



Appeal Decisions

Site visit made on 30 June 2026

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2026

Appeal A Ref: APP/T5150/C/23/3332299

Appeal B Ref: APP/T5150/C/23/3332300

Appeal C Ref: APP/T5150/C/23/3332301

All Flats, 31 Manor Drive, Wembley HA9 8EB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr John O'Donnell, Appeal B by Mr Simon O'Donnell and Appeal C by Mr Dermot Barrett against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 25 September 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to six flats and without planning permission, the erection of a single storey rear extension.
 - The requirements of the notice are to:
STEP 1 Cease the use of the premises as six flats.
STEP 2 Demolish the single storey rear extension.
STEP 3 Restore the internal configuration of the premises to the original layout before the unauthorised change of use and development took place, as set out in the plans approved in Certificate of Lawfulness reference 07/0424 for "Certificate of Lawfulness for existing use of the dwellinghouse as 4 self contained flats". A copy of which is attached to the notice.
STEP 4 Remove all items, debris and materials, arising from compliance with Step 2 and Step 3, from the premises.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d) and (e) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. The enforcement notice is quashed.

The Enforcement Notice

2. 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.
3. The Council first visited the property on 23 March 2022 and stated that it was laid out and occupied as six flats, four on the ground and two on the first floor. However, they did not see inside all of the flats, taking photographs inside three on the ground floor, stating that there was no access to the studio on the front right-hand side as the tenant was going to work.
4. The Council's evidence is limited, but the appellants have provided no substantive evidence to dispute the allegation that there were six flats at that time.
5. The Council visited again on 14 October 2022 and were provided access by the owner. Photographs were taken and the Council stated that they observed that one

of the flats on the ground floor had been vacated, however there were still signs of it being a separate flat (fridge, bathroom, sign on the wall where the kitchen was, sofa, bed). It appears based on their photographs and observations that the kitchen in that flat had been removed and the accommodation no longer had all the facilities required for day-to-day private domestic existence¹ and was not occupied. Consequently, it appears that the property was in use for five flats at that time.

6. In this respect I note an Energy Performance Certificate (EPC) was granted on 12 January 2023 for a ground floor flat with the address 1B, that is in addition to the EPCs granted in respect of flats 1 – 4. Again, the appellants did not address this point.
7. Based on the above, I conclude on the balance of probabilities, and as a matter of fact and degree, that the use when the Notice was issued, was as five flats and the allegation is inaccurate.
8. 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.
9. It would have been possible to correct the allegation to refer to five flats without causing injustice. However, were I to correct the allegation I would need to make consequential variations to the requirements with which there are issues.
10. As previously stated, an LDC was granted for the use of the property as four flats. The Notice does not require the reversion to use as four flats, nor should it, as there is no scope for a notice to require reversion to the lawful use or that another activity takes place. However, in requiring the restoration of the layout shown on the plans submitted with the LDC application, the Council gave the impression, that the last lawful use of the property was as four flats, which is misleading.
11. In their submission the Council also stated that the requirements of the Notice do no more than seek to remedy the breach of planning control and restore the appeal premises to its last lawful condition.
12. However, they also suggested that various changes of use since the LDC was issued, means that there are probably only two lawful flats and the ground floor probably has no lawful use. Further, suggesting that the requirements could be made clearer by the deletion of the words “six flats” and their substitution with the words “more than 2 flats” without causing injustice. It is not clear to me what the Council considers the lawful use to be.
13. Section 57(4) of the Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out.
14. Accordingly, if the property was lawfully in use as four flats immediately prior to the use as five flats, then there would have been a right to revert to use as four flats, following compliance with the enforcement notice in respect of the use as five flats. However, section 57(4) does not provide for resumption of a past lawful use when there have been one or more intervening unlawful uses between that and the current unlawful use. The land may then have a nil use.

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

15. Therefore, even if the use as four flats was lawful in the past, since it appears there has been an intervening unlawful use, as six flats, there is no right of resumption. As such, based on my conclusion, that the property had been in use for six, then five flats, it *may* [my emphasis] be that the property would have a nil use.
16. I have carefully considered how the requirements could be varied. However, the risk of requiring the use as five flats to cease, is that the property would be put to use as a different number of flats.
17. It is usually sufficient in a material change of use case, where the purpose of the notice is to remedy the breach of planning control, for the notice to require the unauthorised use to cease. However, varying the requirements so that they require the use as flats to cease would expand the scope of the enforcement notice, making it more onerous to comply with.
18. Furthermore, it appears that the appellants interpreted the requirement to restore the four-flat layout as indicating that the Council regarded the use of the property as four flats as the lawful use, and they presented their case on that basis. It follows that, had the Notice instead required the cessation of the use of the property as flats in its entirety, or as no more than two flats as suggested by the Council, the appellants may have elected to pursue their appeals on other grounds, in particular ground (f).
19. 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 appellants. Since this is a case where the Council have misdescribed the alleged breach in respect of the use, they may be able to issue another enforcement notice in exercise of their 'second bite' powers under section 171B(4).

Conclusion

20. 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.
21. In these circumstances, the appeals on the grounds set out in section 174(2) (b) (c) (d) and (e) of the 1990 Act (as amended) do not fall to be considered.

Felicity Thompson

INSPECTOR