



Appeal Decisions

Site visit made on 12 May 2026

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2025

Appeal A Ref: APP/N5090/C/24/3336932

46 - 48 Woodstock Road, London NW11 8ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by J H Ventures Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 7 December 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property by way of the further subdivision beyond the approved 8 self-contained flats to provide additional self-contained residential flats.
- The requirements of the notice are to:
 - 1 Cease the use of the site as multiple self-contained flats other than those shown in plans GA 09 /F, GA 01 /F, GA 02 /F, GA 03 /D from application 20/2104/FUL.
 - 2 Remove all kitchen facilities including sinks, worktops, store cupboards, utilities including associated plumbing from the property other than those shown in plans GA 09 /F, GA 01 /F, GA 02 /F, GA 03 /D from application 20/2104/FUL.
 - 3 Remove all bathroom facilities including bath or showers, wash basins, toilets from the property other than those shown in plans GA 09 /F, GA 01 /F, GA 02 /F, GA 03 /D from application 20/2104/FUL.
 - 4 Restore the layout of the property to that shown in plans GA 09 /F, GA 01/F, GA 02 /F, GA 03 /D from application 20/2104/FUL.
 - 5 Permanently remove from the property of all constituent materials resulting from the works in 2, 3 and 4 above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Appeal B Ref: APP/N5090/C/24/3340975

46-48 Woodstock Road, London NW11 8ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by J H Ventures Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 8 February 2024.
- The breach of planning control as alleged in the notice is without planning permission, the use of 46-48 Woodstock Road as an aparthotel (Class C1).
- The requirements of the notice are to:
 - 1 Cease the use of the site as an apart-hotel (Class C1).
 - 2 Remove all kitchen facilities including sinks, worktops, store cupboards, utilities including associated plumbing from the property other than those shown in plans GA 09 /F, GA 01 /F, GA 02 /F, GA 03 /D from application 20/2104/FUL.
 - 3 Remove all bathroom facilities including bath or showers, wash basins, toilets from the property other than those shown in plans GA 09 /F, GA 01 /F, GA 02 /F, GA 03 /D from application 20/2104/FUL.
 - 4 Restore the layout of the property to that shown in plans GA 09 /C, GA 01/C, GA 02 /B, GA 03 /B, GA 04 /A from application 19/4827/FUL
 - 5 Permanently remove from the property of all constituent materials resulting from the works in 2, 3 and 4 above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision – Appeal A and Appeal B

1. The enforcement notices are quashed.

Application for costs

2. An application for costs was made by J H Ventures Limited against the Council of the London Borough of Barnet. That application is subject of a separate decision.

Preliminary Matters – Appeal A and Appeal B

3. An enforcement notice must be drafted to tell the recipient fairly what they have done wrong and must do to remedy it. An enforcement notice must be fundamentally defective to be found a nullity and as established by the Courts, an enforcement notice is only a nullity if the defect is evident on the face of the document.
4. An enforcement notice is unlikely to be a nullity if the explanatory note is incomplete or missing entirely, particularly if the appellant has been able to make a valid appeal and thereby suffered no injustice or prejudice. In respect of Appeal A the explanatory note was attached to the copy of the Notice submitted by the appellant and sets out the fee would be £29952. In respect of Appeal B, the explanatory note was not provided by either of the main parties however, the appellant was able to make a valid appeal, including on ground (a). Therefore, it could not be said that the appellant has suffered injustice or prejudice.
5. The appellant also stated, in broad terms, that the Notice in Appeal A, was served on more people than necessary, in other words those who appear to have no interest in the land, and at an incorrect address. This is a matter more pertinent to an appeal on ground (e). However, the appellant received the Notice and was able to make a valid appeal, and therefore, as acknowledged, were not substantially prejudiced by this. Accordingly, if an appeal on ground (e) had been made it would have failed.
6. Section 173 of the Act and the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 set out what a notice shall include. Section 173(10) states that an enforcement notice shall specify such additional matters as may be prescribed and these are set out under ENAR4¹ and include (a) the reasons why the local planning authority consider it expedient to issue the enforcement notice.
7. If the reasons for issuing a notice are incomplete or incorrect, that would not justify a finding that a notice is null. Accordingly, the Council's statement, in the Notice in respect of Appeal A, that there is no evidence that the development complies with the relevant Building Regulations does not make the Notice a nullity.
8. Whether the Council complied with the Public Sector Equality Duty set out in section 149 of the Equality Act 2010 is not a matter for me to address in an appeal under section 174 of the 1990 Act.

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

Reasons

Appeal A on ground (b)

9. The appellant argued that the Notice is a nullity because it does not tell the recipient what they have done wrong, specifically that the allegation does not state how many flats have been created. This does not make the Notice a nullity, but it is ambiguous and had I found the use was as flats it would have been necessary to consider whether this was a matter capable of correction without injustice. However, their appeal on ground (b) is made on the basis that there are no flats and the use is as an apart-hotel.
10. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant, and the relevant test is the 'balance of probabilities.'
11. A self-contained flat is a dwellinghouse for the purposes of the 1990 Act. It was held in *Gravesham BC v SSE & O'Brien [1983] JPL 306* 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.
12. The appeal property consists of 25 units plus managers accommodation. Whilst there is some variation in size, the units have broadly the same open plan layout, consisting of one or two double beds, a kitchen and dining area and shower room. Each unit therefore has all the facilities for day-to-day living, as per *Gravesham* and in physical terms, therefore, each has all the characteristics of a C3 dwellinghouse.
13. However, as the judgement in *Sheila Moore v Secretary of State for Communities and Local Government [2012] EWCA Civ 1202* says, "While *Gravesham* is authority for the proposition that a dwellinghouse can be so described even if it is not occupied throughout the year as a permanent home, it is not authority for the proposition that any use of a dwellinghouse for holiday lettings will not amount to a material change of use". In determining what has occurred within the property, it is necessary to consider both the physical attributes of the individual units and identify how they are actually used.
14. The property is managed by Stay Smart and the appellant stated that the units are advertised online and are marketed for short term stays (typically a few days up to two weeks). They stated that the website lists local attractions and restaurants to provide tourists with information about the area.
15. Further, that the units are booked on a nightly basis (rather than under a tenancy agreement) with no security deposit and can be let out for a maximum of 90 days. The appellant provided a copy of the management agreement and a Statutory Declaration to support this. Bookings are made through portals including booking.com, sky scanner and Expedia. The Council's submissions include a screenshot taken from booking.com.
16. There is a 24/7 guest support service and on-site manager, with the units serviced daily and bed linen and towels provided and washed, by staff at laundry facilities to the rear of the site.

17. Photographs have been provided and I observed, information posters throughout the property and in the units, providing information and instructions regarding matters such as when guests can check out and rules for smoking and quiet times.
18. Although I did not see inside all of the units, and no details of lettings were provided, none I saw had evidence of personal belongings and paraphernalia to indicate permanent or longer-term occupation.
19. Moreover, third party representations refer to the property as a short stay property, akin to a hotel, with arrivals and departures at all hours and groups of visitors pulling suitcases, speaking loudly with torches looking for the property.
20. I appreciate that Class C3 does not specify any minimum letting period or any requirement for the property to be a sole or main residence. However, it is clear from *Moore* that a material change can nevertheless occur as result of the particular way a short term let property is used, depending on the facts of the case.
21. The glossary to The London Plan 2021 defines apart-hotels as self-contained hotel accommodation (C1 Use Class) that provides for short-term occupancy purchased at a nightly rate with no deposit against damages. This will usually include concierge and room service and include formal procedures for checking in and out.
22. In this case the units are booked on a nightly basis, for a maximum of 90 days, with no security deposit. The rooms are serviced daily and bed linen and towels provided and washed by staff on site. There is also 24/7 guest support and an on-site manager.
23. Based on the above, I conclude on the balance of probabilities, and as a matter of fact and degree, that the use is as an apart-hotel (Class C1) and the alleged use as self-contained residential flats has not occurred.
24. I have considered whether the Notice could be corrected to reflect my findings. However, I cannot be certain that the appellant would make their appeal on other grounds if the allegation were corrected on that basis, indeed it seems likely that they would, given the grounds of appeal in respect of Appeal B. Moreover, it seems the Council would have given different reasons for issuing the Notice.
25. Accordingly, I do not consider that correcting or varying the enforcement notice is possible without causing injustice. Therefore, it should be quashed as inaccurate and incapable of correction without injustice to the Council or the appellant.

Appeal B

26. Following my visit and review of the submissions, I wrote to the main parties with a number of questions about the Notice, specifically the requirements, setting out my without prejudice view that it may be possible to vary the requirements.
27. Both parties responded and as a consequence, I have identified a number of defects with the Notice, which have caused me to consider the position with regard to the validity of the Notice.
28. Planning permission was conditionally granted on 24 January 2020 for the creation of a new basement level and alterations and extensions to 46 and 48 Woodstock Road, reference 19/4827/FUL, hereafter referred to as PP1.

29. A further planning permission was conditionally granted on 14 December 2020 for the conversion of 48 Woodstock Road into four self-contained flats together with the creation of a new basement level to the rear, as well as various alterations and extensions to the property, reference 20/2104/FUL (PP2).
30. The Council stated that it is their understanding that building works were undertaken following the grant of PP2 and initially progressed in accordance with PP1, but the layouts approved by PP1 and the material change of use permitted by PP2, were never implemented, instead the material change of use, subject of this appeal, was carried out.
31. Accordingly, it appears the development that has taken place consists of operational development including the creation of a new basement level, extensions and alterations, and the material change of use to use as an apart-hotel. In other words, the operational development and material change of use were carried out as a single act. It seems therefore the allegation is inaccurate.
32. I also note that the allegation as issued, fails to identify that the use is a “material change of use,” since it is that which amounts to development it should be identified in the allegation.
33. There are also significant issues with the requirements. Requirement one is straightforward – cease the use as an apart-hotel. Requirements two and three are that all kitchen and bathroom facilities are removed, other than those shown in plans from PP2. Requirement four is that the layout of the property is restored to that shown in plans from PP1.
34. None of the plans referred to in the Notice were attached. Having received copies of the plans, it is clear that requirements two and three cannot be complied with in a manner that restores the property to the layout approved by PP1. The plans relied upon are inconsistent with one another and therefore incapable of being implemented simultaneously. The requirements are therefore defective.
35. It appears the Council’s approach to the allegation and requirements was taken on the basis that the operational development is acceptable and although the approved plans from PP1 show layouts that might never have existed, they are content not to raise a concern over a requirement that necessitates their delivery - it has previously approved such layouts and would do so again. The Council were essentially attempting to under-enforce.
36. However, while I acknowledge the reasoning, I do not consider that the resulting layout can be disentangled from the operational development. The appellant has done more than convert two properties into an aparthotel through internal alterations alone. At least some of the new rooms and spaces are made possible by the extensions and creation of the new basement level.
37. An enforcement notice should enable every person who receives a copy to know exactly what, in the Council’s view, constitutes the breach of planning control; and what steps the local planning authority require to be taken, to remedy the breach.
38. In this case the allegation is inaccurate and the requirements problematic. However, the Notice is not so hopelessly ambiguous that the appellant could not tell, from within its four corners, what they have done wrong and what they are required to abstain from doing and it is not a nullity.

39. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party.
40. It may have been possible to correct the allegation to include the operational development without injustice, since the Council identified no harm in respect of the operational development and therefore the prospect of a section 173(11) situation would be of no concern. However, I would have to make consequential variations to the requirements.
41. The Council stated that the purpose of the Notice is to remedy the breach of planning control by requiring the cessation of the use and the restoration of the land to its condition prior to the breach of planning control however, this is not what the requirements, as issued, would achieve.
42. Neither the condition of the land, nor the layout prior to the breach of planning control, could be restored without demolishing the operational development. Introducing such a requirement/s would clearly be more onerous to the appellant.
43. Requiring cessation of the use only, would not remedy the breach of planning control nor provide a clearly definable end state or reasonable certainty to the appellant, and is evidently not the outcome the Council sought.
44. The breach of planning control could also be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. Any such permission must be extant and capable of implementation.
45. The Council stated that PP1 was implemented, which I take to mean was lawfully commenced and therefore remains extant. However, while it may have been possible to require the layout to be altered in accordance with the approved plans under PP1, doing so would render the Notice more onerous to comply with. I also cannot be satisfied that, had the alleged breach and consequently the requirements been accurate from the outset, the appellant would not have made their case differently.
46. The deficiencies in the Notice largely stem from the Council's attempt to under enforce and provide certainty to the appellant. However, that approach has resulted in a failure to accurately identify the alleged breach of planning control, leading to consequential difficulties in framing the Notice's requirements. I have carefully considered whether those deficiencies could be remedied through correction and variation, but I conclude doing so would create an unacceptable risk of injustice to the main parties.
47. Therefore, the Notice should be quashed as inaccurate and incapable of correction without injustice to the Council or the appellant. Since this is a case where the Council have misdescribed the alleged breach, they may be able to issue another enforcement notice in exercise of their 'second bite' powers under section 171B(4).

Conclusions

Appeal A

48. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

49. In these circumstances, the appeal on the grounds set out in section 174(2)(f) and (g) of the 1990 Act (as amended) do not fall to be considered.

Appeal B

50. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.

51. In these circumstances, the appeal on the grounds set out in section 174(2) (a) (f) and (g) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

Felicity Thompson

INSPECTOR