



Appeal Decision

Site visit made on 7 August 2025

by **C Rafferty LLB(Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Appeal Ref: APP/T5150/C/23/3330352

Flays 1-5, 40 Ilex Road, London NW10 9NU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Nicholas Morrison against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 21 August 2023.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the premises to flats.
 - The requirements of the 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 use including the removal of additional kitchens, bathrooms/ shower rooms and toilets from the premises;
 - 3) Restore the internal configuration to the original internal layout before the unauthorised change of use took place. For the avoidance of doubt this should be as indicated in the floor plan as Appendix I attached to this notice;
 - 4) Clear the site and remove all items, debris and materials associated with the unauthorised change of use from the premises
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).
-

Decision

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

Appeal on ground (b)

2. An appeal on ground (b) is brought on the basis that the alleged breach of planning control stated in the notice has not occurred as a matter of fact. The onus lies with the appellant and the relevant test is the balance of probabilities.
3. The appeal site comprises a three-storey dwelling, which currently features five bedrooms, accessed via locked doors, an office space, a utility room, and a kitchen. The appellant asserts that the property has not been converted into flats as alleged, but that it is a five bedroom House in Multiple Occupation (HMO).
4. Section 254 of the Housing Act 2004 sets out the criteria to be met if a building is a HMO. The criteria include that the building must consist of one or more units of living accommodation not consisting of a self-contained flat or flats, and that two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. For the purposes of section 254, "basic amenities" is defined as a toilet, personal washing facilities, or cooking facilities.
5. A site visit was undertaken by the Council on 30 May 2023. The Council states that, at that time, four of the five bedrooms had ensuite facilities with a shower and toilet.

This aligns with my observations from my site visit, where I also noted the fifth bedroom to be located on its own upper floor, across from a bathroom with a toilet and shower. This suggests that the toilets and personal washing facilities are not shared by the households present within the appeal property, nor were they shared at the time the notice was issued, but that each household has their own such facility for personal and exclusive use.

6. With regard to cooking facilities, I observed the communal kitchen on the ground floor, in use during the time of my visit, which contained a cooker and multiple microwaves, kettles, and toasters. I also saw that each of the five rooms had counter space, storage cupboards filled with food and cooking utensils, a sink, and a fridge, but they did not appear to have cooking facilities such as a microwave or hob. However, my visit was conducted after the enforcement notice was issued.
7. The Council has supplied photographs from its May 2023 visit, which show the bedrooms to have extractor hoods above what appear to be cooking hobs, with one bedroom also having an oven and microwave in place. Combined with the fridges and sinks in the bedrooms this suggests that, despite the presence of the communal kitchen, each bedroom at the appeal property contained its own cooking facilities during the period leading up to the issuing of the notice. My findings in this regard are supported by the appellant's statement that they would have been amenable to a request from the Council in June 2023 that the cooking facilities be removed from all rooms in favour of one communal cooking facility.
8. As a result, I find on the balance of probabilities that, at that time, the basic amenities were not shared by two or more households occupying the appeal property. Rather, in May and June of 2023 prior to the notice being issued, I find the rooms comprised individual flats on the basis they contained the facilities required for day-to-day private domestic existence. The evidence before me clearly shows that these rooms were occupied at this time, with nothing substantive to demonstrate that the occupiers of the property as a whole were living as a single household with a communal mode of living. Given the facilities in place in each of the rooms, and lack of communal living or sitting space elsewhere in the property, I find these rooms were being occupied as flats.
9. The appellant refers to the existence of a HMO licence, a copy of which has been provided. However, this licence is not an indication that the property is being used as a HMO. Rather, it confirms the suitability of the property for the number of occupants and that the management arrangements are satisfactory. Furthermore, although not determinative in itself, the tenancy agreement provided uses terminology such as "studio" and "flat" when referring to the individual rooms to be rented at the appeal property.
10. Taking all of the above together, I find that the matters alleged to constitute a breach of planning control as stated in the notice had occurred. Accordingly, the appeal under ground (b) fails.

Appeal under ground (c)

11. An appeal on ground (c) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters do not constitute a breach of planning control.

12. The appellant contends that the appeal property is in use as a five bedroom HMO and, as such, planning permission is not required for the change of use of the appeal property from a single dwelling house to that use. However, a ground (c) appeal is brought in relation to the breach of planning control alleged in the notice. In this instance, that is the material change of use of the premises to flats. It is not the material change of use to a HMO.
13. I have found in the appeal on ground (b) that the alleged breach of planning control has occurred. The material change of use from a single dwellinghouse to separate flats constitutes development under S55(3) of the Act for which planning permission is required. There is no evidence before me of permission for such a development having been granted, either expressly or under Article 3(1) of the Town and Country Planning (General Permitted Development (England) Order 2025. On that basis, the alleged breach of planning control stated in the notice constitutes a breach of planning control under S171A(1)(a) of the Act.
14. For the reasons given, the appeal on ground (c) fails.

Other Matters

15. The appellant states that the enforcement notice has been issued for false and incorrect reasons. However, there is nothing substantive before me to suggest that this was the case, that the notice is defective, or that the notice was not served as required. While the appellant alleges a lack of engagement from the Council, this does not go to grounds of appeal before me.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

C Rafferty

INSPECTOR