



Appeal Decision

Site visit made on 14 July 2025

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: **23 January 2026**

Appeal Ref: APP/T5150/C/23/3314971

3 Humber Road, London NW2 6EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the “Act”).
 - The appeal is made by Mr Peter Mitchell against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 9 December 2022.
 - 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 to:
 1. Cease the use of the premises as a House In multiple Occupation (HMO), and its occupation by more than ONE household.
 2. Remove the single storey rear extension and rear dormer extension and restore the property back to its original condition before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen and reception rooms on the ground floor, and bedrooms and a bathroom with WC on the first floor.
 3. Remove all internal partitions, items, materials and debris associated with the unauthorised use from the premises, including the removal of all kitchens, ensuite bathrooms/shower rooms and toilets that have been installed to facilitate the unauthorised change of use.
 - The period for compliance with the requirements is: six months from the date the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Act.
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Decision

1. The enforcement notice is quashed.

Matters concerning the notice

The allegation

2. Section 171A(1)(a) of the Act states that the carrying out of development without the required planning permission constitutes a breach of planning control. Section 173(1) says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. Section 173(2) says that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
3. The breach identifies the breach of planning control as a material change of use of the premises to a House in Multiple Occupation (HMO). The Town and Country Planning (Use Classes)(Amendment)(England) Order 2010 sets out, among other things, to distinguish between dwellinghouses and houses in multiple occupation as follows:

Class C3 Dwellinghouses: Use as a dwellinghouse (whether or not as a sole or main residence) by – (including) (c)not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4 Houses in multiple occupation: Use of a dwellinghouse by not more than six residents as a “house in multiple occupation” (HMO).

4. Occupation by more than six residents as a house in multiple occupation would fall to be considered as a large, sui generis HMO.
5. However, within the Council’s statement of case, the Council allege that, at the date of the notice, the premises consisted of six HMO rooms occupied by 12 people from five households. This would therefore amount to a sui generis HMO.
6. The alleged breach of planning control is stated to be a material change of use of the premises to a house in multiple occupation (HMO). This is not incorrect, however, it fails to properly describe the breach alleged by the Council and in the interests of certainty and clarity a correction to the allegation to properly describe the use as a sui generis house in multiple occupation occupied by more than six residents would be necessary.
7. However, the appellant’s case and their ground (c) appeal is advanced on the basis that the matters alleged in the notice, namely the material change of use of the premises (from a dwellinghouse) to a Use Class C4 HMO is development permitted by reason of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the “GPDO”). The change of use from a single dwelling (Use Class C3) to a HMO for up to six residents (Use Class C4) is normally permitted development under the terms of Schedule 2 Part 3 Class L of the GPDO. This permitted development right came into effect on 1 October 2010.
8. The Council of the London Borough of Brent made an Article 4(1) Direction relating to development comprising change of use from a use falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that Order, which came into force on 1st November 2022 (‘the Article 4 Direction’).
9. The appellant does not dispute that a material change of use to a Use Class C4 HMO had occurred at the date of the notice. The appellant seeks to show through their appeal under ground (c) that a material change of use of the premises to use as a HMO for up to six residents (Use Class C4) had been begun prior to the Article 4 Direction being brought into effect and that the use existed at the time of the notice being issued such that it was permitted development that did not constitute a breach of planning control.
10. However, the resultant consequence of amending the allegation to a sui generis HMO, would mean that under ground (c) the appellant would need to show, on the balance of probabilities, that the property was not in use as a *sui generis HMO* at the relevant date, this being the date of issue of the notice, namely the 9 December 2022. This has not been argued by the appellant.
11. I have wide powers of correction under section 176(1) of the Act, subject to the correction or variation not causing injustice to the appellants or the local planning

authority. I wrote the parties raising a number of concerns regarding the notice including:

- Whether the allegation should include reference to a sui generis HMO, in the interests of clarity whether the allegation should be corrected;
 - If a correction to the allegation is required, whether the requirements need a corresponding correction;
 - Whether the reference to 4 years is correct and whether a correction to 10 years should be made;
 - Whether the corrections can be made without causing injustice to either party.
12. In response to my queries, the Council confirmed that it is happy for the correction to be made to the allegation and that the insertion of 'sui generis' is required before 'House in Multiple Occupation (HMO)', in step 1 of the requirements. The Council suggests that no injustice would be caused by the amendments, however, it has not expanded upon this point.
13. The appellant, however, disputes that the allegation should be corrected, on the basis that the appeal property was converted to a small C4 HMO prior to the Article 4 Direction coming into effect and that as a consequence, no correction to the requirements is required. The appellant asserts that the corrections cannot be made without causing injustice to the appellant.
14. While the appellant has not explained why they consider corrections cannot be made without causing them injustice, I cannot conclude that, in the event the notice were corrected to include reference to a sui generis HMO, the appellant would not have wished to pursue other grounds of appeal, such as an appeal under ground (b) which would require the appellant to demonstrate that a change of use to a sui generis HMO had not occurred at the date of the notice, or an application for planning permission deemed to have been made under section 177(5) of the Act.
15. Furthermore, the appellant may have wished to appeal under ground (f). The enforcement notice requires the removal of the single storey rear extension and rear dormer extension and to restore the property back to its original condition before the unauthorised change of use took place. While the Council has clearly included these requirements on the basis that the works facilitated the unauthorised use, the appellant's position is that the works constituted permitted development at the time they were carried out. While this is a hidden ground (f) which the Council has responded to, the arguments would be different if the works were carried out to facilitate a sui generis HMO use, as opposed to a C4 HMO use.
16. While I consider it would be possible to correct the immunity period set out in the enforcement notice from 4 years to 10 years, because the appellant has made their case on the basis that at the date the alleged breach occurred, it was development which was permitted by the GPDO, in my judgement, correcting the notice to allege a sui generis HMO would cause injustice to the appellant. I therefore conclude that the notice is invalid beyond correction.

Conclusion

17. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the ground (c) set out in section 174(2) of the Act do not fall to be considered.

E Brownless

INSPECTOR