



Appeal Decision

Site visit made on 21 May 2025

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

an Inspector appointed by the Secretary of State

Decision date: 7 August 2025

Appeal Ref: APP/T5150/C/23/3334359

Upper Floors Flats, 448A High Road, Wembley HA9 7AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mrs Parveen Aslam against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 25 October 2023.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the first and second floors to eight flats.
 - The requirements of the notice are:
 - STEP 1 Cease the use of the first and second floors as no more than two flats.
 - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use from the premises, including the removal of all kitchens and all bathrooms.
 - STEP 3 Alter the internal configuration to the layout shown in "Plan A" attached to this notice.
 - The period for compliance with the requirements is 6 months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).
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Summary Decision: The appeal is dismissed, the enforcement notice is corrected and upheld.

The Notice

1. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
2. The land to which the notice relates is described in schedule 1 of the notice as the 'Upper Floors Flats, 448A High Road, Wembley, HA9 7AY'. The allegation in the notice is of the material change of use of the first and second floors to eight flats. Accordingly, the notice clearly does not relate to the ground floor of the land identified on the plan attached to the notice.
3. At the site visit I was shown a unit of residential accommodation at ground floor, in an annexe to the rear of the main building on site. Within the main building I observed what appeared to be four units of accommodation at first floor and three units of accommodation on the second floor. In view of this, the number of units of accommodation I observed within the part of the property that is the target of the notice (i.e. the upper floors of No 448A) was 7, rather than 8, as alleged; the ground floor unit I observed is not the target of the enforcement notice. The notice

does not, therefore, accurately describe the breach of planning control in the part of the site to which the notice relates.

4. In a note to the parties, I advised them of my concerns regarding the accuracy of the enforcement notice. I have had regard to all comments received in response to this note in reaching my decision in this case.
5. I have considered whether I am able to correct the notice to accurately reflect the location of the 8 units alleged in the notice, as I observed them. To do so, I would correct the notice to include reference to the ground floor as well as the upper floors. However, I am concerned that such a correction would increase the scope of the notice to extend to land that it does not currently target. This would cause injustice to the appellant.
6. The Council shares my concerns above and suggested that I correct the notice so that it refers to seven flats instead of eight. I see no reason why such a correction would cause injustice to either party. The appellant has approached her appeal in a way that deals with the seven flats at first and second floor. It should be clear from this decision that the unit of accommodation I observed at ground floor is not the target of the enforcement notice and not the subject of this appeal.

Ground (d)

The Main Considerations:

7. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by the matters alleged.
8. Despite the compact size and limited facilities within each of the seven units I observed at the site visit, I have no reason to find that at present these have the distinctive characteristics of a dwellinghouse in that each has the ability to afford the facilities required for day-to-day private domestic existence.
9. It is agreed that the relevant time limit¹ in this case is 4 years. Accordingly, the main consideration is whether, on the date the enforcement notice was issued, the use of the first and second floor of No 448A (i.e. the appeal property) as seven self-contained flats had continued substantially uninterrupted for a period of 4 years or more beginning with the date of the breach. The case must be made for each of the flats that are the target of the notice. The test of the evidence is on the balance of probability and the burden of proof is on the appellant.

The Evidence:

10. The evidence submitted with the appeal includes a number of statutory declarations, one of which has been prepared by the appellant. These are also supported by a series of tenancy agreements relating to properties referred to as flat 1 to flat 8. The Council has also provided a series of documents including valuation records, energy certificates and house in multiple occupation (HMO) application records.

¹ Having regard to section 171B(2) of the 1990 Act and section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

Reasons:

11. I note the Council's reference to the planning application number 13/2904, which was approved on 12 June 2014. This relates to both 448 and 448A High Road and granted permission for the 'subdivision of the existing first and second floor flat into 2 self-contained flats'. Despite this permission, the appellant refers to the property at No 448A and states that it has been used as eight self-contained flats since August 2014. It is understood that the property known as No 448A includes the ground floor unit to the rear, which I observed on my site visit. For the reason I have given earlier in this decision, this unit is not the subject of this appeal.
12. There are a further three statutory declarations. The first is from Nilton Lopes De Souza, who says that they have occupied the premises they describe as a first floor studio flat 3 at the appeal site on a continuous basis since 13 March 2016. The date of the commencement of Nilton Lopes De Souza's occupation is consistent with the tenancy agreement signed by them, dated 13 March 2016, which is for a 2 year term. There are a further three tenancy agreements each for a 2 year term relating to the accommodation referred to as flat 3, signed by Nilton Lopes De Souza, the last is dated 13 March 2022.
13. The statutory declarations of Oral Charles Coley and Petre Evdochim are phrased in a similar way to that of Nilton Lopes De Souza. The former says they have occupied the accommodation they describe as the second floor studio flat 6 since 6 June 2018 and the latter refers to the first floor studio flat 4, saying that they have occupied this since 29 September 2018. Again, the tenancy agreements I have been provided with, signed by these individuals, are consistent with what is said in their statutory declarations, in terms of the date their occupation of the property commenced. There are also tenancy agreements for the accommodation referred to as flat 4 and flat 6 for the subsequent years, signed by Oral Charles Coley and Petre Evdochim. Again, the last of these are both for a term of 2 years and were signed on 6 June and 29 September 2022 respectively.
14. Whilst there are tenancy agreements relating to the remaining 4 units of accommodation on the first and second floor of No 448A, I have not been provided with statutory declarations from any of the occupiers of these units. Furthermore, unlike the tenancy agreements relating to the accommodation referred to as flat 3, flat 4 and flat 6, there are some gaps in the relevant dates and terms of these agreements.
15. For example, for the accommodation referred to as flat 2, the term of the first tenancy agreement, dated 28 November 2017, ended on 27 November 2019, but the term of the next agreement did not start until 10 January 2021. In her appeal statement the appellant refers to a '1 year but extended' tenancy agreement for 2019, but a copy of this has not been provided. Neither do I understand that the Council has received this. There is a similar gap between the term of the agreements for this accommodation between January 2022 and December 2022. I have noted other similar gaps in other of the accommodation referred to. This includes for the unit referred to as flat 5, between September 2021 and November 2021, and for that referred to as flat 8, between March 2022 and December 2022. There is nothing from the appellant to explain reasons the gaps in the term of these tenancy agreements.

16. In addition to the above, for the accommodation referred to as flat 7, there is a substantial overlap in the term specified in two of the tenancy agreements signed in April and July 2021. This introduces a degree of ambiguity in this evidence as it is not clear which of the tenants is said to have occupied this accommodation during the overlap period. The appellant has not given any explanation for this.
17. The above highlights that tenancy agreements alone are not sufficient to demonstrate the continuity of a use. A signed tenancy agreement demonstrates a right of a tenant to occupy the unit to which the agreement relates, but not necessarily that those rights were exercised. Whilst I note that the appellant states, in brief, that each of the units have been used as 'self contained flats by tenants stated on the tenancy schedule [on] a continuous basis since August 2014', the evidence does not support this claim with regard to all of the units that are the target of the notice.
18. Notwithstanding the above, the Council has provided a copy of the appellant's HMO licence application, which was completed by the appellant and submitted on 25 September 2017. The address of the property is given as No 448A and the type of property is described as a shared flat. It gives the number of households and number of occupiers within the shared flat as 5. The form indicates that there are only 5 bedrooms within the property, indicating that there were no unoccupied bedrooms at the time the form was completed. Furthermore, the document states there is a shared kitchen and shared bathroom at first floor. The 'Bedrooms/Studios' referred to in the form are as follows:
 - Room Number 1 - A 'Bedroom with shower/bath' at the '1st Floor Middle', with name of tenant given as Nilton;
 - Room number 2 - A 'Bedroom with shower/bath' at the '1st Floor Front', with name of tenant given as Ana Costa;
 - Room Number 3 - A 'Bedroom with shower/bath' at the '2nd Floor Front', with name of tenant given as Ben Hunter;
 - Room Number 4 - A 'Bedroom with shower/bath' at the '2nd Floor Middle', with name of tenant given as Subbaraju Mudunuri;
 - Room Number 5 - A 'Bedroom with shower/bath' at the '2nd Floor Rear', with name of tenant given as Ioana Enache;
19. The Government advice on HMO licences defines a HMO as a property rented out by at least 3 people who are not from 1 household but share facilities like a bathroom and kitchen. This is the type of property described by the appellant in the HMO licence application, completed by her in 2017. This is not consistent with the seven self-contained flats the appellant now says was comprised within the appeal site at the time the HMO licence application was completed. Accordingly, what is recorded by the appellant in the HMO licence application is not consistent with the appellant's claims with regard to the presence of 7 self-contained units of accommodation (or 8 units if the whole of the property at No 448A is considered) she now says have been comprised in the property since 2014. If the appellant's claims in this case were correct, she has not explained why she applied for and obtained a HMO licence in 2017. Furthermore, she does not explain why she applied to renew the license in January 2020. There is little to explain this inconsistency in the evidence.

20. The energy performance certificates dated November 2019 cast a further degree of doubt over the appellant's claims. These describe the properties they relate to as a 'top floor maisonette' and a 'Mid-floor flat'. I am, however mindful that, unlike the HMO licence application and renewal, I do not understand from this evidence who provided the information contained within the certificates. Nevertheless, the appellant has not addressed this contradiction of the claims she has made.
21. The appellant's evidence has, however, provided a degree of explanation for the presence of a single boiler in the property, referred to in the gas safety certificates. She says that the property is served by a single electric, gas and water meter and that all bills are included within the monthly rental charges. That there might be a single boiler serving the property is not, therefore, surprising. This evidence neither corroborates nor contradicts the appellant's claims in this case.
22. Whilst I note that the statutory declarations of Nilton Lopes De Souza, Oral Charles Coley and Petre Evdochim say that they are the occupiers of a 'studio flat', none describe the facilities comprised in the accommodation they refer to. Accordingly, whilst I have no doubt that they have occupied the appeal property from the time they have stated, there is ambiguity in their evidence with regard to the nature of the accommodation they have occupied.
23. In addition to this, each of these individuals state that, since occupying the property they 'confirm that the property has a total of eight self-contained flats that have been continuously occupied'. Bearing in mind that they say they are tenants of only part of the appeal property, they have not explained how they all have a knowledge and understanding of how other parts of the appeal property have been used and occupied during their residence at the appeal site.
24. I acknowledge that the tenancy agreements refer to the properties that they relate to as a flat. I also acknowledge that the appellant refers to the 7 units at the appeal site being 'self-contained flats'. However, there is little evidence from the appellant to explain or demonstrate that, since 2014, each of the units referred to have had the distinctive characteristics of a dwellinghouse in that each have contained the facilities required for day-to-day private domestic existence. Indeed, the HMO licence application is evidence that indicates that at the time the licence was applied for, the appeal property did not comprise 7 units each with facilities required for day-to-day private domestic existence.
25. I note that the licence application was made more than 4 years prior to the date the enforcement notice was issued. However, I can see that the HMO licence was renewed by the appellant in January 2020. The HMO licence renewal document does not list what accommodation was comprised in the appeal property at that time. Nevertheless, that the HMO licence was renewed indicates that the appeal property remained in use as a HMO with shared facilities, rather than in the claimed use as 7 self-contained units of accommodation without any shared facilities.
26. There is clearly a material difference between the accommodation described in the 2017 HMO licence application and the accommodation I observed on site. I acknowledge that the appellant does not refer to any changes to the accommodation comprised in the appeal site since 2014, including physical changes or changes to how it has been used; her evidence is simply that the appeal property has been used as 7 self-contained flats since August 2014.

Nevertheless, these claims are contradicted by the HMO licence application made by the appellant in 2017 and renewed in January 2020. This renewal was less than 4 years prior to the issue of the enforcement notice.

27. I have had regard to the record of an enforcement complaint having been made in respect of No 448A. Whilst this refers to a material change of use of the first and second floors of No 448A to eight flats, it is evidence that a complaint was received about such a material change of use at that time, rather than confirmation that a material change of use had occurred. Notwithstanding this, I note that the date of this complaint is November 2020, which is some 10 months after the HMO licence had been renewed.
28. Bringing all of the above together, I acknowledge that there is evidence that supports the appellant's case. I have no reason to doubt that the appeal property has been occupied by the tenants referred to in the tenancy agreements and who provided statutory declarations. However, for the reasons given, I find there to be a degree of ambiguity with regard to the nature of the accommodation occupied by those tenants. I also find shortcomings in the appellant's evidence with regard to the continuity of the use claimed for some of the units subject of this appeal.
29. Notwithstanding this, the Council has provided evidence which substantially contradicts the claims made by the appellant in this case. I refer in particular to the HMO licence application and renewal evidence, the source of which is from the appellant herself. There is little explanation from the appellant addressing the inconsistency of this evidence with the appellant's case.
30. Accordingly, the appellant has failed to discharge the burden of proof that is upon her. Having regard to the evidence before me, I find it more likely than not that on the date the enforcement notice was issued, the use of the first and second floor of the appeal property as seven self-contained flats had not continued substantially uninterrupted for a period of 4 years or more beginning with the date of the breach.
31. It follows that, on the balance of probability, the use alleged in the enforcement notice, once corrected as I intend, was not lawful at the time the enforcement notice was issued and enforcement action could be taken in respect of it at that time. The ground (d) appeal must, therefore, fail.

Conclusion

32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

33. It is directed that the enforcement notice is corrected by the deletion from schedule 2 of the word "eight" and its substitution with the word "seven". Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR