Planning Inspectorate

Appeal Decision

Site visit made on 27 October 2026

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2026

Appeal Ref: APP/G5180/C/25/3360747
76 Crofton Lane, Orpington, BR5 1HD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Basant Mertia against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 14 January 2025.
- The breach of planning control as alleged in the notice is: Without the required planning permission, the material change of use of the building from a single dwellinghouse to two flats.
- The requirements of the notice are to:
  (a) Cease the use of the building as two flats.
  (b) Reinstate the interior of the property so as to be as shown on the attached drawing number 4285 - 01 ("GROUND & FIRST FLOOR PLANS") dated May 2024 and approved by the Council under planning permission reference 23/03750/FULL6
- The periods for compliance with the requirements are:
  For requirement (a): Within 6 months after this notice takes effect.
  For requirement (b): Within 8 months after this notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2) (b) of the Town and Country Planning Act 1990 (as amended).

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for Costs

2. An application for costs has been made by Mr Basant Mertia, against the Council of the London Borough of Bromley. This application is the subject of a separate decision.

The Enforcement Notice

3. The requirements of the notice at paragraph 5(b) refer to attached drawing number 4285-01 (“GROUND & FIRST FLOOR PLANS”) dated May 2024. This drawing is not attached to any copy of the notice that I have received. The failure to attach the drawing could have prevented recipients of the notice from fully understanding what they had to do to comply with its requirements, which would in turn make the notice invalid. However, as a copy of the drawing has been appended to both the appellant’s and the Council’s statements, I am satisfied that had I been minded to uphold the notice, it could have been varied, without causing injustice to either party, by either attaching the missing drawing or by removing requirement (b), given that requirement (a) would have been sufficient to remedy the alleged breach of planning control.

Procedural Matters

4. I acknowledge the correspondence submitted by third parties. However, as no appeal on ground (a) has been made, I am unable to consider the planning merits

of the allegation. As such, I shall not be providing an opinion as to whether the creation of two flats, subject to the installation of a first-floor kitchen, would comply with relevant planning policies or design standards, as requested by the appellant, as this could fetter a future planning application. I am also unable to consider matters which are not referred to in the notice or speculative concerns regarding potential future alterations to the property. The appeal on ground (b) is limited to whether the alleged breach has occurred or not.

The Appeal on ground (b)

5. To succeed on ground (b) the appellant must demonstrate that the matters alleged in the notice have not occurred. This is a legal ground, and the burden of proof is on the appellant. The relevant test is the balance of probabilities.

6. Planning permissions have previously been granted for various alterations and extensions to the property. It was evident from my visit that the internal layout of the property is in accordance with the plans approved under planning permission reference 23/03750/FULL6, albeit with the addition of two internal lockable doors located inside the front porch, which although not development, are capable of providing separate independent entrances to the ground and first floor accommodation, and facilitating the sub-division of the single dwellinghouse.

7. Section 55(3)(a) of the Town and Country Planning Act 1990 (the 1990 Act) states that "*the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building and of each part of it which is so used*". It is therefore necessary to establish whether there are two separate dwellinghouses as a matter of fact and degree. In this respect, the Court held in Gravesham[1], that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it, the facilities required for day-to-day private domestic existence.

8. I understand that the whole of the appeal property remains within the same ownership. The ground floor is currently let and appears to be occupied by the tenants as a three-bedroom flat or HMO. No tenancy agreement has been provided to explain the terms and conditions relating to the occupation of the property. Such documents are generally provided upon request, with personal details redacted where necessary.

9. At the time of my visit, the first floor was vacant, and did not contain any kitchen units, kitchen sink or cooking facilities to enable it to function as or to be occupied as a self-contained flat. The appellant has confirmed that the creation of a first floor flat had been intended and that an application may be made for such a use in the future. However, having been advised by the Council that installing a kitchen on the first floor would result in a material change of use requiring planning permission, the appellant has avoided doing so.

10. Both parties have referred me to the definition of a flat according to the 1990 Act, which is "*a separate and self-contained set of premises constructed or adapted for use as a dwelling*"; and to the definition of a dwelling according to the Housing Act 2004, which is "*a building or part of a building occupied or intended to be occupied as a separate dwelling*". I have also been advised that the Bromley Local Plan 2019, defines a self-contained unit as "*one which has a kitchen (or cooking area),*

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

bathroom and toilet inside it for the exclusive use of the household living within the unit". None of these definitions lead me to the conclusion that a dwellinghouse or flat does not need to contain the basic day to day facilities (including a kitchen/cooking facilities) necessary for private domestic existence to be used as such.

11. The Council focus heavily on the word 'intended' in the Housing Act, which is not the relevant legislation for planning matters, and on case law (Welwyn)[2]. In Welwyn, Lord Mance, questioned at paragraph 27 "*whether it is right to describe a dwelling house as having or being of no use as a dwelling house, when it has just been completed and its owner intends to occupy it within days.*" He had regard to previous case law (Impey)[3], in which it was held that "*change of use to residential development can take place before the premises are used in the ordinary and accepted sense of the word.*" The example given was "*where operations are undertaken to convert premises for residential use and they are then put on the market as being available for letting. Nobody is using those premises in the ordinary connotation of the term, because they are empty, but there has plainly, on those facts, been a change of use.*

12. However, in the case law referred to, there is no suggestion that the dwellinghouses in question could not be characterised as such due to the absence of the necessary facilities to function as such. Even a unit intended to be sold or let as a self-contained flat would have to have a toilet, bathroom and kitchen in it, before it could be characterised as a dwellinghouse applying Gravesham principles. Without all these facilities it could not be useable, classed as a completed dwelling or occupied as such. In the appeal before me, the first-floor accommodation is not capable of being occupied or used as a self-contained flat, as it does not contain the necessary facilities for cooking and is not ready to be moved into without further works being undertaken, most likely requiring an electrician, plumber and joiner. There is also no evidence that the first floor has been advertised as ready and available to buy or let as an independent flat.

13. Whilst I acknowledge that the property has been developed in a way that would enable it to be very easily adapted for use as two separate self-contained flats in the future, by adding a first-floor kitchen, the absence of a first-floor kitchen at the time the notice was issued means that the first floor was not capable of being occupied as a separate wholly independent self-contained flat. Consequently, even though the sub-division of the dwelling into two units, including an independent ground floor flat, may have resulted in a material change of use, it was not to a use as two flats as alleged in the notice. For the avoidance of doubt, I do not express any opinion as to the use (lawful or otherwise) of the first-floor accommodation.

14. The Council's example of a purpose-built block of flats not being a single dwellinghouse where only one has a kitchen and is occupied, is not at all comparable to a single dwellinghouse that is only partially occupied or that has been sub-divided into a mixed use. There is no evidence of the comments allegedly made by tenants and builders, which in any event are speculative and do not support the allegation that a material change of use to two flats has already occurred. Evidence has been submitted to demonstrate that the property has been

[2] *Welwyn Hatfield Council v Secretary of State for Communities and Local Government* [2011] UKSC 15
[3] *Impey v Secretary of State for the Environment* [1984] 47 P & CR 157

advertised both as a six-bedroom house and as a three-bedroom ground floor flat, albeit I have no specific details of how long either was advertised for, when, where or of any interest received.

15. Having considered all of the evidence before me, I conclude, on the balance of probabilities and as a matter of fact and degree, that the material change of use to two flats as alleged in the notice has not occurred.

Conclusion

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

R Bartlett

INSPECTOR