



Appeal Decision

Site visit made on 28 July 2026

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2026

Appeal Ref: APP/T5150/C/24/3349809

10 Birchen Grove, London NW9 8SA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Ben Kpogho against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 16 July 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 House in Multiple Occupation (HMO) and a flat and without planning permission, the erection of a single storey side extension and porch.
 - The requirements of the notice are: 1. Cease the use of the premises as flats. 2. Cease the use of the premises as an HMO. 3. Demolish the unauthorised single storey side extension and front porch. 4. Remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised use and development from the premises. 5. Restore the internal configuration to the layout which existed prior to the unauthorised change of use and unauthorised development took place, as shown in 'Plan A' attached to the notice.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 (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.
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Decision

1. The appeal is allowed insofar as it relates to the part of the development specified below and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a single storey side extension and porch at 10 Birchen Grove, London NW9 8SA referred to in the notice.
2. The appeal is dismissed and the enforcement notice is upheld for the remaining part of the development and planning permission is refused in respect of the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the material change of use of the premises to a House in Multiple Occupation and a flat at 10 Birchen Grove, London NW9 8SA referred to in the notice.

Preliminary Matters

3. The ground (c) appeal is 'that those matters (i.e., the matters stated in the enforcement notice) do not constitute a breach of planning control. However, the appellant's claim that there has been no use of the appeal premises as a flat is relevant to ground (b)-'that those matters have not occurred.' Consequently, after seeking comments from the main parties I shall deal with the appeal as if it had also been made on that ground. There would be no unfairness, as the Council have been afforded an opportunity to comment on the hidden ground of appeal.
4. My decision takes the revised National Planning Policy Framework, which came into force during the course of the appeal, into account.

Ground (b) and (c) appeals

5. The burden is firmly on the appellant to show why their appeal should succeed on ground (b), or failing that, on ground (c), the relevant test of the evidence in both grounds of appeal being on the balance of probability.
6. The premises contains an enlarged semi-detached residential building, with living accommodation arranged over four floor levels. A basement level is accessed from the front hallway via an internal stairwell. In the basement are four bedrooms along with a kitchen, living/dining space, a shower/WC and another WC. At ground floor level is a bedroom together with a living/dining room, kitchen and bathroom. There are three further bedrooms and a bathroom on the first floor with another bedroom at roof level.
7. The ground (b) appeal is focussed on the flat component of the alleged use. There is no dispute that the use as a House in Multiple Occupation (HMO) has occurred, or that a single storey side extension and porch have been erected.
8. The basement living accommodation is largely separate physically from the rest of the building. The accommodation has the ability to afford to those who use it the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwellinghouse according to established case law.¹ Those factors are not necessarily conclusive of a separate residential use. Even so, the Council's evidence suggests that the basement was in use as a flat, occupied by a family of two adults with two children, on the occasion of a visit which took place prior to the issuing of the notice. There is little sound reason to regard this evidence as other than accurate. Copies of photographs taken during that Council visit provide scant indication that the basement kitchen and bathroom were being shared with residents of upper floors of the premises. Besides, the appellant advanced little firm evidence to support their claim that the premises had not been used other than as a single residential planning unit. An absence of separate utilities or a separate tenancy or Council Tax registration would not necessarily mean there has been no use of the basement accommodation other than as part of the rest of the premises.
9. The planning application made during March 2023 to use the premises as two, self-contained flats² does little to support the appellant's version of events. The accompanying drawings show self-contained, two-bedroom accommodation in the basement. Besides, that application was determined almost a year before the notice was issued and some months prior to the granting by the Council of an HMO licence for the premises. The grant of such a licence is not determinative of the use for planning purposes. HMOs are licenced under separate legislation setting minimum standards for amenities, safety and management practices.
10. Consequently, based on the available evidence and as a matter of fact and degree, I consider it more likely than not that the basement has been used as a separate flat. From what I observed, it appears that this accommodation is currently used as part of the HMO. However, that makes little difference to the outcome in this ground of appeal, as the appellant has been unable to show that the basement was not used as a flat prior to the issuing of the notice. The ground (b) appeal fails.
11. Turning now to the ground (c) appeal. The matters stated in the notice have involved the making of a material change in the use of the premises from a single dwelling to use as an HMO and flat and the carrying out of building operations. This all falls within the definition of development set out in s55(1) of the Act. Planning permission is required for the development of land, having regard to s57(1) of the Act. The definition of a breach of planning control in s171A(1)(a) of the Act includes carrying out development without the required planning permission.

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

² Council Ref: 23/1017

12. There has been no grant of express planning permission for the change of use or the building operations stated in the notice following the submission of a planning application to the Council. For the appeal on this ground to succeed, the appellant would therefore have to show that the development is granted planning permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO).
13. Dealing firstly with the alleged change of use. At Article 3(1), Schedule 2, Part 3, Class L, paragraph L.(b), the GPDO grants planning permission for change of use of a dwelling within Class C3³ to use as a small HMO with no more than six residents, in Class C4. Even so, neither Class L nor any other Class in the GPDO Part 3 grants planning permission for the change of use to an HMO and flat. Moreover, as the available evidence shows that there have been and continue to be significantly more than six persons residing at the premises, the use for multiple occupancy purposes is as a large HMO, falling outside Class C4. Therefore, even if the basement had not been used as a flat, planning permission would not be granted for the HMO by Part 3, Class L.
14. Moving on to the alleged building operations. The GPDO at Article 3(1), Schedule 2, Part 1, Class A, grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse, subject to the relevant limitations in paragraph A.1 and A.2 being complied with and the relevant conditions in paragraphs A.3 and A.4 not being breached. Part 1, Class D grants planning permission for the erection or construction of a porch outside any external door of a dwellinghouse, subject to none of the limitations in paragraph D.1 being exceeded. However, those rights do not apply in the case of a building used as an HMO and flat. The definition of a dwellinghouse set out in Article 2(1) of the GPDO does not include a building which contains one or more flats or a flat contained within such a building.
15. The appellant claimed that the premises were used as a single dwelling for about a year after the works were carried out, prior to the HMO use commencing. Nevertheless, there is little firm evidence to indicate that the building operations were undertaken other than as part of the works to convert the premises to an HMO and flat. Copies of photographs taken during a Council visit in June 2023 show that works were ongoing with the fitting out of the basement approaching completion, weeks before the date when the appellant stated that the use as an HMO commenced. Case law ⁴ which confirms that permitted development rights in Part 1 of the GPDO can continue to apply to a Class C4 HMO is of limited relevance, as the use of the premises does not fall within that Class.
16. Besides, the single storey side extension is within 2 metres of the premises boundary and as measured by the Council, exceeds the 3-metre height to eaves limit in paragraph A.1(i) of Class A. Also, the Council measured the porch as exceeding the 3-metre height limit in paragraph D.1(c) of Class D. There is little sound reason to question the accuracy of the Council's measurements. Where any limitation in Part 1 is exceeded the whole development is unauthorised. For this and the above reasons, erection of the extension and porch is not granted planning permission by the GPDO Part 1.
17. Accordingly, the appellant has been unable to show that the matters stated in the notice do not constitute a breach of planning control. The ground (c) appeal fails.

³ The Town and Country Planning (Use Classes) Order 1987 (as amended)

⁴ *London Borough of Brent v SSHCLG & Yehuda Rothchild* [2022] EWHC 2051 (Admin)

Ground (a) appeal

Main Issues

18. The deemed planning application arising from the ground (a) appeal derives its terms from the matters stated in the notice as constituting a breach of planning control. Therefore, the main issues in this ground of appeal are:
- Whether suitable living conditions are provided for existing and future occupiers of the HMO and flat, having regard to noise and disturbance, internal floor space, provision of outdoor private amenity space and outlook and natural light.
 - The effect on the living conditions of occupiers of neighbouring residential property, having regard to noise and disturbance, on-street parking, waste/recycling storage, cycle storage and management of outdoor amenity space.
 - The effect on the supply of family housing in the Borough.
 - The effect on the character and appearance of the building and the surrounding area.

Reasons

Living conditions-existing and future occupiers of the HMO & flat

19. The number of people occupying the premises is considerably greater than what would be associated with the lawful use as a single dwelling. Also, in general the occupiers of an HMO lead mostly separate daily lives from one another. It is unlikely for example that they will share common connections or relationships or have similar work patterns or leisure interests. Consequently, occupiers of each separate bedroom in the HMO are in all likelihood undertaking activities such as cooking food and doing laundry, or travelling for the purposes of work, leisure or to meet day-to-day shopping needs, separately and at different times throughout the day. Compared to use as a single dwelling there has also probably been a considerable increase in pedestrian and vehicle-borne visitors to the premises, including deliveries, associated with the use as an HMO and flat.
20. Given the likely scale of activity in shared spaces such as kitchens, bathrooms and hallways, together with the increase in the number and frequency of comings and goings, it is highly probable that occupiers of the premises experience significant incidences of noise and disturbance in their living spaces at times. This is especially likely to occur where bedrooms are alongside such shared spaces. There is little to suggest that any sound insulation has been installed to assist in mitigating the effects of noise and disturbance on occupiers. None of this contributes to a comfortable and relatively peaceful living environment at the premises.
21. The Council's HMO Supplementary Planning Document (HMO SPD) advises that as the primary private space for occupiers, bedrooms in an HMO should provide the minimum private internal space set out in Policy D6 of the London Plan (LP). This requires the floorspace of a two bedspace double or twin bedroom to be at least 11.5m² and that of a one bedspace single bedroom to be at least 7.5m², the requirement to adhere to the relevant space standards being reflected in the Brent Design Guide SPD (SPD1). In addition, the HMO SPD requires provision of a shared indoor amenity space of at least 16.5m² for between 6 and 10 occupiers.
22. The Council assessed the size of two of the first floor bedrooms and the ground floor living/dining area as falling below the minimum sizes required and from my observations, there is no sound reason to disagree. The existence of an HMO licence has little bearing on whether the minimum size requirements are met for

planning purposes. Moreover, after accommodating a bed and one or two basic furniture items there is little space in two of the first floor bedrooms for storing personal possessions and other everyday domestic items, or for circulation. Also, the living/dining area is very modest in size with little room for circulation after provision of a small table and some chairs, a significant portion of the space being taken up by domestic furniture and storage. The failure to provide sufficiently sized bedrooms and internal amenity space contributes to occupiers of the HMO experiencing an uncomfortably cramped and restrictive living environment.

23. As the basement provides four-bedroom accommodation, there should be a gross internal floor area (GIA) of at least 90m² for a flat to meet the minimum internal space standard in Table 3.1 to LP Policy D6. There is little to suggest that the basement is other than significantly deficient in GIA when assessed against the minimum standard. Besides, three of the bedrooms and the living/dining area are similarly restrictive in terms of their size and useability to equivalent spaces in the HMO. The failure to provide sufficient floorspace has led to occupiers of the flat also experiencing a cramped and congested living environment.
24. Occupiers of the flat have access to private outdoor amenity space at the rear of the premises. This is of a size significantly in excess of the 50m² required by Policy BH13 of the Brent Local Plan (BLP) for new dwellings with 3 or more bedrooms, reiterated in SPD1. There is therefore sufficient opportunity for the occupiers to undertake activities typically associated with private outdoor amenity space, including informal relaxation and drying household washing.
25. SPD1 advises that new development should ensure a good level of daylight, sunlight and outlook throughout the day and the year. Nevertheless, one of the basement front bedrooms has no direct outlook with limited access to natural light, being lit only by a light well. The other basement front bedroom is lit by a window which, with its sill above the average eye line and facing directly onto a hard surface at a higher ground level, affords little meaningful outlook and limited levels of natural light. Use of the hard surface for vehicle parking is likely to further restrict the outlook from this room and the natural light available. The smaller of the rear bedrooms also has a limited outlook and enjoys little natural light, the window facing directly towards a nearby external wall, with external walls in proximity on either side. The limited outlook and low natural light levels means that occupiers experience an oppressive and unrelieved sense of enclosure in these rooms and have an increased reliance on artificial light sources, all contributing to the sense of a restrictive living environment in the flat.
26. Accordingly, suitable living conditions are not provided for existing and future occupiers of the HMO and flat. This is in conflict with LP Policy D6, which requires new dwellings to, amongst other things, be of high-quality design and provide adequately sized rooms with comfortable and functional layouts which are fit for purpose, also providing sufficient daylight and sunlight and meeting the minimum standards specified. There is conflict with criteria in BLP Policy DMP1, which require development to provide high levels of internal and external amenity and to not unacceptably increase exposure to noise and general disturbance. There is also conflict with criterion in BLP Policy BH7, which require shared living accommodation to be of an acceptable quality, meeting appropriate standards for the needs of its occupants, including appropriate communal facilities. However, provision of the flat means there is no net loss of a dwelling and no conflict with BLP Policy BH10. Nor is there conflict with BLP Policy BH13, which requires new dwellings to have sufficient external private amenity space.

Living conditions-occupiers of neighbouring residential property

27. The premises are located in a suburban residential area, in which properties generally tend to be similar in size and in single family occupancy. As a result, the surroundings largely exhibit a settled suburban residential character, where

neighbouring occupiers could reasonably expect to enjoy relatively good levels of peace and quiet in their homes and gardens at most times.

28. Compared with use as a single dwelling, the considerable increase in the number of persons residing at the premises and the corresponding extra activities associated with the use as an HMO and flat, along with the increased number and frequency of pedestrian and vehicular comings and goings thereto, is at odds with the otherwise largely peaceful residential context and is likely to have led to neighbouring occupiers experiencing significant additional levels of noise and disturbance. Also, in the absence of details of any sound insulation installed there is little assurance that the effects of additional noise and disturbance arising from the use on occupiers of the neighbouring attached property have been adequately mitigated.
29. Notwithstanding the proximity to some local shops and bus stops the premises has a Public Transport Accessibility Level (PTAL) of 2, reflecting a poor to moderate access to bus and rail services. As far as I was made aware, occupiers of the premises are not prevented from accessing a private car, nor are any future such restrictions proposed. In the circumstances, it is not unreasonable to expect that a significant number of occupiers require access to a private car to meet some or all of their day-to-day travel needs. In my estimation, the hard surfaced area at the front of the premises could accommodate a maximum of three cars. Therefore, in all likelihood the demand for car parking associated with the use exceeds the off-street parking available at the premises, leading to a number of additional cars attempting to park on the street.
30. During my visit I observed that there were vehicles parked along large parts of both sides of the street, leaving few spaces for further vehicles to park safely or conveniently. The demand for on-street parking in the vicinity is likely to be significantly higher at other times, i.e. during the evening and at weekends. Accordingly, the use is likely to have considerably increased pressure to park further cars on the street, where spare capacity is in all probability limited at most times. This is liable to have exacerbated parking congestion in the vicinity, causing significant inconvenience to neighbouring occupiers.
31. Furthermore, few details of the provision made for external waste/recycling storage, secure cycle storage and for the management of outdoor amenity space at the premises were supplied. The failure to make suitable provision for waste/recycling storage and to implement an appropriate waste management plan, along with the lack of any provision for cycle storage, does not reflect advice in the HMO SPD. This all reinforces my concerns over the impacts of the use on the living conditions of neighbouring occupiers, as such matters are capable of having adverse consequences in that respect.
32. As a result, the use as an HMO and flat causes unacceptable harm to the living conditions of occupiers of neighbouring residential property. This conflicts with criteria in BLP Policy DMP1, which require new development to not unacceptably increase exposure to noise and general disturbance and be satisfactory in terms of means of access for all, parking, manoeuvring and servicing and to not have an adverse impact on the movement network. There is also conflict with criteria in BLP Policy BH7, which require shared living accommodation to be located where there is good access to public transport and other amenities including shops and to include agreed management arrangements suitable to the use and size to not unacceptably impact on neighbouring amenity.

Supply of family housing

33. BLP Policy BH11 seeks to maintain family-sized housing, i.e., with 3 or more bedrooms, by requiring that additional dwellings should have a floor area of at least 130m² and should provide at least a 3-bedroom dwelling, preferably with direct access to a garden/amenity space and be within an area with a PTAL of 3 or

above. This is to ensure the continued provision of housing suitable for occupation by families to meet the Borough's housing needs.

34. As the lawful use is as a single dwelling and there are in excess of 3 bedrooms, the premises is a family-sized home as meant by the BLP. The use as an HMO and flat has led to the loss of such a home, as a single dwelling with 3 or more bedrooms is not provided. The flat is not suitable for occupation by families due to its restrictive size and the limited outlook and low levels of natural light in some rooms. No exceptional circumstances which might have justified the loss identified were drawn to my attention. Also, the PTAL of 2 is below that required. Consequently, the use has adversely affected the supply of family homes in the Borough, in conflict with BLP Policy BH11.

Character and appearance

35. The two storey bay window on the principal elevation of the building mirrors the neighbouring attached property and contributes to the well-balanced appearance of both buildings. Pairs of dwellings of similar scale with corresponding elevational treatments are reiterated throughout the surroundings. Along with the settled, quiet residential qualities already referred to, these factors contribute to the pleasant and cohesive suburban residential character and appearance of the locality.
36. The noise and disturbance associated with the use is at odds with the appreciable sense of peace and quiet otherwise generally experienced in the residential surroundings. Also, the apparently unmanaged collection of waste and recycling receptacles stored on the frontage is in excess of that normally associated with a single dwelling. Along with the assorted parking and storage of motorbikes and cycles, this has contributed to a marked erosion in the appearance of the premises, which now has a more cluttered and utilitarian feel usually associated with an inner urban setting, thus appearing alien in the otherwise largely suburban residential surroundings. Additionally, the uncertain management of the outdoor amenity space does not compare favourably with the generally more orderly qualities of neighbouring residential gardens.
37. The extension is set partly below the ground level of the front of the premises. Along with the monopitch roof, sitting well below the highest part of the ground floor bay window, this gives the extension a reasonably low profile. Being slightly above the adjacent ground level, the front window in the extension does not align with any of the principal elevation windows. Even so, this does not prevent the extension from being viewed as a small scale, subservient addition to the building, comparing favourably with the visual qualities of similar side additions at other residential properties in the vicinity. Although it is unclear whether these other additions are lawful, as established built features they are nevertheless part of the visual character of the surroundings in which the extension falls to be assessed.
38. Furthermore, the extension reflects advice in the Council's revised Residential Extensions & Alterations SPD, being less than two thirds of the width of the original dwelling, under 4m high and having a flat roof. Besides, the extension only slightly exceeds the height limit set out in the GPDO at Article 3(1), Schedule 2, Part 1, Class A. Therefore, it is highly relevant that a similarly proportioned extension could lawfully be erected at the premises immediately following compliance with the notice, in conjunction with the use as a single dwelling. Set in that context and also having regard to the other factors identified above, the extension is well integrated visually with the building and is not viewed as an alien feature in its surroundings.
39. The porch extends across the principal elevation of the building to adjoin the bay window, as well as protruding slightly forwards of it, incorporating a shallow pitched roof. The porch only slightly exceeds the height limit in the GPDO Part 1, at Class D. As a result, the prospect of a similar structure being erected lawfully immediately following compliance with the notice is similarly relevant in respect of the porch. Against that background, the porch is not seen as an obvious, awkward addition to

the building. Since there are a significant number of porches of varying design and scale in the vicinity, often protruding beyond bay windows, the porch also does not appear at odds with the general pattern of surrounding development. Whilst the revised SPD advises that porches should not project beyond or connect to bay windows, the 'fallback' position carries greater weight in this instance.

40. Therefore, the use as an HMO and flat has significantly and harmfully eroded the character and appearance of the building and the surrounding area. This is in conflict with criterion in BLP Policy DMP1, which provides that new development should complement the locality in terms of the location, use, concentration, siting, layout, scale, type, density, materials, detailing and design. However, the extension and porch cause no such harm and do not conflict with that or other criteria in BLP Policy DMP1 nor conflict with BLP Policy BD1, which requires new development to be of the highest architectural and urban design quality.

Other matters

41. The use contributes to meeting housing needs generally in the Borough. This matter carries modest weight, having regard to the small scale of the development.
42. The matters raised by an interested party are not planning considerations and so fall outside the scope of this appeal.

Conclusion-Ground (a) appeal

43. The use as an HMO and flat does not provide suitable living conditions for existing and future occupiers, there is unacceptable harm to the living conditions of occupiers of neighbouring residential property, an adverse effect on the supply of family housing in the Borough and unacceptable harm is caused to the character and appearance of the building and the surrounding area. This is in conflict with the Development Plan, taken as a whole. However, the extension and porch do not harm the character and appearance of the building or the surroundings and there is no conflict with the Development Plan in that respect. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan.
44. Therefore, the appeal on ground (a) does not succeed and planning permission will not be granted for the material change of use to an HMO and flat. The appeal on this ground does succeed in part however and planning permission will be granted for the extension and porch. At s177(1)(a), the Act provides for the granting of planning permission for part of the matters stated in the notice. No planning conditions are necessary.

Conclusion

45. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matters the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission which I will grant by virtue of s180 of the 1990 Act.

Stephen Hawkins

INSPECTOR