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## Appeal Decision

Site visit made on 25 March 2025

**by Felicity Thompson BA(Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 25 April 2025**

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**Appeal Ref: APP/Y5420/C/23/3321376**

**The land and building(s) known as 226 Stapleton Hall Road, Hornsey, London N4 4QR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Ms Dorit Zak against an enforcement notice issued by the Council of the London Borough of Haringey.
  - The notice was issued on 30 March 2023.
  - The breach of planning control as alleged in the notice is without planning permission the change of use of the property to a mixed use comprising of three self-contained flats and a House in Multiple Occupation.
  - The requirements of the notice are:
    1. Cease the use of the property as a mixed use comprising of self-contained flats and a House in Multiple Occupation.
    2. Remove from the self-contained flats all kitchens, including not limited to, private cooking equipment, cabinets, drawers, worktop areas, sinks and drainage areas.
  - The period for compliance with the requirements is stated as 30 August 2023.
  - 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).
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### Decision

1. It is directed that the enforcement notice is corrected and varied by:
  - 1) inserting 'material' between 'the' and 'change' in section 3 (the breach of planning control alleged).
  - 2) Substituting six (6) months for 30 August 2023 as the time for compliance.
2. Subject to the correction and variation, 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.

### The Enforcement Notice

3. Since the appeal was made, the appellant submitted an appeal decision<sup>1</sup> which they consider is relevant in respect of the time limit for taking enforcement action. However, as the Council stated in response, that appeal concerned the use of a property as four flats (dwellinghouses). At that time, the relevant period in respect of dwellinghouses was four years. This appeal concerns a mixed use as flats as an HMO for which the time limit for taking enforcement action is ten years from the date of the breach, as set out in section 171B of the Act. The enforcement notice is not invalid.

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<sup>1</sup> APP/C2741/C/22/3300628

4. I shall however correct the allegation to clarify that there has been a 'material' change of use, since it is that which amounts to development.

### **The appeal on ground (a) and the deemed planning application**

5. Based upon the Council's submission, the main issue is whether the flats provide acceptable living conditions for occupants, with particular regard to size.
6. The development plan is the basis on which planning, and appeal decisions are made. It is stated in section 38(6) of the Planning and Compulsory Purchase Act 2004 that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."
7. It does not matter that the development was carried out some time ago nor that it has been operating in this way since 2014, it is an established principle that decisions on planning appeals should be made on the basis of the development plan and national policy which are in place at the time of the decision - rather than at the time of the event or any earlier stage.
8. Policy SP2 of the Council's Local Plan<sup>2</sup> requires high quality residential development that is designed having regard to the housing design standards and space standards set out in The London Plan (2016) which has been superseded by The London Plan (2021) however, the space standards remain the same. The criteria in Policy SP2 are not mutually exclusive, so whether the development *Aims to maximise housing for people whose circumstances makes them vulnerable and/or people with specific needs*, it must still comply with the space standards.
9. Policy D6 of The London Plan 2021 relates to housing quality and standards. The notes to Policy D6 set out that new dwelling in the context of the standards, includes new build, conversions, and changes of use. Policy D6 requires a one-bedroom, one-person, single storey dwelling to provide a minimum gross internal floor area (GIA) of 37sqm where the dwelling has a shower room instead of a bathroom. The standards are minimum standards to be achieved which applicants are encouraged to exceed.
10. The flats are numbered three, four and eight and the GIA of each is 18.9 sqm, 20.3 sqm and 24.8 sqm. Consequently, the flats do not meet the *minimum* [my emphasis] standard with the shortfall in each case being significant.
11. The property has an HMO licence for 12 persons occupying as nine households however, the property is not being used solely as an HMO, the development is a mixed use. In any event, licensing serves a different purpose, namely ensuring accommodation meets a minimum standard for human habitation. Accordingly, this and that the property has been successfully operating as an HMO for nine years are matters of little weight.
12. The flats are undersized and do not provide satisfactory living conditions for occupants contrary to Policy D6 of The London Plan 2021 and Policy SP2 of the Local Plan which together require residential development to be of a high-quality design and meet minimum internal space standards. There is also conflict with the

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<sup>2</sup> Haringey's Local Plan Strategic Policies 2013 – 2026 (formerly the Core Strategy) March 2013 Consolidated with alterations since 2017.

National Planning Policy Framework which seeks to ensure a high standard of amenity for existing and future users of buildings.

*Other matters*

13. The property is located within the Stroud Green Conservation Area (SGCA). The reasons for issuing the notice do not refer to the Conservation Area however, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
14. It seems, in the absence of an appraisal or explanation, that this part of the SGCA is residential in character, which except for a more contemporary development adjacent to the appeal site, consists of attractive, well maintained Victorian red brick properties. The appeal property exhibits many of the architectural characteristics seen in properties in the wider SGCA and, as such, makes a positive contribution to it. As a residential use/s with no external alterations, the development preserves the character and appearance of the SGCA.

*Conclusion on ground (a)*

15. The use is contrary to the development plan when taken as a whole and in this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan. The appeal on ground (a) therefore fails, and planning permission will not be granted.

**The appeal on ground (f)**

16. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
17. Since the notice requires the use to cease and that all kitchens from the flats are removed, I find its purpose is to remedy the breach of planning control.
18. It is not clear from the submissions what the lawful use of the property is. However, it is an established principle that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use.
19. Whether the Council would informally accept the use as a Class C4 HMO<sup>3</sup> whilst planning permission is obtained for an alternative use, is a matter for the parties away from this appeal.
20. Since it appears, in the absence of contrary evidence, that the kitchens in the flats have facilitated the unauthorised use as flats, it is not excessive, in order to remedy the breach of planning control, to require their removal, along with the cessation of the use as flats and an HMO.
21. The appeal on ground (f) fails.

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<sup>3</sup> The Town and Country Planning (Use Classes) Order 1987.

### **The appeal on ground (g)**

22. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
23. The period for compliance with the notice starts to run from the date when the notice comes into effect. In this case the notice as issued requires compliance by a calendar date which has been overtaken by the appeal process. That period would have been equivalent to around three months and three weeks, since the notice would have taken effect on 8 May 2023, had an appeal not been made. Since an appeal was made, the period begins from the date of this decision.
24. The appellant suggested a period of 18 months on the basis that the period is too short to provide existing tenants with notice and time to vacate and find alternative living arrangements. Moreover, that the requirements would mean that the property could not be used until a planning application has been submitted and approved by the Council, and thereafter the necessary work to the building carried out and new tenants found.
25. The purpose of the period within an enforcement notice is to allow for the use to cease and the physical works associated with the notice to be removed. The appellant's submission relates largely to the time before works could commence.
26. However, whilst I have no substantive details of the terms of the tenancies held by any current occupants, particularly in relation to matters such as the notice periods, I have no doubt that compliance with the requirements of the notice would, at the very least, represent a significant inconvenience to the occupants.
27. Moreover, there will be a reasonable amount of work required to comply with the requirements and given my findings under ground (f) it is likely that the appellant will need to submit an alternative proposal/s to the Council.
28. Having regard to these circumstances, even if account is taken of the need to remedy the harm, the requirements to undertake all the works within three months and three weeks would place a disproportionate burden on the occupants and appellant. Whilst the Council referred to their discretionary power to further extend the period, if necessary, in the circumstances it is reasonable for the appellant and occupants to have some certainty.
29. I conclude that the period for compliance should be extended to six months. A period of six months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellant and occupants. To this extent, the appeal on ground (g) succeeds.

### **Conclusion**

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

*Felicity Thompson*

INSPECTOR