



Appeal Decision

Site visit made on 7 May 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 12th September 2025

Appeal Ref: APP/Q5300/C/24/3358189

402 Southbury Road, Enfield, EN3 4JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by 402 Southbury Ltd against an enforcement notice issued by the Council of the London Borough of Enfield.
- The notice was issued on 29 November 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission, the unauthorised conversion of the single- family dwelling into a House of Multiple Occupancy (HMO).'
- The requirements of the notice are
 1. Cease the use of the Premises as an HMO
 2. Remove all locks from internal doors and any partitions that facilitate the conversion into an HMO.
 3. Remove all cooking facilities from each room, except the kitchen area.
 4. Remove all resulting materials from the Premises.
- The period for compliance with the requirements is 3 months
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 (the Act) (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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - i) Deleting the words 'conversion' and 'Occupancy' from the allegation and replacing them with 'material change of use' and 'Occupation.'
 - ii) Deleting the second requirement in full and replacing it with 'Remove all locks from internal doors that have facilitated the material change of use.'
 - iii) Deleting the third requirement in full and replacing it with 'On the ground floor, remove the ensuite shower room and facilities from Unit 1 and the shower with cubicle from Unit 2. On the first floor, remove the ensuite shower rooms and facilities from Units 4 and 5.'
 - iv) Delete the words '3 months' from the period of compliance and replace them with '7 months.'
2. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The appellant did not pursue an appeal under ground (g) in the appeal form which relates to the period for compliance with the notice. However, due to the nature of the breach, the views of the parties were sought and obtained in the event of the

notice being upheld. I have therefore addressed the period for compliance under ground (g) in this decision letter.

The Notice

4. The allegation refers to the conversion of the single family dwelling into a House of Multiple Occupancy (HMO). However, the use of the word 'conversion' lacks clarity. The heading of the notice refers to a 'material change of use' and the allegation relates to a material change of use from a single family dwelling into an HMO. I will correct the allegation by replacing the word 'conversion' with 'material change of use' and I will also replace the word 'Occupancy' with 'Occupation.' These amendments do not cause injustice to any party.

The appeal under ground (c)

5. An appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant on the balance of probabilities. For example, the appellant needs to demonstrate that development has not occurred for the purposes of Section 55 of the 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted' development.
6. Development, as defined by section 55 of the 1990 Act, includes a 'material change of use'. Section 55(2)(f) provides that use for any other purposes within the same "class" specified in the Use Classes Order (the UCO) does not involve development. Under the UCO, the use of a building as a single dwellinghouse comes under Use Class C3. The appeal property has five occupants and is therefore in Use Class C4 HMO which is defined as occupation by between 3 and 6 occupants who share basic amenities such as a kitchen or bathroom. Under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO), a dwelling falling within Use Class C3 is permitted to change to Class C4 HMO without needing planning permission and this change would not constitute development.
7. However, in October 2013, the Council adopted a Direction under Article 4 of the GPDO which required planning permission to be obtained to authorise any change from Class C3 dwellinghouse to Class C4 HMO use in areas of the Borough that include the appeal site. A change of use from Use Class C3 dwellinghouse to Class C4 HMO occurring after October 2013 therefore requires express planning permission. The appellant's argument under ground (c) is that the change of use to Class C4 HMO occurred before the Article 4 Direction came into force in October 2013 and therefore express planning permission is not required.
8. The appellant bought the appeal property in 2022 and his vendor had owned the property since 2002. The appellant therefore relies upon the replies to pre- contract inquiries provided immediately prior to his purchase. The vendor was asked in 2022 'what proof do you have that the property was an HMO from 2013?' The response provided was that 'the tenant had moved out, and the licence had not been renewed.'
9. The vendor was not asked whether he had any information about use 'before' rather than 'from' 2013. The reply appears to relate to more recent occupation as the appeal property was sold to the appellant with vacant possession. The reply also refers to tenant singular which implies one occupier which is not Class C4

HMO use. No date is provided in relation to the grant of the licence that 'has not been renewed.' In any event, the grant of a licence is not by itself proof of occupation or actual use. Occupiers may move out without the landlord notifying the Licensing Department of the Council of any changes and simply let the licence lapse.

10. The appellant also refers to the existence of a building notice for a proposed HMO for 5 persons dated 24 May 2002. There is no evidence as to when any physical works took place following service of that building notice. There is no record of completion of the building work on the Council's records and significantly the appellant has not provided any documentary evidence regarding occupiers or use following the carrying out of any building work.
11. The appellant has not discharged the burden of proof and shown, on the balance of probabilities, that the change of use of the appeal property to an HMO occurred prior to the introduction of the Article 4 Direction in October 2013. Development has occurred which constituted a breach of planning control in the absence of express planning permission or permitted development rights. The appeal under ground (c) therefore fails.

The appeal under ground (d)

12. This ground of appeal relates to the period of immunity and whether it is too late for enforcement action to be taken. Since the enforcement notice was issued on the 29 November 2024, the appellant needs to show, on the balance of probabilities, that the material change of use to Class C4 HMO use described in the notice occurred on or before the 29 November 2014 and continued for at least 10 years after the date of change without any significant interruption.
13. As established in *Gabbittas v SSE & Newham LBC* [1985] JPL 630 and the Planning Practice Guidance (PPG) an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
14. The appellant has limited information about the occupation and use of the appeal property before his purchase in 2022. I have already address under ground (c) the issues with the vendor's reply at the time of the appellant's purchase. The appellant states that when he visited the appeal property prior to his purchase the property was vacant. He has no information as to when the property had last been occupied or how many were in occupation at any point prior to his purchase. He refers to the physical layout that was present when he viewed in August 2022 and refers to 5 bedrooms with locks. However, there is no evidence as to how long the appeal property had been vacant for, how it was occupied at any point prior to 2022 or that any use occurring before 2022 was continuous and without significant interruption.
15. After his purchase, the appellant carried out works and including adding ensuite facilities and layout changes have occurred in comparison with the plan marked 'Floor plan as viewed in August 2022.' There is currently an HMO Licence in force for the appeal property which was issued on the 27 June 2024 for a period of 2 years. Whilst the appellant indicates that he was unable to check the history of HMO licences for the appeal property, the existence or absence of licences for the appeal property during the relevant ten year period, does not, by itself, equate to use or occupation for planning purposes.

16. The Council has referred to an Assured Shorthold Tenancy Agreement dated the 15 September 2022 for the appeal property that was supplied to the council tax department of the Council. The agreement relates to a period from the 15 September 2022 to the 14 March 2023 and describes the appeal property as a 3 bedroomed house let to a single tenant. If the appeal property was let to a single tenant, then for the purpose of establishing immunity for HMO use, the clock re-started. However, even disregarding that tenancy agreement, the appellant has provided very limited information with regard to the use of the appeal property in terms of occupation and use over a 10 year period.
17. The appellant's evidence is not sufficiently precise or unambiguous to demonstrate that on the balance of probabilities, the material change of use took place on or before the 29 November 2014 and continued for at least 10 years after the date of change without any significant interruption. The appeal under ground (d) therefore fails.

The appeal under ground (a) and the Deemed Planning Application (DPA)

Main Issues

18. The main issues are
- whether the development has sufficient refuse storage and cycle provision
 - the effect of the development upon the living conditions of nearby occupiers having regard to noise
 - whether occupiers of the appeal property have adequate living conditions having particular regard to relevant internal space standards
 - the effect of the development on achieving a mixed balance of housing uses within the community;

Reasons

19. The appeal property is a 2 storey mid terraced dwelling which forms part of a block of similar dwellings on the northern side of Southbury Road. There is a car park for public use beyond the rear gardens of the terrace block. The character of the surrounding area is largely residential but there is a supermarket superstore on the opposite side of the road to the appeal property. The appeal site has a PTAL value of 4 and is located in close proximity of Southbury Rail station.

Refuse storage and cycle provision

20. There is currently no cycle storage at the appeal property and limited refuse storage. The appellant has proposed that a cycle storage facility could be accommodated in the rear garden and has provided details. There is a gate to provide access to the rear from the public car park. Whilst the appeal site is a terraced property, refuse storage at the front is prevalent and not out of character along the block of terraces. No 414 is part of the same terraced block and has been granted planning permission as a large HMO and is likely to have refuse and cycle storage proportionate to the number of occupiers.
21. From the evidence before me and from my observations on site, I see no overriding reason why refuse storage and cycle parking provision for the development could not be accommodated in an appropriate location within the appeal site. I am

satisfied therefore that such matters could be controlled by suitably worded conditions in the event of the grant of planning permission being appropriate.

22. Consequently, adequate provision could be made for the storage of refuse and cycle parking. I therefore find no conflict with Policy D3 of the London Plan, Policies DMD5 and DMD37 of the Development Management Document (DMD) which collectively refer to encouraging cycling and providing storage which does not adversely affect the quality of the street scene. I find Policies CP4 of the CS and Policies DMD6 and DMD8 of the DMD to be less relevant as they largely relate to design of new homes and standards for new residential development.

Living conditions of neighbouring occupiers

23. The Council refers to the number of occupants and associated refuse and cycle provision representing over – intensive use leading to general noise and disturbance to the detriment of the amenities enjoyed by the occupants of the neighbouring residential properties. There are no third party comments either in favour or objecting to the development and no record of any complaints. I have no site specific evidence provided by the Council which indicates that the use of the property has generated any noise issues that would be any greater than those arising from occupation by a single family household.
24. On the evidence before me, I do not therefore find that there is harm to neighbouring occupiers with regard to noise and disturbance. The development is therefore not in conflict with Policy DMD5 (c) which states that development must not lead to an unacceptable level of noise and disturbance for adjoining properties. It is also not in conflict with Policy D3 of the London Plan which refers to mitigating impacts of noise. Whilst other policies have been referred to by the Council, I do find those policies to be less relevant. Policy DMD8 refers to general standards for new residential development. Policy CP30 of the Core Strategy and Policy DMD37 refer primarily to design. Policy DMD68 appears to relate to noise issues in the context of businesses rather than uses such as HMOs.

Living conditions of occupiers

25. The Council alleges that the development is cramped and of substandard quality with insufficient space in terms of bedrooms, kitchen and living area and built in storage. The appellant has referred to the bedroom sizes exceeding 7.5 square metres which is a figure referred to in the Technical housing standards - nationally described space standard but the introduction to that document¹ states that the standard for bedrooms, storage and internal areas are only relevant in new dwellings.
26. The relevant policies for assessing the standard of accommodation and layout include Policy DMD 5 of the DMD criteria (a) which states that all development must provide a high quality form of accommodation which meets internal floor space standards in the London Plan. Policy CP4 of the Core Strategy refers to high quality housing. Policy DMD5 and DMD8 state that HMOs must provide a high quality form of accommodation with well-designed flexible functional layouts with adequate size rooms which are fit for purpose.

¹ Paragraph 2

27. As a single dwelling house with three bedrooms, the appeal property had separate kitchen and dining areas and two reception rooms on the ground floor. The changes to the internal configuration to create 2 bedrooms on the ground floor means that the re-located kitchen of 10 square metres is in between the 2 ground floor bedrooms with limited natural light. There is limited space for cooking and eating for five occupiers within the kitchen either as a group or alone. There is no other communal space to relax or congregate apart from the modest kitchen. There is outside space but that cannot be used in inclement weather.
28. On the upper floor, there are 3 bedrooms which range in size between 10.7 square metres and 12.1 square metres, without including ensembles, based upon the figures provided by the appellant. Whilst the bedrooms all vary in size, the ground floor bedroom at the front of the house which is Unit 1 and the middle upstairs bedroom which is Unit 4 appear cramped particularly with the addition of partitioned ensuite shower rooms in every bedroom. The combination of lack of communal space with smaller bedrooms does create a sense of containment and the overall layout particularly downstairs appears disjointed.
29. The appellant makes comparisons between the appeal property and 414 Southbury which was granted planning permission for a large HMO in August 2024. However, each appeal has to be assessed on its own merits. I have no details of how that property compares with the appeal site in terms of built development, the internal layout and communal living space.
30. The appeal property does not appear to be particularly well maintained and the layout with the lack of communal space for the number of occupants together with two smaller bedrooms does not provide high quality form of accommodation with well designed, flexible functional layouts with adequate size rooms which are fit for purpose.
31. I therefore conclude that the development does not provide adequate living conditions for occupiers with regard to internal space. It is contrary to Policy CP4 of the Core Strategy, Policies DMD 5 and DMD 8 of the DMD which collectively seek to provide high quality accommodation for occupiers.

Housing Balance

32. Prior to the material change of use taking place, the appeal property was a single family dwelling with 3 bedrooms. Policy CP5 of the Enfield Plan Core Strategy (CS) seeks to ensure developments offer a range of housing sizes to meet housing need. Enfield's Strategic Housing Market Assessment (2010) identifies a need for larger family sized dwellings and an oversupply of smaller single person accommodation'. The appellant accepts that the material change of use amounts to the loss of a family home but refers to the severe shortage of affordable housing and a growing number of people living in privately rented accommodation. Policy CP5 of the Enfield Plan Core Strategy (CS) seeks to ensure developments offer a range of housing sizes to meet housing need but does not prevent the loss of a family house.
33. There is no information from the Council as to how these matters apply to the appeal property and the development plan policies including Policy CP5 are not intended to prevent all conversions. Policy DMD5 sets out criteria against which development including conversions of existing homes are determined. That criteria includes avoiding an over concentration of HMOs. Although the Council has

referred to 16 other conversions on Southbury Road, I have no details of how many houses there are on the road or the Council has not alleged a breach of Policy DMD5 which refers to the number of conversions not exceeding 20%. There are instances where the Council does support conversions which would involve loss of a family home as all conversions are not unacceptable. However, there is no rationale or context from the Council as to how the loss of a family home in this location impacts upon achieving a mixed balance of housing uses within the community.

34. The appellant has referred to the severe shortage of affordable housing and a growing number of people living in privately rented accommodation for affordable housing and HMOs. Whilst I have no details of rent levels in terms of affordability, I also have limited information to indicate that the development would have a significant effect on local housing provision.
35. On the limited evidence before me, I do not find that the development results in the loss of a family home which impacts upon achieving a mixed balance of housing uses within the community. The development is therefore not in conflict with Policy D3 of the London Plan, Policies CP4, CP5 and CP30 of the CS, Policy DMD5 and DMD37 of the DMD.

Conclusion on ground (a)

36. I have found that refuse storage and cycle provision could be dealt with by way of condition were I minded to grant planning permission for the development. I have not found that the development does harm the living conditions of nearby occupiers having regard to noise. On the evidence before me, I have not found that the development has an effect upon achieving a mixed balance of housing uses. However, I found that that development does not provide adequate living conditions for occupiers with particular regard to internal space.
37. The development is therefore in conflict with the development plan as a whole and there are no material considerations that indicate that the application for planning permission should be determined other than in accordance with the development plan. The appeal under ground (a) is dismissed.

An appeal under ground (f)

38. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
39. The appeal under ground (f) is limited to consideration of whether the requirements of the notice exceed what is necessary having regard to the purpose of the notice. As the requirements refer to cessation of the unauthorised use and removal of certain works, the purpose of the notice is to remedy the breach of planning control.
40. As well as cessation of the use, the requirements also include removing internal locks and any partitions that have facilitated the material change of use as well as cooking facilities. Case law² has established that where an enforcement notice is issued in respect of a material change of use, and requires that certain works were

² *Murfitt v SSE & Cambridgeshire CC* [1980] JPL 598

remove, those works must have been integral to the making of the material change of use. The last lawful use of the appeal property was as a single dwelling house. The floor plan of August 2022 shows one family bathroom for three bedrooms on the first floor, two reception rooms on the ground floor and also a toilet and sink to the rear of the ground floor.

41. Requirement 3 refers to removing all cooking facilities in each room, except the kitchen area. There is no evidence before me to indicate that prior to the issue of the notice, there were cooking facilities outside of a single kitchen, I will therefore delete this requirement.
42. Requirement 2 includes removing any partitions that facilitate the conversion into an HMO. The appellant wishes to retain all of the ensuite facilities in the 3 bedrooms on the first floor and a sink and toilet for guests on the ground floor. On the ground floor, the removal of the ensuite shower room to Unit 1 which is at the front of the house and the shower with cubicle to Unit 2 would leave a guest W.C and a sink at the rear of the ground floor and replicate the downstairs facilities shown on the plan dated August 2022. I will amend the notice so that those ground floor facilities that pre- dated the material change of use can remain.
43. On the first floor, there are 3 ensuite shower rooms for 3 bedrooms which is unlikely to be found in a single family home of this size. In any event, I have no evidence to indicate that the addition of those shower rooms by the appellant to replace a single family bathroom has not facilitated the material change of use. However, enforcement action is intended to be remedial rather than punitive. The ensuite shower room in Unit 3 replaced the family bathroom. Requiring the removal of the other 2 shower rooms in Units 4 and 5, together with the other requirements including cessation of the HMO use would remedy the breach without the need to remove the remaining shower room. I will amend the requirements to require the removal of the shower rooms in Units 4 and 5. I will delete requirement 2 and replace it with 'Remove all locks from internal doors that facilitate the material change of use to an HMO'.
44. I will delete requirement 3 and replace it with 'On the ground floor, remove the ensuite shower room and facilities from Unit 1 and the shower with cubicle from Unit 2. On the first floor, remove the ensuite shower rooms and facilities from Units 4 and 5.' The appeal under ground (f) succeeds to that extent and I will vary the wording of the requirements accordingly.

The appeal under ground (g)

45. The period for compliance with the requirements of the notice is 3 months. As well as requiring works, occupiers will need to seek new accommodation. The period for compliance needs to reflect that the occupiers have rights and will lose their only home whilst balancing the public interest of compliance with the notice. The appellant has indicated that the occupiers have Assured Shorthold Tenancies which have expired so that the occupiers are now on rolling contracts which usually requires 2 months' notice. The appellant states that occupiers are likely to be advised by the Council to await a formal eviction process in order to avoid making themselves homeless. The appellant has requested a period of 15 months in total which would allow for court proceedings which could take up to 12 months and then a 3 month period to carry out works.

46. The Council has not commented upon the likelihood of court proceedings but has indicated that 6 months would be appropriate in light of a recent appeal decision relating to a hostel where 10 months was considered to be proportionate. A copy of that decision has not been provided and each appeal has to be decided upon its own merits.
47. Nevertheless, a 15 months compliance period is excessive, when it is simply not known if the occupiers will seek accommodation themselves when served with notices rather than wait for the court process which itself has an unknown timescale. The required works are not major works that justify a further 3 month period. On balance, I do consider that 7 months is a reasonable period and the appellant can keep the Council informed in terms of compliance once notices are served. The appeal under ground (g) succeeds to that extent.

Conclusion

48. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

E Griffin

INSPECTOR