



Appeal Decision

Site visit made on 23 April 2025

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 1st May 2025

Appeal Ref: APP/T5150/C/23/3324367

65 Blenheim Gardens London NW2 4NR

- 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 “1990 Act”).
 - The appeal is made by Mr John Cawley against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 15 May 2023.
 - The breach of planning control as alleged is the material change of use of the premises to ten flats.
 - The requirements of the enforcement notice are to: 1) Cease the use of the premises as flats. 2) Remove all internal partitions, items, materials and debris associated with the unauthorised change of use from the premises, including the removal of additional kitchens, bathrooms/shower rooms and toilets, and 3) restore the internal configuration to the original layout before the unauthorised change of use took place as shown in the plans labelled ‘Appendix A’, attached to the issued notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e), (d), (f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Procedural matter

2. I am not persuaded by the agent’s arguments that the appeal should be determined by local public inquiry. Taking evidence on oath or affirmation and the testing of the evidence via cross-examination is unnecessary nor would it assist the appellant or Council. Both appeal parties have had ample opportunity to make written submissions. In any event, as you will read below, I have placed limited, if any, weight on the Council’s short-term lets claim. The latter was the main reason for the agent’s request to change procedure from written representations to inquiry. I proceed to my reasons.

Ground (e)

3. In pursuing an appeal on this ground, the appellant needs to show, on the balance of probability, that copies of the issued notice were not served as required by s172 of the 1990 Act. Sub-section (2)(a)(b) state a copy of a notice shall be served on the owner, occupier and on any other person having an interest in the land. An *owner* is defined in S336(1); a person may be an *occupier* because of a lease, licence or oral permission. An interest in the land connotes a legal or equitable interest. A person entitled to appeal is specifically defined as a relevant occupier. There is a distinction between occupiers with an interest who must be served, and persons with an interest, which entitles them to make an appeal. I am also mindful of s176(5).

4. The appellant says copies of the notice were not served on the occupiers of the 10 flats, but the Council say copies were hand-delivered to each room. A laminated copy was also attached to the doorway as confirmed by certificate of service. Additionally, the owner or interested persons have been served via Royal Mail tracker service.
5. In any event, even if the notice had not been correctly served, section 176(5) provides that where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the notice was not served, that fact may be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure to serve them.
6. Even if the appellant is correct, the tenants have not been substantially prejudiced by the failure to serve them. This is because the appellant's appeal has protected their interest. The appellant has had an opportunity to argue the appeal fully during these appeal proceedings. It cannot, therefore, be said that they have suffered any prejudice because of any failure to comply with the rules concerning service.
7. I conclude that the evidence presented indicates the notice has been properly serviced. In any event, given the circumstances of this case any failure in terms of service of the notice may be disregarded. Ground (e) fails.

Ground (d)

8. The onus of proof is upon the appellant. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is, on the balance of probability, sufficiently precise and unambiguous. Effectively, the claim is that the alleged development is immune from enforcement action due to the passage of time because no. 65 has been converted into 10 flats on or before 15 May 2019, and has continued thereafter without significant interruption.
9. The appellant vehemently disputes the Council's claim that the property was occupied and used for short-term lets between 2019 and 2020. The authority draws attention to the appellant's own evidence, which seems to suggest short-term occupation and use of some of the flats. In any event, I am not overly concerned by the Council's claims. This is because the quantum of the evidence presented seeks to demonstrate that the material change in the use of no. 65, as alleged in the notice, occurred on or before the relevant date.
10. The documentary evidence includes domestic electrical installation certificates, energy performance certificates, several tenancies and invoices for maintenance by The London Flat. However, there seems to be some confusion in the documentary evidence because the sworn testimony is that the London Apartment Direct Limited company has managed the maintenance and rentals since July 2018.
11. Nonetheless, I have carefully reviewed and considered all this documentary evidence. In my assessment, the evidence presented does not sufficiently show when the property had changed into 10 self-contained flats and how it has been used as such thereafter for a period of four years without significant interruption. This is because the statutory declarations are incomplete and they do not divulge when, how and by whom the physical work involved in the conversion of a large

dwelling began and were substantially completed. There is no specific detail about the nature, scale or sequence of the events. I cannot be sure each flat provided viable facilities for day-to-day domestic existence on or before the relevant date. This finding is sufficient to dislodge this ground (d) appeal. Nevertheless, I have reviewed the evidence about use of each flat.

12. Tenancy agreements do not prove use but might help in appreciating the timings and level of occupancy. The appellant says some of the tenants occupied flats on a rolling tenancy. That is possible but there is no evidence from relevant tenants subject to a rolling period to substantiate that claim. This kind of information could have backed up the appellant's claim. There is an added complexity. The Council has identified unexplained gaps in some of the tenancies.
13. Flat 1, for example, has an 11-month gap between tenancy ending on 13 April 2019 and the next tenancy beginning on 20 March 2020. For the period 28 April 2018 to 27 July 2018, only one utility bill has been provided, but it is in the name of the appellant and there is no plausible explanation as to why the bill is in the appellant's name.
14. There are two tenancy agreements for flat 9 covering 18 May 2018 to 17 May 2019, and 23 September 2022 to 2023. There is no credible explanation as to why there is a significant gap of some three years. A utility bill has been provided, but that is in the name of the appellant and covers the period 28 April 2018 to 27 July 2018, which is before the relevant date. There is no reasonable explanation as to why the bill is in the appellant's name. Finally, it is unclear which electrical safety certificate applies to flat 9.
15. A third example is flat 8 where the submitted agreements appear to show an 11-month gap between the tenancy ending on 9 June 2019 and the next starting on 1 May 2020. Perhaps record of rent received for each flat over the relevant period may have assisted. In addition, the Council say the Valuation Office has no record of 10 dwellings being registered nor is local taxation paid for each flat. The appellant has not provided any likely explanation as to why council tax has not been paid on each flat for the relevant period. This kind of evidence could have helped confirm occupancy throughout the relevant period, but it also cast doubt on the veracity of the appellant's claim that each flat has been occupied and used as a single dwellinghouse.
16. Drawing all the above threads together, I find that the available evidence does not sufficiently, precisely and unambiguously show, on the balance of probabilities, the alleged material change in the use of no. 65 to 10 flats occurred on or before the relevant date, and that use continued thereafter for a period of four years without significant interruption.
17. I have also considered whether any of the flats may be immune from enforcement action but the evidence presented is not persuasive enough so I cannot draw any firm conclusions as to when each flat became a dwellinghouse, and that each flat was occupied and used as a single dwelling thereafter for a period of four years without significant interruption.
18. Frankly, I must conclude that the onus has not been adequately or convincingly discharged and so this ground (d) appeal must fail.

Ground (f)

19. The appellant says the steps required should seek to remedy the breach rather than re-create an internal configuration akin to the property's former use as a single dwellinghouse. There is some force behind this argument given reversionary rights. However, step 1) requires cessation of the use and 2) stipulates the removal of fittings and fixtures that sustained the latter. Keeping several bathrooms so they can be used in connection with a dwellinghouse is a matter for the appellant and Council, but these requirements are not excessive to remedy the breach.
20. Another purpose is to restore the land to its condition before the breach occurred, which falls within s173(4)(a). Step 3 requires restoration of the internal configuration to the original layout before the material change in the use of no. 65 occurred. The reference to plans previously submitted to the Council by the appellant does not undermine specificity given the plans reflect the layout of the building prior to its use as 10 flats. In these circumstances, I consider that the restorative nature of step 3) is not excessive and ensures the breach is remedied.
21. For all the above reasons, I find that the steps required achieve the purpose of remedying the breach of planning control and are not excessive. No lesser step will achieve that purpose and ground (f) must fail.

Ground (g)

22. The appellant says that the period of compliance is too short: a reasonable period being nine months. However, the steps required by the notice are not too onerous given the nature of the building work. A six-month period should also afford the appellant sufficient time to give current occupiers termination notices to vacate the property.
23. Given the reasons for issuing the notice, the breach of planning control should not be allowed to continue more than absolutely necessary. I do not consider six months is too short and it is a reasonable period of compliance. Ground (g) fails.

Overall conclusions

24. For all the above reasons and having considered all other matters raised, I conclude that the appeal against the enforcement notice should fail.

A U Ghafoor

INSPECTOR