



Appeal Decision

Site visit made on 31 July 2026

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2026

Appeal Ref: APP/T5150/C/24/3357006

171 Wembley Hill Road, Wembley HA9 8EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Wharf House Limited against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 29 October 2024.
- The breach of planning control as alleged in the notice is *without planning permission, the material change of use of the premises to a mixed use as a House in Multiple Occupation (HMO) and flats ("the unauthorised change of use")*.
- The requirements of the notice are:
 - STEP1** Cease the use of the premises as a House in Multiple Occupation (HMO). Cease the use of the premises as flats. Cease the mixed use as a House in Multiple Occupation (HMO) and flats.
 - STEP2** Remove all kitchens and cooking facilities, except ONE, from the premises and remove all associated items, debris and materials, arising from this removal from the premises.
 - STEP3** Remove all bathrooms and bathroom facilities, except THREE, from the premises and remove all associated items, debris and materials, arising from this removal from the premises.
 - STEP4** Remove all partition walls, fittings and fixtures, facilitating the unauthorised change of use from the premises, and remove all associated items, debris and materials, arising from this removal from the premises, so that the internal layout of the premises is returned back to that which existed prior to the unauthorised change of use taking place
- The period for compliance with the requirements is *6 months after this notice takes effect*.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 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 1990 Act.

The Enforcement Notice

1. The appellant has appealed the enforcement notice under grounds (a), (f) and (g), in that planning permission should be granted; lesser steps could be taken; and the compliance period is too short, respectively. The appellant therefore has not questioned the nature of the allegation of the breach of planning control, which should be considered under a ground (b) appeal. Nevertheless, I have a duty to ensure that the enforcement notice is in order.
2. In accordance with section 173(1) of the 1990 Act (as amended), an enforcement notice must state, *'the matters which appear to the local planning authority to constitute the breach of planning control'* and it must be stated in such a way that it *'enables any person on whom a copy of it is served to know what those matters are'* (section 173(2)). In other words, the allegation must be clear. In my view neither the allegation nor the requirements of the notice are clear.
3. From the information before me, planning permission¹ was granted at the site for the conversion of a dwellinghouse into a 9 bedroom HMO and a single storey rear infill extension. This was enacted by the appellant, and they obtained an HMO

¹ London Borough of Brent Planning Ref: 18/3484

licence² from the Council in October 2021, for the occupation of the premises for no more than 10 persons. Thus, the appeal site has an extant permission for its use as a large HMO.

4. The enforcement notice, as draft, states the alleged breach of planning control is a material change of use of the premises to a mixed use as an HMO and flats. It is unclear whether a material change of use has occurred given the extant permission. Given the extant permission it is therefore relevant to ascertain if there are any flats at the appeal site.
5. Self-contained flats are considered dwellinghouses for the purposes of the 1990 Act (as amended) and thus are Class C3 under the Town and Country Planning (Use Classes) Order 1987 (UCO) as amended, whilst HMOs fall within Class C4 of the UCO. *Gravesham*³ is the lead case on defining “dwellinghouses”. The *Gravesham* case found the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it, the facilities required for a day to day private domestic existence.
6. Section 254 of the Housing Act 2004 sets out several tests which deal with the definition of an HMO. The standard test at section 254(2)(a) includes whether one or more units of living accommodation consists of a self-contained flat. At section 245(8) a self-contained flat is defined as a separate set of premises (whether or not on the same floor), which (a) forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants. The three basic amenities include a toilet, personal washing facilities, and cooking facilities. Therefore, in this case it is important to ascertain the facilities and amenities available within the units at the appeal site.
7. From my site visit the property was subdivided over three floors and contained 10 individual units, as the ground floor units 3 and 5 have been combined to form a single unit (unit 3), as have units 6 and 7 on the first floor (unit 7).
8. The ground floor contained four individual units (1, 2, 3 and 4) which are all accessed via private and lockable doors. The ground floor also contained a large, shared kitchen including two 4 x ring hobs, two ovens, two extractor hoods, two washing machines and food preparation and storage facilities. Each of the four units consisted of a private bedroom, with a bed and storage units and en-suite facilities including a toilet, shower and basin.
9. The first floor also contained four units (7, 8, 9 and 10) although I was unable to access unit 7. Of the units inspected, these all contained similar facilities to the ground floor with a separate bedroom and each unit containing their own private en-suite bathroom. Despite the en-suite facilities the first floor also contained a shared bathroom with shower, toilet and basin. The top floor consisted of 2 units (11 and 12) again with similar facilities to those on the lower floors.
10. I have been presented with little information that there has been any change in the use of these units since the enforcement notice was issued.
11. All the units at the appeal site would therefore meet parts (a) and (b) of the definition of a self-contained flat in the Housing Act. They all also partially meet the

² London Borough of Brent Licence Ref: HMOL/02284/20

³ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

basic amenity criteria, in that they all include private toilets and personal washing facilities. However, based on the information before me and my observations made at the site visit, none of the units have been provided with their own private cooking facilities.

12. Whilst it is acknowledged that the majority of the units have a fridge, sink, draining board and small kitchenette facilities, none of them exhibited primary and private cooking facilities such as a hob or oven. I would also acknowledge that this would not prevent the plugging in of other devices such as microwaves, kettles and/or air-fryers, and thus providing occasional cooking facilities within these units. However, whilst these facilities would provide convenience by providing the occupants with access to warm snacks and beverages, access to the communal kitchen facilities would still be essential as part of an everyday existence.
13. Based on my site observations and the evidence submitted, I would conclude that the size of each of the units are restricted by their requirements to provide the required accommodation such as a bed, washing and storage facilities etc which limits space for the provision for cooking facilities within each unit. As such, I am unable to conclude that any of these units currently provide all the facilities required for day-to-day private domestic existence, as set out in *Gravesham*, to the extent that they would be deemed self-contained flats and thus dwellinghouses for the purposes of the 1990 Act (as amended). Consequently, as a matter of fact and degree the allegation of a change of use to a mixed use is erroneous as the appeal site is in use as a large (10 units) HMO only.
14. Furthermore, the steps as set out in the requirements of the notice, as draft, are also erroneous. Step 1 cannot be achieved as there is an extant permission for the use of the appeal property as an HMO, therefore, to cease this use would prevent a lawful use at the site which the notice cannot seek to achieve. As stated above, none of the units are considered flats, and as such, based on the evidence before me this breach has not occurred. Nor has the mixed use taken place for the reasons stated above. It is therefore unclear whether step 1 of the notice is achievable.
15. Steps 2, 3 and 4 are also imprecise. Step 2 requires the removal of the kitchen and cooking facilities except one, however from the information before me there is only one communal kitchen within the premises. Similarly, step 3 requires the removal of all but three bathrooms but does not specify which ones are to be removed. As detailed above all the units have en-suite facilities and there is a further communal bathroom on the first floor, thus it is unclear which of the facilities should remain and which are to be removed. Step 4 requires the removal of all partition walls facilitating the alleged unauthorised use, but again it is unclear to which items these pertain given the extant permission for a large HMO.
16. Consequently, I have concerns on whether the notice is a valid one and, if not, whether it is capable of correction. Pursuant to section 176 of the 1990 Act (as amended), I have the power to correct any defect, error or mis-description, provided I am satisfied there will be no injustice to either party.
17. It is unclear from the four corners of the enforcement notice whether the alleged breach has occurred, nor whether the requirements can be complied with. The corrections required to the notice are not minor changes, and would fundamentally alter the notice, potentially broadening its scope which would result in injustice to

the appellant at the very least. Therefore, it is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would likely be caused to one or both of the main parties were I to do so.

18. Overall, for the reasons given above, I conclude that the notice does not specify with sufficient clarity the alleged breach of planning control nor the requirements necessary to remedy it. I find, therefore, that the enforcement notice, as issued, is invalid. Accordingly, it is directed that the enforcement notice is quashed.

Robert Naylor

INSPECTOR