, and on 31 August (1 day before the deadline) ASTs were issued to three unrelated tenants who occupied Flat B as an HMO. On the same day the Council discharged the pre-occupation conditions. In October, with the HMO use lawfully established, the tenants were rehoused and internal works to convert Flat B into a 6 bed HMO were begun.
5. The question for ground (c) is therefore whether the appellant is correct that the C3 uses were lawfully begun before the 31st August so that the HMO change of use could then lawfully be made before the Article 4 came into force. It is clear that Flat B was never used as a single dwellinghouse but the appellant relies on Impey¹, Howell² and Welwyn Hatfield³ that although building works and uses are separate concepts in the planning acts, nevertheless the physical conversion of a building is a relevant factor and can be decisive when considering whether a change of use has taken place.
6. However, it is clear from all three judgements that the works element is not necessarily the only thing to look at, but the case must be looked at in the round. This is because all three cases involved excessive (in the courts opinion) concentration on the use rather than whole picture. The appellant quotes Donaldson L J in Welwyn & Hatfield to say “*I consider it is artificial that a building has or is of no use at all, or that its use is as anything other than a dwelling house, when its owner has just built it to live in and is about to move in within a few days time*”. This is the application of commonsense.
7. In this case the appellant has been open that he never intended to use the building as 2 flats but always wanted HMOs for financial reasons. The rushed conversion to a C3 use was simply an artificial ruse to get round the impending closing of the right to then convert to an HMO. The flat was never occupied as a flat and was never intended to be so occupied. The 3 tenants who were bundled in on the last possible day were merely pawns in the appellants plan to then quickly bundle them out so the actual 6 bed HMO use could be created. This is one of those cases where the appearance of the building (as two flats) is insufficient to show the C3 uses were begun. As the appellant demonstrated the flat could be used as a three person HMO without any changes being made. Thus, until a use was established, and particularly because the intended use was not a C3 flat, it is impossible to be certain what the actual use would be.
8. As it says in Impey whether a building is usable may be the only test but it is a matter of fact and degree and as is made clear in Howell and Welwyn the matters must be looked at in the round. In this case therefore I do not consider, for the reasons given above, that a lawful C3 use was ever established in Flat B so the conversion to an HMO on 31 August was also not lawful, as the right to make a change of use to a C4 HMO granted in the GPDO cannot apply where the original

¹ Impey v Secretary of State for the Environment (1984) 47 P & CR 157

² Howell v Sunbury-on-Thames Urban District Council (1964) 15 P & CR 26

³ Welwyn Hatfield Council v Secretary of State for Communities and Local Government [2011] UKSC 15

use is unlawful. Thus planning permission is required for the HMO and the appeal on ground (c) fails.

The Appeal on Ground (a)

9. The Council's objections to the conversion are based on the quality of the accommodation provided. The original layout of Flat B (which is over 2 floors, the first and loft) was used for the 3 tenants in August 2022, but then altered to accommodate 6 tenants. This later layout was seen by the Council and it seems was the same as that when an HMO licence was applied for. This was granted in February 2024 subject to various conditions. In particular that the first floor right rear bedsit (room B4 on the plans dated 23/10/24) should have its ensuite removed as should the second floor rear right bedsit (room B6 on the plans) to make them larger; and the first floor utility should be subdivided to create 2 shower rooms each for the exclusive use of the enlarged bedrooms (B4 & B6). These works were not carried out and so the licence is in abeyance.
10. Since then, as I saw, slightly different alterations have been carried out and are shown on the October 2024 plans. B4 doesn't seem to have changed, but B6 has had its ensuite removed and there is a separate bathroom on the first floor solely for the use of B6.
11. The Council also noted that at least one room was occupied by a family, whereas the rooms are too small for more than 1 person. The appellant argues that for single occupancy, each room is the minimum size required. Room sizes are contained in the Council's *'Adopted Standards - Houses in Multiple Occupation'* document. This does not seem to be a planning document that is part of the development plan, but nevertheless, it provides details on what the Council consider to be sensible standards for an HMO and I shall give it weight accordingly. For a room with a single occupant that includes a bathroom and where there is no shared common room, the minimum size is 11sqm. A kitchen in a house for 6 people should be 8.5sqm. The plans provided show that all the rooms do, just, meet this minimum standard.
12. Local residents have also complained, citing overcrowding and rubbish bins spilling onto the street. I noted that bin stores have been provided on the forecourt and on the day of my site visit it was clearly bin collection day and there was no untidiness on the forecourt. Overcrowding is clearly a problem but that can be dealt with by the condition suggested by the Council.
13. The Council refer to 3 policies from the Bromley local plan in the notice. Policy 4 is concerned with good design for housing and space standards as set out in the London Plan policy 6. Policy 9 refers to conversion of houses and requires high quality living environment and amenities of neighbours should not be affected; while policy 37 deal with design in general particularly respecting neighbours' amenities. The space standards in the London Plan are not directly relevant to HMOs and I have used the Council's own standards, which are met by the development and no other design issues have been raised. The bin storage issue seems to have been solved and if the number of occupants is restricted to 6 then the use as an HMO should be acceptable. Consequently, I shall allow the appeal on ground (a) and I do not need to consider ground (f).

Conditions

14. The Council suggest 2 conditions. One is an implementation condition, but the conversion has already been carried out. The second, limiting occupation to 6 people is important due to the room sizes and to avoid overcrowding.

Simon Hand

INSPECTOR