



Appeal Decisions

Site visit made on 4 February 2025

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 May 2025

Appeal A Ref: APP/T5150/C/24/3336859

50 West Hill, Wembley HA9 9RS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Muntatha Kubah against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 8 December 2023.
- The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO).
- The requirements of the notice are:
 - STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO).
 - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets, except those shown in the attached Plan A¹.
 - STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use took place, as shown in the attached Plan A. For the avoidance of doubt, this should include a kitchen/dining room, living room, and a guest bedroom and en-suite bathroom on the ground floor, four bedrooms and a bathroom on the first floor, and a bedroom and a bathroom on the second floor.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is allowed and the notice is quashed.

Appeal B Ref: APP/T5150/X/24/3336315

50 West Hill, Wembley, Brent HA9 9RS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Muntather Kubah against the decision of the Council of the London Borough of Brent.
- The application ref 23/1988, dated 8 June 2023, was refused by notice dated 2 October 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is a use as a small HMO (Use Class C4).

Summary Decision: The appeal is allowed.

Background

1. Both appeals relate to the use of the appeal property as a house in multiple occupation (HMO). Where a HMO falls within Class C4 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order), this would comprise a use of a dwellinghouse by not more than six residents as a “house in multiple occupation”. This is often referred to as ‘a small HMO’. I will refer to this in these decisions as a Class C4 HMO. Where there are

¹ Reference here and elsewhere in the header is to a plan attached the enforcement notice to which Appeal A relates.

more than 6 residents of a HMO, this is a use that would not fall within any class of the 1987 Order and would, therefore, be regarded as a *sui generis* use. This is often referred to as 'a large HMO', and I will do the same in these decisions.

2. Ordinarily, development comprising a change of use of a property from a dwellinghouse falling within Class C3 of Part C, Schedule 1 of the 1987 Order to a Class C4 HMO would have the benefit of the planning permission granted by Class L of Part 3, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 Order), hereinafter referred to as Class L.
3. The parties have, however, referred to an Article 4 Direction² (the Article 4 Direction), which came into effect on 1 November 2022. From the date this came into effect, development comprising the change of use of a property within the area specified in the Direction from a dwellinghouse falling within Class C3 to a Class C4 HMO would not have the benefit of the planning permission ordinarily granted by reason of Class L of the 2015 Order.

Relevant Legislation and Guidance

4. With particular regard to Appeal B, section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. For the avoidance of doubt, this means that the planning merits of the development are not relevant to Appeal B and the main issue is whether the Council's decision to refuse to grant a LDC was well founded.
5. The test of the evidence in both appeals is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. This advice is relevant to Appeal A.

Ground (b) for Appeal A

6. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred.
7. Having visited the site, I note that there are 6 rooms available in the property capable of being used as bedrooms. The internal layout of the property was broadly in accordance with the layout plan submitted with the application subject of Appeal B. The room labelled as a 'hall' on the plan was, however, used as a sitting room and study for the occupier of bedroom 04. All bedroom doors were fitted with locks, save for bedroom 04, where there was a lock on the door entering the adjoining sitting room and study. At the time of my visit 5 of the 6 bedrooms

² Article 4 of the 2015 Order 2015.

appeared to be occupied; bedroom 06 appeared to be used for storage only. There were double beds in some of the bedrooms. I noted a kitchen on the ground floor and larger bathroom on the first floor, which could be accessed by all occupiers of the property. Having regard to my observations on site, the layout and use of the property was consistent with that of a HMO.

8. The notice alleges a material change of use of the appeal property to a HMO. The appellant does not dispute that a material change of use to a HMO has occurred. In view of this, the ground (b) appeal should fail.

Ground (c) for Appeal A and Appeal B

9. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control.
10. The description of development on Appeal B is 'a use as a small HMO (Use Class C4)'. The description of the development in the enforcement notice is consistent with this, insofar as it alleges a material change of use of the premises to a HMO. It does not, however, specify whether the allegation is of a change to a Class C4 HMO or to a large HMO.
11. There is no dispute between the parties that there has been a material change of use of the appeal property to a HMO. I have agreed with this in my conclusions on the ground (b) appeal. In view of this, and having regard to the case made by both parties, the main considerations under ground (c) for Appeal A and for Appeal B are as follows:
 - Whether or not, when the use as a HMO commenced, the property was used as a Class C4 HMO;
 - If so, whether or not the change of use to a Class C4 HMO was lawful, having the benefit of the planning permission granted by reason of Class L of Part 3, Article 3, Schedule 2 of the 2015 Order; and
 - If so, whether or not the lawful use of the property as a Class C4 HMO was extant or had been lost by the time the LDC application had been made and the enforcement notice issued.

When the HMO used commenced, was it a Class C4 HMO?

12. In its statement of case the Council refer to the need for planning permission for a change of use from a dwellinghouse to a large HMO. It also refers to the need for planning permission for the change of use from a Class C4 HMO to a large HMO. It is not, however, clear from the Council's case which of these is applicable (i.e. which of these has occurred in this case). It is not, therefore, clear what the Council's position is on whether the property was used as a Class C4 HMO or large HMO when the use as a HMO first commenced.
13. Notwithstanding the above, in their letter to accompany the application subject of Appeal B, the appellant suggests that the HMO use started in March 2021. The letter does not, however, specify the number of residents at this time. Nevertheless, in the planning contravention notice (PCN), completed on 10 August 2023, in answer to a specific question on when the property first started to be used as a HMO, the appellant states that there were 6 occupants at this time. The

appellant has also provided 6 tenancy agreements that were signed in September and October 2022. These were each signed by a single tenant, indicating that, at that time, there was to be only one tenant in each of the 6 bedrooms in the property.

14. I have had regard to the Council's case, which concentrates on a site visit to the property in February 2023. Whilst I will come to the weight I attribute to this evidence below, even if it were the case that the property was used as a large HMO at the time of the visit, it does not contradict the appellant's evidence, that prior to this date, and when the HMO use commenced, there were not more than 6 residents in the property.
15. In view of the sanctions imposed, should a completed PCN contain statements that are false or misleading, I attribute substantial weight to the evidence contained in the PCN. Moreover, the Council does not suggest that the answers given in the completed PCN are inaccurate or misleading. The PCN, together with the 6 tenancy agreements demonstrates that, on the balance of probability, when the use as a HMO commenced, it was as a Class C4 HMO.

Was the change of use to a Class C4 HMO lawful?

16. There is no dispute that, prior to the change of use of the property to a HMO, it was used as a dwellinghouse falling within Class C3 of Part C, Schedule 1 of the 1987 Order. As I have already noted above, development comprising a change of use of a property from a dwellinghouse falling within Class C3 to a Class C4 HMO would ordinarily have the benefit of the planning permission granted by Class L. From the date the Article 4 Direction came into effect, which is 1 November 2022, any such changes of use would not have the benefit of the planning permission granted by Class L. Accordingly, the appeal turns on whether or not the change of use from a Class C3 Dwellinghouse to a Class C4 HMO occurred prior to 1 November 2022.
17. In their letter to accompany the application subject of Appeal B, the appellant says that 'the property has been converted to a HMO since December 2020 and in HMO use March 2021'. To support this claim, the appellant provides a contractor's agreement, dated December 2020, and a building control fee receipt, dated February 2021. They have also provided certificates relating to domestic electric, emergency lighting, and fire alarms and fire detection, all dated March 2021. Whilst these demonstrate an intention to carry out works to the property, or that some electrical and fire safety works were carried out, they are not sufficient to demonstrate that the works necessary to use the property as a HMO were undertaken and completed by the time they say the use commenced in March 2021.
18. I can see from the correspondence between the appellant and his agent that there was a clear intention to commence the use of the property as a HMO prior to the Article 4 Direction coming into effect. This does not, however, demonstrate that the change of use had taken place at a time it would have had the benefit of the planning permission granted by Class L.
19. The tenancy agreements, on the other hand, are evidence that supports the appellant's case. The value the appellant places on these does not appear to be disputed by the Council. Indeed, the Council's position with regard to the date the use as a HMO commenced is not clear.

20. I acknowledge that the tenancy agreements do not support the claim that the use commenced in March 2021 and that, on their own, they are not sufficient to demonstrate the continuity of the use. Nevertheless, in the absence of any evidence to the contrary, they are sufficient to demonstrate that, on the balance of probability, the use as a Class C4 HMO had commenced at the time the agreements were signed. As this date is prior to the date the Article 4 Direction came into effect, I can only conclude that the change of use to a Class C4 HMO was lawful as it was carried out with the benefit of the planning permission granted by Class L.

Is the lawful use extant or has it been lost?

21. The circumstances where a lawful use of land or buildings might be lost include where there has been a material change of use of the land or building to some other use. Accordingly, I consider here whether the Council's evidence relating to the site visit on 22 February 2023, is sufficient to demonstrate that, at this time, the use of the property as a C4 HMO had ceased and the use as a large HMO had commenced, resulting in a material change of use of the property to a large HMO.
22. The Council say that 'it was confirmed during the site visit on the 22nd February 2023 that the premises was occupied by at least 8 unrelated people'. The evidence submitted by the Council to corroborate this is not, however, persuasive. To support its case, the Council refer to the photographs taken by the Council officer during this site visit, which show double beds in some of the bedrooms. On this point, I note that the number of bed spaces are counted in the report prepared in respect of the LDC application subject of Appeal B. However, the photographs alone are not sufficient to corroborate the claim that 8 or more people were occupying the property at the time of the site visit. That the property was capable of accommodating more than 6 residents, does not mean that it was occupied by more than 6 residents at this time.
23. The Council suggest that the officer 'witnessed' at least 8 people occupying the property at the time of the visit. It is not, however, clear what is meant by this. The officer's notes of the February 2023 site visit might have provided some useful insight into what was witnessed by the officer. If, for example, the officer had counted the number of people present at the property at the time of the visit, or if they had had a conversation with the appellant or occupiers at the visit, where the number of residents was discussed, I would expect there to be a note of this. However, without such supporting evidence, the weight I am able to attribute to the Council's claims regarding the number of occupiers at the time of the site visit must be limited.
24. The appellant refutes the Council's claims. In doing so they point to the tenancy agreements, which I have already considered above. I also note the answers given by the appellant in the PCN, dated August 2023, where they state that there are 5 occupants at that time. The appellant refers only in the PCN to the use of the property as a Class C4 HMO. None of the answers given suggest that the property has been occupied by more than 6 residents since the use commenced. Indeed, there is no suggestion that the answers given in the PCN conceal a period of use of the property by more than 6 residents.
25. On balance and all things considered, it is more likely than not that, since the use of the property as a Class C4 HMO commenced, it has not been occupied by more

than 6 residents. Accordingly, the lawful use of the property as a Class C4 HMO was, on the balance of probability, extant and had not been lost by the time the LDC application had been made and the enforcement notice had been issued.

Summary

26. Bringing all of the above together, whilst I have had regard to the Council's evidence, this is not sufficient to contradict or otherwise make the appellant's version of events less than probable. I find the appellant's evidence sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of the appeal property as a Class C4 HMO was permitted by Class L at the time the use commenced, and that it was lawful at the time the LDC application subject of Appeal B was made and at the time the enforcement notice subject of Appeal A was issued. Accordingly, I conclude that the matters alleged in the notice do not constitute a breach of planning control, on the balance of probability.

Conclusion - Appeal A

27. For the reasons given above, I conclude that the appeal on ground (b) must fail. Otherwise, I conclude on the balance of probabilities that the material change of use alleged in the notice does not represent a breach of planning control. The appeal succeeds on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on ground (g) does not need to be considered.

Conclusion – Appeal B

28. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use as a small HMO (Use Class C4) is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

Formal Decision – Appeal A

29. The appeal is allowed and the enforcement notice is quashed.

Formal Decision – Appeal B

30. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

J Moss

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT
PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 8 June 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated that, on the balance of probability, the use as a small house in multiple occupation by not more than 6 residents, a use falling within Class C4 Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended, was permitted by Class L of Part 3, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended at the time it commenced and that it was lawful at the time the application for a lawful development certificate was made.

Signed

J Moss

Inspector

Date: 30 May 2025

Reference: APP/T5150/X/24/3336315

First Schedule

A use as a small house in multiple occupation by not more than 6 residents, a use falling within Class C4 Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended.

Second Schedule

Land at 50 West Hill, Wembley, Brent HA9 9RS

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 May 2025

by J Moss BSc (Hons) DipTP MRTPI

Land at: 50 West Hill, Wembley, Brent HA9 9RS

Reference: APP/T5150/X/24/3336315

Scale: Not to scale

