



Appeal Decision

Site visit made on 12 May 2025

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

an Inspector appointed by the Secretary of State

Decision date: 27th May 2025

Appeal Ref: APP/T5150/C/23/3321563

27 Pembroke Road Wembley HA9 7PD

- 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 Sentinel Estates Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 31 March 2023.
- The breach of planning control as alleged is the material change of use of the premises from two flats to a House in Multiple Occupation (HMO).
- The requirements of the enforcement notice are to: 1) Cease the use of the premises as a HMO. 2) Remove all fixtures and fittings associated with the change of use to a HMO, including, but not limited to, the removal of all en-suite toilets and showers, and all kitchen equipment located in the bedrooms and all partitions.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (a), (f) and (g) of the 1990 Act.
- An application for costs is made by the Council against the appellant company. That decision is the subject of a separate Decision.

Decision

1. It is directed that the enforcement notice is varied by the deletion of the number “3” in section 6, the period of compliance, and the substitution therefor with the number “6”. Subject to this variation, the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c)

2. The onus is firmly upon the appellant company to show the alleged matter does not constitute a breach of planning controls on the balance of probabilities. The Council consider that at the date of issue the property was used as an HMO. In fact, that is not in dispute and is broadly consistent with the findings in a previous appeal decision¹. The last notice alleged use as an HMO and self-contained flats, but that was quashed because Inspector Franks held the alleged matter had not, in fact, occurred. This is because rooms 1 and 2 were not self-contained flats.
3. The nub of the appellant company’s argument is that the HMO use does not require express planning permission. The argument is a simple one namely that the change of use benefits from permitted development (PD) rights. For the following reasons, I disagree.
4. Use of a dwellinghouse by not more than six residents is classified as Class C4 in Schedule 1, Part C to the Town and Country Planning (Use Classes) Order 1987 (as amended) (“the UCO”). Normally, there are permitted development (PD) rights to change from a use falling within Class C3 (dwellinghouses) of the Schedule to the UCO, to a use falling within Class

¹ Appeal ref: same prefix ending in 3247855 allowed on ground (b) dated 11 April 2022.

C4². However, an in-force Article 4 Direction prohibits such changes of use, and it came into force on 1 November 2022.

5. The factual evidence is that until at least 2013 the property was occupied and used as two self-contained flats and that was the circumstance in 2007. Similarly, a resident occupier's application in July 2007 for benefits also described the existing use as flats. In 2013 and 2015, the property was marketed for sale as two flats. Sales particulars describe the internal makeup and layout as two flats. An extract from property website Zoopla refers to an offer received in connection with this 3-bed semi-detached house that is "...currently arranged as two one-bedroom flats". There is nothing before me to indicate the particulars are inaccurate and there is no evidence to discredit the details, which state the flats were unauthorised and did not benefit from planning permission.
6. Evidence about the previous unauthorised use of the property as two self-contained flats is highly problematic. This is because a change of use from a single dwellinghouse into two self-contained flats normally amounts to a material change of use and requires express planning permission by operation of law³. There is nothing before me to indicate express planning permission had been obtained. In addition, the evidence presented does not demonstrate the unauthorised use acquired immunity, due to the passage of time.
7. The appellant company acquired no. 27 in 2016. The use of the property as two self-contained flats could at any time reverted back to use as a single dwellinghouse without the requirement for planning permission to be obtained. The reason is because the self-contained flats had not yet become lawful in planning terms. Instead, the quantum of evidence shows that in May 2016 a single-storey rear extension was built, six studios were registered with the valuation office and energy performance certificates secured.
8. Had the evidence submitted clearly illustrated that the property had in fact reverted to use as a single dwellinghouse and then there was a change of use to an HMO, the latter could have been permitted development. However, the evidence points in the likelihood that the HMO use followed the self-contained flats and is therefore not permitted by Class L(b), which allows a change from Class C3 (dwellinghouses) to a use falling within Class C4 (HMO) of the UCO. Express planning permission is required for the matter alleged in the notice and it has not been obtained. Ground (c) fails.

Ground (d)

9. On the appellant company's own evidence, this ground of challenge is doomed to fail. Both appeal parties accept that the alleged HMO use commenced in 2016, which is confirmed by a survey of the property done in January 2020. Moreover, evidence submitted with the previous appeal by existing residents confirms the property has always been in use as an HMO since 2016. Thus, the 10-year period required to achieve immunity cannot be satisfied. This is because the evidence does not clearly and unambiguously show that the HMO use commenced on or before 31 March 2013, which is the relevant date. The position is worse if the second bite provisions⁴ apply to the notice before me as the relevant date would then be 23 January 2010. The evidence presented does not show, on the balance of probabilities, that the alleged use is immune from enforcement action by reason of immunity. Ground (d) must fail.

² Article 3, Schedule 2, Part 3, to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

³ Section 55(3) of the 1990 Act applied.

⁴ Section s171B(4)(b) of the 1990 Act.

Ground (a)

10. No. 27 comprises a two-storey semi-detached property located on the east side of Pembroke Road, which is predominantly residential in character. The **main issue** is the effect of the development on (1) family housing (2) living conditions of existing and future occupiers regarding comings and goings, general disturbance, and the standard of accommodation.

Family housing

11. A local estate agent endorses the use of no. 27 as an HMO because there is a need for affordable or low-cost housing in this part of the borough, especially when there is a shortage of such type of accommodation. However, that argument could be made in support of any site. Nonetheless, the appellant company suggests policy BH7 of Brent's Local Plan (2022) is supportive of accommodation with shared facilities, especially for people who need supportive accommodation. There is policy support for the need for non-self-contained residential units with shared facilities like the accommodation at no. 27. These types of proposals are usually supported where they are in areas with good access to public transport and other amenities. In comparison, the appeal site is in an area of limited accessibility in terms of public transport with a PTAL rating of 2, although there are shops within walking distance.
12. In the past the property has been used as two self-contained flats but use as a shared HMO results in the loss of a 3-bedroom dwelling in an area that is residential in character. The property is suitable for use as a single dwellinghouse and the loss of family housing such as this increases the borough's challenge to meet its housing needs. The loss of family housing stock is at odds with local plan policies such as policy H8 of The London Plan and Brent's LP policy BH10. Such policies seek to resist the net loss of housing. The submitted evidence does not indicate the loss of this dwelling has no material impact. On the contrary, I consider that the use of no. 27 as an HMO contributes to the loss of much needed family dwellings in the borough. The evidence presented does not indicate exceptional circumstances exist to set aside these local plan policies.
13. On this main issue, I conclude that the development has a potentially harmful effect on the supply of family housing contrary to LP policy BH6 and BH7, and policy H8 to the London Plan.

Living conditions

14. The argument in favour is that the accommodation meets with housing and HMO standards and provides appropriate and high-quality accommodation. Each room is over 11 sqm in area thus meeting with housing space standards. The rooms also have their own shower room providing a degree of privacy for existing residents. However, as Inspector Franks observed, I too consider the rooms are very small given the way in which existing rooms have been carved out to form six ensuite bedrooms. The rooms have fridges, and some have a small worktop for convenience, but these facilities further reduce available space. The shared kitchen is very small and without daylight and no space for a dining table and chairs. The layout appears cramped and substandard given the lack of circulation space.
15. Compared to the use of the property as a single dwellinghouse or two flats, the nature and scale of the HMO use is likely to generate different off-site consequences. The agent attempts to compare use and occupation of no. 27 by say a family of 5 individuals, but the expectation is that they would form a single household. In contrast, the use of no. 27 as a HMO involves occupation and use of this small 3-bedroom dwelling by six unrelated individuals who are likely to generate significant level of comings and goings associated with residential living. The character of the HMO use is likely to cause general disturbance to existing residents given the

location and siting of no. 27. I consider that the development before me represents an intensive residential use that is likely to be a source of much annoyance.

16. There is no realistic fallback given the effect of the Article 4 Direction. At final comments stage the Council say an HMO licence application was granted on 10 October 2022 for occupation by a maximum 5 persons because there were insufficient kitchen facilities for 6 persons. An alternative might be to grant planning permission for a 5-bedroom HMO. However, even if I am to regard the latter as part of the matters alleged, there are limited, if any, details explaining how such a scheme would function or work in practice, due to the available floorspace and limited shared and circulation areas.
17. I conclude that the development has a potentially harmful effect on existing and future occupiers. The development conflicts with Brent's LP policies DMP1 and BH7, as well as the main aims of Supplementary Planning Document (2022).

Ground (f)

18. The notice clearly seeks to remedy the breach of planning controls, but the appellant company regards the requirements to be unreasonable. Step 1) requires the cessation of the use as an HMO and I have already found the latter is not a lawful existing use of the dwelling.
19. The claim is that step 2) is excessive as there is no restriction against bedrooms having en-suite shower rooms. Retaining the en-suite facility would, potentially, address the breach at less disruption and cost given the HMO license granted by the Council. However, the requirement is to remove all fixtures and fittings associated with the unauthorised HMO. As part of ground (a), I have considered an alternative but there are limited details, and it is for the appellant to advance a fully worked-up alternative scheme: I cannot search for one. Whether a 5-bedroom HMO would work and resolve the planning conundrum is a matter for the appeal parties to consider and/or explore.
20. Drawing all the above points together, the steps required by the notice are, in my assessment, the minimum necessary to achieve the purpose behind the notice and fall within its scope. They are not excessive, and ground (f) fails.

Ground (g)

21. The evidence presented does not indicate to me that a 9-month period of compliance is required to serve notices on the tenants and carry out the building work. On the other hand, 3 months also seems too short given the potential future use of the property because of the HMO licence. In my view, 6 months from the date of my decision is reasonable as it allows sufficient time to serve termination notices on the tenants and for them to find alternative accommodation. Ground (g) succeeds to this limited extent.

Overall conclusions

22. I conclude that the appeal against the enforcement notice fails on ground (c) and (d). I refuse to grant planning permission on the deemed planning application, but ground (g) succeeds as the period of compliance should be 6 months. I have therefore varied the notice. Subject to this variation, the enforcement notice is upheld.

A U Ghafoor

INSPECTOR