
Appeal Decision

Site visit made on 2 June 2026

by **M Ollerenshaw BSc (Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2026

Appeal Ref: APP/X5210/C/25/3363921

Land at 17 Fordwych Road, London, NW2 3TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr David Benedikt, Sternglade Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 27 February 2025.
 - The breach of planning control as alleged in the notice is without planning permission: change of use from 7 non-self-contained residential units with shared facilities (HMO) and a 1 x 3 bed self-contained residential unit to 8 self-contained residential units.
 - The requirements of the notice are to:
 1. Cease the use of the property for 8x self-contained residential units;
 2. Completely remove the kitchenettes in the 7x studio units;
 3. Reinstate the shared kitchen that was previously located at the first floor level;
 4. Completely remove the shower rooms in the 7x studio units;
 5. Reinstate the bathrooms previously located at ground and first floor levels; and
 6. Make good any damage caused as a result of the above works.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of requirement 1. under section 5 and the substitution of: '1. Cease the use of the property as more than one self-contained residential unit.' Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. The notice requires the use of the property as 8 self-contained residential units to cease. However, the current wording of the requirements could be interpreted to mean that it does not prevent the use of the property for any number other than 8 self-contained residential units, and also lead to confusion with regard to the ground level self-contained flat which the Council accepts is lawful. I shall therefore correct the notice to delete reference to "8" self-contained residential units and replace it with "more than one" in step 1 of the requirements. I am satisfied that this correction will not cause any injustice to the appellant or the Council.

The appeal on ground (b)

3. An appeal on ground (b) is that the matters stated in the notice have not occurred. The onus is on the appellant to make their case, with the relevant test of the evidence being on the balance of probabilities. In this case, the question is whether the appeal property had been used as 8 self-contained flats, as alleged, by the date of the notice.

4. The appeal property is a substantial three storey semi-detached building. From the main entrance, a hallway and staircase provide access to the rooms within the property, which is arranged over three levels, with an additional room within the roof space. There is an area of hardstanding to the front and a private garden to the rear. The surrounding area is residential and is characterised by similar semi-detached properties.
5. The Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) sets out that a House in Multiple Occupation (HMO) for the purposes of Class C4 does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004. Consequently, a building converted into self-contained flats is excluded from the UCO definition of a HMO. Section 254 (2) of the Housing Act sets out a building or part of a building meets the standard test if (f) 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. Basic amenities mean a toilet, personal washing facilities, or cooking facilities.
6. The basis of the appellant's ground (b) appeal is that the property remains an HMO and therefore the alleged change of use to self-contained flats has not occurred. The Council considers that the 7 bedrooms (which have also been referred to as studio or bedsit units) are now self-contained due to the provision of en-suite facilities and kitchenettes within each of the rooms and the lack of communal space within the property. As noted above, there is no dispute that the self-contained residential unit at ground level pre-dates the alleged breach and is lawful due to the passage of time.
7. In 2019 planning permission¹ was granted for the 'Installation of dormer window to rear roof slope, rooflights to side and front roof slope and erection of single storey rear extension to add additional residential floorspace to existing HMO'. At that time, therefore, the evidence indicates that the property was in use as an HMO, and the approved plan² for the application showed communal rooms at ground floor and attic levels, a communal kitchen at first floor and bathrooms on the ground and first floors.
8. An HMO licence for the property was issued in April 2019, and it expired in April 2024. The licence permitted a maximum of 12 occupiers and a further 2 occupiers within the self-contained unit at ground floor level, and indicated that the shared kitchen and bathroom facilities were suitable for use by 10 occupiers. However, during a Council inspection in October 2024, it was found that the shared kitchen and bathroom facilities had been removed, and en-suite facilities and kitchenettes had been installed in the 7 bedsit rooms, such that they appeared to be self-contained units. While I accept that the Council's inspection was only a snapshot in time, I have no evidence to suggest that the conditions on that day were not typical of the use of the property, bearing in mind that the onus is on the appellant to demonstrate their case. Moreover, the Council's findings at that time are broadly consistent with the observations I made of the property during my own visit.
9. In addition to a bed, I observed that each of the bedrooms contained a separate wc/shower room together with a table and chairs and a kitchenette including a fridge, worktop, sink, hob and microwave. The rooms therefore have their own

¹ Application Ref. 2019/1027/P

² Dwg Ref. 11 Rev E

toilet, personal washing facilities, and cooking facilities. The kitchenette facilities enable occupiers to cook and eat food in their own rooms. While I accept that an HMO might also contain some of these facilities, given there is no longer a shared kitchen or bathroom the occupiers rely on the amenities in their own rooms.

10. Although I was unable to access Room 6, and the appellant says the Council did not access Rooms 6 and 7 during their inspection in 2024, nevertheless there is no evidence before me to suggest that the layout and facilities in these rooms are not typical of the other rooms.
11. The judgment of *Gravesham*³ established that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The evidence indicates that at the time of the Council's inspection in 2024, the rooms contained the basic amenities required for day-to-day private existence behind a locked door, and they had the character of self-contained units.
12. During my visit I was able to see that the attic room contained a small table, chairs, washing machines and a dryer. While this room therefore had some of the features of a communal space, it does not appear to have been used as such at the time of the notice. The appellant has referred to the approved plan for the 2019 planning permission which indicated a communal room within the attic space, and the Council's report on that application which indicated that 'the new room in the roof would be a communal room and not a bedroom'. However, this does not demonstrate that the room was used a communal space at the time of the notice, and the approved plan also showed other shared spaces within the building which no longer exist.
13. The Council's site photographs from October 2024 show that the attic room was mainly used for storage. It did not appear to contain the facilities required to enable residents to cook, sit or dine. I accept that this room was labelled as a communal room in the 2019 planning application and it can be accessed by occupiers, but that does not automatically equate to it being used as communal space. It is not conveniently located, being accessed via a steep staircase to the top of the building, and the modest dimensions of the room mean that it could only be comfortably used by a small number of occupiers at any one time. These factors raise doubts as to how useable this space is. Indeed, there is very little evidence to show that occupiers have used this space on a communal basis, other than for storage. It seems that occupiers share other facilities including the garden, small storage cupboards/rooms, boilers, gas and electric systems, water and waste systems, and broadband service. However, these alone do not demonstrate an HMO use as other residential uses sometimes share such facilities.
14. Given this deficiency in functional communal space within the building, together with the provision within each of the rooms of the facilities required for day-to-day private existence, I find that a material change of use to 8 self-contained residential units has occurred.
15. I understand that a further HMO licence was applied for in April 2024 and that it may since have been issued. Reference is also made to a 2014 HMO licence but details of that have not been provided. Be that as it may, HMO licences are dealt with under separate legislation and do not determine whether a material change of

³ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

use has occurred for planning purposes. The length of time between receipt of the complaint in June 2024 and the date that enforcement action was taken is also not determinative. I afford little weight to these matters.

16. For the above reasons, I conclude that the appellant has not demonstrated, on the balance of probabilities and as a matter of fact and degree, that by the date of the notice the matters alleged in the notice had not occurred. Consequently, the appeal on ground (b) fails.

The appeal on ground (f)

17. An appeal on this ground is that the steps required by the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
18. When an appeal is made on ground (f), it is necessary to understand the purpose of the notice. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are either (a) the remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
19. The notice requires the use of the property as self-contained residential units to cease, kitchenettes and shower rooms to be removed from the 7 studio units, and reinstatement of shared kitchen and bathrooms. The purpose of the notice must therefore be to remedy the breach of planning control.
20. The appellant's view is the steps required are excessive because the property remains in use as an HMO. However, that matter has been addressed under the ground (b) appeal, and I have concluded that the breach has occurred. The cessation of the unauthorised use is necessary to remedy the breach.
21. It is well established in case law that a notice can legitimately require the removal of works integral to, and solely for, the purpose of facilitating unauthorised development, even if such works on their own might not constitute development, or they would be permitted development or immune from enforcement, so that the land is restored to its condition before the change of use took place.
22. The appellant contends that the requirements to reinstate the shared kitchen and bathrooms are excessive given that an HMO does not require all facilities to be communal or all rooms to not be self-contained. In this case, however, the removal of the shared kitchen and bathrooms, and the provision of kitchenettes and shower rooms in each room, has facilitated the unauthorised use. The reinstatement of the shared facilities and removal of kitchenettes and shower rooms is necessary to restore the property to its condition before the breach took place and thus remedy the breach. The appellant suggests that the requirements could be achieved by an additional shared facility or using the attic room in a different way, but the ground (f) appeal (f) cannot be used to consider the planning merits of an alternative scheme and no details of such alternative arrangements have been provided in any event.
23. There are no obvious alternatives or lesser steps to achieve the purpose of the notice. I therefore conclude that the requirements do not exceed what is reasonably necessary to remedy the breach of planning control. The appeal on ground (f) fails.

Other Matters

24. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law the most fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the occupiers' rights under Article 8 and the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified in the notice, the action is in accordance with the law and pursues legitimate aims regulating land use in the public interest and is necessary and proportionate to the situation.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed, and I shall uphold the enforcement notice as corrected.

Formal Decision

M Ollerenshaw

INSPECTOR