



Appeal Decision

Site visit made on 28 July 2026

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

an Inspector appointed by the Secretary of State

Decision date: 24th August 2026

Appeal Ref: APP/A5270/C/25/3364852

The Fox Inn, Green Lane, Hanwell, W7 2PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Gerard Flynn, True Fox Limited against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 26 March 2025.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the first floor and roof space to 5 self-contained flats.
 - The requirements of the notice are to:
 - A. Cease the use of the first floor and roof space as self-contained flats;
 - B. Remove the kitchen facilities from each of the self-contained flats;
 - C. Remove the bathrooms from each of the self-contained flats;
 - D. Remove all internal partitions that have facilitated the use of the first floor and roof space as self-contained flats; and
 - E. Remove all resulting materials, debris and rubbish from the land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), and (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

2. The appeal site relates to The Fox Inn, which is a public house located on Green Lane within a mainly residential area. The notice alleges the material change of use of the first floor and roof space to five self-contained flats. A neighbouring occupier refers to the effects of the alleged development, including in relation to noise and disturbance. However, I am unable to consider the planning merits of the case in the absence of an appeal on ground (a). A separate enforcement notice has been issued in relation to alleged external changes to the building, but it is not the subject of this appeal.

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.
4. Planning permission (Ref. 194310FUL) was granted on 7th December 2020 for the “conversion of loft space and staff accommodation at first floor level and change of use to provide four, bedroom guest house accommodation (Use Class C1) at first floor and roof level and ancillary self-contained manager's flat and installation of conservation style rooflights (to east and west elevations)” (the 2020 permission). A

further application was submitted in April 2022 for the change of use of the upper floors from guest accommodation (Use Class C1) to five self-contained residential units (Use Class C3), but the application was refused¹.

5. The appellant has referred to an initial notice sent to Building Control in February 2021 for a proposal described as the conversion to guest/bedsits and a one bedroom manager's flat. I understand that a completion certificate was subsequently issued, though no substantive details have been provided. In any case, this is not determinative of the use of the premises and is contradicted by the appellant's own evidence which acknowledges that the units were let on assured shorthold tenancies of between six and twelve months as an interim use to establish an income stream during the Covid-19 pandemic. The appellant has also stated that measures have been taken to evict the tenants so that the premises can be run as a guest house, as originally intended and approved, and that compliance with requirement A of the notice would be achieved by September 2025.
6. The Council has provided street level photographs of the property from September 2022 which show that the flats were signposted "The Fox Apartments" and had their own gated external access, numbered letterbox and intercom. Each unit had the facilities for day to day living including kitchen, bathroom and separate utilities.
7. During my site visit it appeared to me that the use as self-contained flats had ceased. Aside from Flat 1, which I am informed is occupied by an employee of the company, the other rooms are used as guest accommodation. Nevertheless, an appeal on ground (b) cannot succeed simply on the basis that the alleged activities have ceased. This is because section 174(2)(b) of the Town and Country Planning Act 1990 (as amended) is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice. The evidence before me including the appellant's own submissions, indicates that, by the date of the notice, the upper floors had been used as self-contained flats.
8. The 2020 permission included an ancillary self-contained manager's flat. The appellant indicates that the first floor flat has been used by the manager and staff as accommodation in association with the public house. However, in response to the Planning Contravention Notice (PCN), the appellant's agent stated that the upper floors were used as self-contained flats and that the manager's flat was not ancillary to the public house. The designated premises supervisors for the public house do not appear to be listed in the summary of tenancy agreements provided in response to the PCN. Furthermore, the proposed internal access from the public house to the accommodation that was detailed on the approved plans for the 2020 permission was not provided. Therefore, the evidence before me indicates that this flat was not occupied in a manner ancillary to the public house.
9. The appellant says that there is no material change from the 2020 permission, but rather that the alleged use is in breach of condition 10 of that permission which prohibits stays of more than 30 days. In this regard, I note that permission was sought to remove condition 10 but this was refused². The evidence indicates a use as self-contained flats rather than guest house accommodation, and the upper floors do not accord with the layout approved as part of the 2020 permission. In addition to the absence of an internal staircase linking the accommodation to the public house, a number of internal partitions are in different positions, and the size

¹ Application Ref. 221512FUL

² Application Ref. 214567VAR

and configuration of the units differs from the approved plans. Given that the use and layout are materially different, I am not satisfied that the 2020 permission was implemented. The breach is therefore correctly characterised as development without planning permission rather than a breach of condition.

10. For the above reasons, I conclude that, on the balance of probabilities, the appeal site was used as five self-contained flats. The breach of planning control alleged in the notice therefore occurred as a matter of fact. Consequently, the appeal on ground (b) fails.

The appeal on ground (c)

11. An appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control.
12. Given that the 2020 permission was not implemented, the evidence indicates that the last known use of the upper floors was as ancillary staff accommodation for the public house. The subdivision of those floors to five self-contained flats is of a materially different character to the previous use in terms of the levels of occupancy and the potential impacts on the surrounding area. It constitutes development within the meaning of section 55 of the 1990 Act. Express planning permission has not been granted for this use, and there is no indication that it is granted permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
13. For these reasons I conclude that the development constitutes a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (f)

14. 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.
15. 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. It is clear from the requirements that the notice seeks to remedy the breach of planning control, and this is confirmed in section 4 of the notice.
16. The cessation of the unauthorised use, as set out in requirement A, is clearly necessary to remedy the breach. The dispute is over requirements B-E, which require removal of the kitchens, bathrooms, and internal partitions and the removal of all resulting materials from the land. I have had regard to the case law³ referred to by the appellant. It is well established that a notice can require the removal of works integral to, and solely for, the purpose of facilitating an unauthorised use, even if such works do not constitute development requiring planning permission.
17. The appellant suggests that these requirements are excessive given the 2020 permission. I am mindful of section 173(4)(a) of the 1990 Act which indicates that a

³ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598, *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467.

notice can seek the remedying of the breach of planning control by making the development comply with the terms of any planning permission granted in respect of the land. The appellant argues that the internal works and facilities have been carried out in accordance with the permission. However, the evidence indicates that the 2020 permission was not implemented, and it does not now appear capable of being implemented. On that basis, the 2020 permission does not represent an obvious alternative to the requirements of the notice.

18. Having regard to the *Murfitt* principle, the kitchens, bathrooms and internal partitions are integral to the use as self-contained flats and they facilitated that use. The removal of these is therefore reasonable as it will ensure the property is restored to its condition before the breach of planning control took place.
19. The appellant contends that the requirement to cease the use of the self-contained manager's flat is excessive and unreasonable given that this benefits from planning permission. However, I have found that this flat was not occupied in a manner ancillary to the public house in accordance with the 2020 permission, but was a self-contained unit. The cessation of that use therefore remains necessary. For the avoidance of doubt, the notice would not prevent the appellant from reverting to the previous lawful use once the requirements of the notice have been complied with.
20. 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.
21. The appeal on ground (f) fails.

Conclusion

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

M Ollerenshaw

INSPECTOR