



Appeal Decision

Site visit made on 28 July 2025

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 08 August 2025

Appeal Ref: APP/N5090/C/23/3336151

Land at 5 Gloucester Gardens, London, NW11 9AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Raphael Bude against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 12 December 2023.
- The breach of planning control as alleged in the notice is Without planning permission, change of use of the property to a House in Multiple Occupation (Sui Generis).
- The requirements of the notice are to cease the use of the property as a large House in Multiple Occupation (Sui Generis).
- The period for compliance with the requirement is 6 Months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is allowed, the enforcement notice is corrected and quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Decision

1. It is directed that the enforcement notice is corrected by the addition of the words “the material” after the word “permission” in paragraph 3.
2. Subject to this correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the use of the property as a large House in Multiple Occupation at Land at 5 Gloucester Gardens, London, NW11 9AB as shown on the plan attached to the notice and subject to the following condition:
 - 1) If within one month of the date of this decision details of the facilities to be provided for the secure parking of bicycles have not been submitted to the local planning authority for their written approval, or if the approved facilities have not been provided as approved within three months of the local planning authority’s written approval, the use of the house as a house in multiple occupation shall cease until the approved facilities have been provided. The facilities provided as approved shall be retained as approved.

Preliminary Matters

3. The Barnet Local Plan 2021-2036 (BLP) has been adopted since the appeal has been made and statements submitted. The Council has subsequently provided details of those relevant development plan policies, and the appellant has had an opportunity to comment on them and so has not been prejudiced.

The Enforcement Notice

4. The meaning of development in section 55 of the Town and Country Planning Act, 1990, (the Act) as amended, includes “the making of a material change in the use of any buildings or other land”. I will correct the alleged breach of planning control by inserting the word ‘material’. Such an amendment to the description will not cause any injustice because the evidence was clear from both parties that they understood the notice was directed at such a breach.

Appeal on ground (c)

5. The ground of appeal is that matters alleged do not constitute a breach of planning control. It is for the appellant to make out their case on the balance of probabilities.
6. It is the appellant's case that when he purchased the property in February 2016 it was already in use as a small House in Multiple Occupation (HMO, Use Class C4). He believes the Class C4 use to be the lawful use of the property, as it was implemented prior to Barnet Council making an Article 4(1) Direction, relating to development comprising a change of use from a use falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) to a use falling within Class C4 of that Order, which came into force on 29 May 2016. Furthermore, the appellant states that it was only in August 2016 that the use changed from a six person HMO to an eight bedroom HMO with eleven occupants, i.e. a large HMO (*sui generis*¹). He contends that the change from a lawful six person HMO to an eight bedroom HMO was not a material change of use, not development, and thus not a breach of planning control.
7. There is no substantive or documentary evidence to support the appellant's assertion that the property was in use as a Class C4 HMO when he purchased it in February 2016. Nevertheless, there is documentary evidence in the form of Assured Tenancy Agreements (AST) corroborated by rental ledgers and deposit certificates which demonstrate that five rooms of the appeal property were let and occupied by six unrelated persons on 29 May 2016 when the Article 4(1) Direction came into force. On the balance of probabilities, the property was in use as an HMO (Use Class C4) prior to 29 May 2016 and benefited from deemed planning permission under the provisions of Article 3, Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).
8. I have had regard to the Council's contention that it was always the appellant's intention for the property to be an eight bedroom HMO. However, the evidence shows on the balance of probability that the actual use of the premises prior to 29 May 2016 was as a six person HMO. It is actual use, which is important, and not future intentions.
9. The appellant does not dispute that the property is now in use as a large HMO which is a *sui generis* use. Having regard to established case law, including the judgements cited by both parties during the appeal process, whether there has been a material change of use will always depend on the particular characteristics of the use in question. It is a matter of fact and degree and a planning judgement. Consideration must be given to whether there has been a definable change in the

¹ Latin expression, meaning ‘of its own kind’ when no use classes order category fits.

character of the use and including whether off-site or on-site impacts indicate that there is a change in the definable character of the site's planning land use.

10. Having regard to my findings above, on the balance of probability, the lawful use of the property is a small HMO (Use Class C4). The evidence shows that prior to 29 May 2016 the actual use was as a five-bedroom HMO occupied by six unrelated persons who shared basic amenities. When the notice was served the property was occupied by eleven persons in eight bedrooms. According to the Planning Contravention Notice completed by the appellant, in August 2016 two additional rooms were added to create an eight bedroomed property, which was then occupied by eleven persons. Thus, whilst there has been no change in use of the dwellinghouse as a HMO, the number of people occupying the property has almost doubled. Three additional households have been accommodated in the property.
11. It is not known how the property was laid out as a five-bedroom, six person HMO. However, I noted on my site visit that there are currently five bedrooms on the first floor of the property and three on the ground floor. It is thus likely that as occupancy increased, the original downstairs living rooms were converted to the additional three bedrooms now in use. Consequently, other than the communal kitchen and outside garden area, there are now no other communal living areas available to the occupiers. The relatively small kitchen has two ovens/hobs and eight fridges, one for each household. The actual space within the kitchen for communal eating is limited and the appellant advised that most residents eat in their rooms. Furthermore, I noted that most of the bedrooms also had fridges within them to provide the residents with additional space for food storage.
12. For the reasons given above, and in the absence of any evidence from the appellant to demonstrate otherwise, it seems to me that the internal layout and utilisation of space within the property as an eight bedroom HMO, has a very different character to that of a five bedroom HMO. On the balance of probability, with less households requiring bedroom space, there would be more communal living space on the ground floor and less competition for kitchen cooking, dining space and for food storage within the previous use as five-bedroom HMO.
13. Furthermore, not only are there changes to the physical characteristics of the property with on-site impacts in terms of how the property is used and the living conditions of the residents, those additional three households, comprising a further five occupants, has undoubtedly resulted in an increase in the comings and goings from the property, including visitors and deliveries to it. There is likely to be greater competition for the on-site parking space and for on-street parking, and a need to provide additional bins and cycle storage space. Furthermore, the general noise levels of eleven occupiers utilising the outdoor rear garden space would be significantly greater than that from the use of the property by six residents.
14. For the reason set out above, I consider that the use of the property as an eight bedroom, eleven person HMO has resulted in a material change in the use of the property. There is no planning permission granted by the local planning authority for that change of use and that change of use is not permitted under any provision of the GPDO. A breach of planning control has occurred and the appeal on ground (c) fails.

Appeal on ground (d)

15. Section 171B (2) of the Act provides that where there has been a breach of planning control consisting of a material change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach (S171B (3) of the Act).
16. It is the appellant's case that for the purposes of Section 171B (2) use as a *sui generis* HMO constitutes use as a 'single dwellinghouse' and as such the immunity period should be four years rather than 10 years. In support of his case, a legal opinion has been provided². I have had regard to that opinion which cites several different judgments, from which the author draws his opinion. However, I am mindful that none of those judgements provide a direct precedent for his proposition that use of the dwellinghouse as an HMO is subject to the four-year rule. I have also had regard to the Council's evidence on this matter, set out firstly in their statement of case and in their final comments.
17. It seems to me that the question to be answered is whether the breach of planning control alleged consists of the change of use of the building to use as a single dwellinghouse. There is no dispute that the property is in use as a '*sui generis*' HMO, nor that the property is a dwellinghouse, as it has all the distinctive characteristics to afford those who use it the facilities required for day-to-day private domestic existence³. The question is whether use as an HMO is use as a 'single dwellinghouse'. An HMO is a dwellinghouse which is in multiple occupation, and as such, comprises a number of different households. Conversely, in my judgement, a 'single dwellinghouse' would only be occupied by residents living together as a single household. Consequently, in this case the breach of planning control does not consist of a change of use of the building to use as a single dwellinghouse and as such the immunity period is 10 years from the date of the breach.
18. The main issue is whether the change of use took place before the 12 December 2013, with the use as an eight-bedroom HMO continuing for at least 10 years thereafter. The onus of proof is on the appellant and the test is on the balance of probability.
19. In this case the appellant accepts that the change of use took place in August 2016. Having regard to my finding that the relevant date is 12 December 2013, it is therefore not disputed that an immunity period of 10 years cannot be demonstrated. The appeal on ground (d) fails.

Appeal on ground (a), deemed planning application

Main Issues

20. The main issues in this case are:
 - the effect of the development on the character of the street, including its impact on the living conditions of neighbouring residents; and

² Opinion, Charles Streeten, Francis Taylor Building, 4 April 2024.

³ *Gravesham BC v SSE & O'Brien* [1982] 47 P & CR 142

- whether the development is in an accessible location and encourages sustainable and active travel.

Reasons

Character and living conditions

21. The Council are concerned that this large, eight-bedroom/eleven-person property, has the potential to generate significant comings and goings, both from those occupying the property, as well as from visitors, including deliveries. As such, they believe there is likely to be greater associated noise and disturbance from the property compared with its previous use. Furthermore, there would be a greater demand for refuse collection and infrastructure, and a high turnover of residents undermines the character and interest in the property itself.
22. From the evidence available, I understand that the property has been operating as a large HMO since August 2016, and I have not been provided with any evidence that would suggest that it is causing any noise or disturbance to neighbouring residents. Moreover, I have received a significant number of representations which offer support for the development from the neighbouring residents who reside in this small cul-de-sac. Their correspondence suggests that the tenants of the appellant property do not cause any noise or disturbance, and that the property is kept clean and tidy. The management plan which formed part of the appeal submission states that a cleaning company is responsible for cleaning all communal areas (indoors and outdoors) fortnightly.
23. The appeal property is detached and has a front garden with space to park one car. I noted on my site visit that both the front and rear garden were well kept, with refuse and recycling bins contained within the site frontage. From the street it was not obvious that the property is in multiple occupation, and thus the visual characteristics of this residential area have been unaffected by its use as an HMO. Furthermore, in the absence of any substantive evidence to demonstrate otherwise, from my observations there is sufficient separation between the appeal property and neighbouring residents such that any increase in comings and goings would not have an adverse impact on the living conditions of nearby residents, with particular regard to noise and disturbance.
24. For the reasons given above, I conclude that the development does not have a significant and harmful impact on the living conditions of nearby residents, with particular regard to noise and disturbance, nor does it adversely affect the residential character of the street. There is therefore no conflict with Policies CDH01 and HOU04 c). of BLP, Supplementary Planning Document: Residential Design Guidance and Supplementary Planning Document: Sustainable Design and Construction. Collectively, these policies seek to ensure that proposals do not have an unacceptable impact on the amenity of occupiers of neighbouring properties nor on the character of the area.

Accessible Location

25. Policy HOU04 of BLP advises that proposals for new HMOs will be supported where, amongst other criteria, they are easily accessible by public transport, cycling and walking, whilst Policy CDH01 seeks to make the most efficient use of land, optimise the capacity of sites in the most sustainable and well-connected locations. Policy TRC01 seeks to promote active and sustainable travel whilst

Policy TRC03 requires cycle parking to be delivered in accordance with Standards set out in the London Plan Policy T5 Cycling. The Council advise that in this case the development should provide two-short stay and two long-stay cycle parking spaces within the appeal site.

26. Transport for London identify the location of the appeal site as having low to moderate accessibility to public transport accessibility, PTAL rating 2/3 and the Council believe the site is not considered by 'Barnet standards' to be close to services. Furthermore, there are no open spaces in the vicinity of the site.
27. Golders Green and Brent Cross tube stations are both within a 10-minute walk of Gloucester Gardens, and there are regular bus services along the adjoining Golders Green Road. In addition, there are a range of services and community facilities provided within Golders Green Centre which is accessible on foot or by bicycle. Golders Hill Park, is also within a reasonable distance of Gloucester Gardens, and I am mindful that the appeal property has a large back garden which residents are able to access for play, drying clothes and sitting out. Furthermore, there is sufficient space within the appeal site to make provision for secure cycle storage and those facilities can be secured by a planning condition.
28. For the reasons given above, I consider that the development is located in a sustainable and accessible location. I find no conflict with Policies HOU04, CDH01, TRC01 nor TRC03 of BLP, the aims of which are set out above.

Other Matters

29. In their reasons for issuing the enforcement notice the Council considered that the appellant had not demonstrated a need for an HMO. The Council's statement of case sets out Barnet's priority housing need to be for family sized homes. However, in this case there has been no loss of a family sized home. Prior to the unauthorised development taking place, the property was, on the balance of probability, in use as an HMO. That use having benefitted from a deemed grant of planning permission under the provisions of the GPDO prior to May 2016. Thus, there was no change of use to an HMO and any policy provision which seeks to safeguard the existing use of family homes is not a matter for my consideration in this appeal.

Conditions

30. In the interests of securing provision for sustainable and active travel it is reasonable and necessary to impose a condition to require secure on site cycle storage.

Conclusion on ground (a)

31. For the reasons given above, I conclude that there is no conflict with the development plan when read as a whole, nor with the provisions of the National Planning Policy Framework. The appeal on ground (a) therefore succeeds.

Overall Conclusion

32. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice. The appeal on ground (g) does not fall to be considered.

Elizabeth Pleasant,

INSPECTOR