The Planning Inspectorate

Appeal Decision

Inquiry Held on 30, 31 July and 1 August 2019
Site visit made on 31 July 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary

Decision date: 24 September 2019

Appeal Ref: APP/T5150/C/18/3203606
52 Blenheim Gardens, London NW2 4NT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Abbeylord Properties Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 20 April 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises to a large House in Multiple Occupation (HMO), comprising fourteen units of accommodation and the erection of two self-contained dwellings in the rear garden of the premises.
- The requirements of the notice are STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO) and cease the use of the buildings in the rear garden as residential dwellings; STEP 2 Remove all items associated with the use of the premises as a House in Multiple Occupation (HMO) from the premises and remove all items associated with the dwellings'/residential use from the rear buildings; STEP 3 Remove bathrooms/showerrooms so that there are NO MORE than FOUR in the premises and NONE in the buildings in the rear garden of the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the notice is corrected to delete the relevant allegation and requirement, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld, as set out below in the formal decision.

Application for costs

1. At the Inquiry an application for costs was made by the Council of London Borough of Brent against Abbeylord Properties Ltd. A counter application was made by Abbeylord Properties Ltd against the Council. These applications are the subject of separate Decisions.

Preliminary Matters

2. It was apparent from the evidence and my visit that the main building is split into 17 separate lettable rooms and that there is a separate unit of accommodation within the rear garden of the property (which hereafter I refer to as the 'garden unit'), adjacent to the rear boundary. A second self-contained dwelling in the rear garden of the premises (alleged in the notice), was acknowledged, by the Council at the Inquiry, not to exist. There is no

evidence before me to suggest that this layout has changed since the notice was issued.

3. A feature common to 16 of the lettable rooms is that all are accessed by an external door to the side of the main building, with their occupiers having access to communal kitchen and bathroom areas on the ground and lower ground floors. By contrast the remaining room, despite being accessed via a side porch, is entered at the rear of the property without entering the main building itself. This unit, which hereafter I shall refer to as the 'lower ground unit', is therefore characterised by a higher degree of self-containment in comparison to the other rooms.

4. Occupiers of the 16 rooms could all potentially use the shared communal kitchen and bathroom areas, despite the availability of cooking and washing facilities in many of the rooms. It is therefore correct in my view to regard these rooms as forming part of a large HMO.

5. However it seems to me that the occupiers of the lower ground unit and garden unit would be unlikely to use these shared facilities, as this would require passing through external parts of the property, which would be far less convenient. In addition to this there would be a lack of need to do so as both units contain the necessary facilities for day to day living. Therefore, despite being within the same area of ownership and a single management and rating regime; being accessed through a communal side porch and potentially sharing laundry facilities in the porch and the rear garden area, I consider, on balance, the lower ground and garden units to be functionally separate from the alleged HMO use and that they constitute separate planning units.

6. Accordingly I find that the alleged use should properly be described as a HMO comprising 16 units of accommodation, one adjoining self-contained dwelling and the erection of a self-contained dwelling in the rear garden of the premises. Under cross-examination the appellant's professional planning witness, Mr Gibbs, despite considering that the Council should have entered into further discussion with the appellant about the breach, accepted that the description of the allegation could be amended without resulting in prejudice. I am satisfied that the description of the allegation can be changed without resulting in injustice to either of the parties.

7. The appellant does, however, raise the concern that the enforcement notice does not set out what the Council considers to be the previous lawful use from which the alleged unlawful use has changed. However I am satisfied that there is no requirement for this to be done.

8. In terms of background, a key element of the planning history of the site involved planning permission being granted for change of use to 3 self-contained flats and one-studio flat[1]. I refer to this permission later in my decision.

9. At the Inquiry, the significance of a previous enforcement notice served on the property in February 2003, in relation to an allegation of a change of use to 14 self-contained flats was discussed. However this appeal is not concerned with an allegation of 14 self-contained flats, and as such the requirements of the 2003 notice do not have a bearing on my deliberations in this case.

[1] Ref 02/3052 dated 16 May 2003

10. At the Inquiry all evidence was taken on oath.

The appeal on ground (b)

11. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. The alleged breach, as amended, is one of change of use to a large HMO and to a self-contained adjoining dwelling and the erection of a self-contained dwelling in the rear garden of the premises.

12. Whilst I note that the parties dispute the lawful use of the property, with the appellant saying that it is already a large HMO and the Council saying that there may be no lawful use, this is not material to whether the alleged unlawful use of the land has actually occurred in the context of a ground (b) appeal. There is no dispute between the parties that the property is currently being used as a large HMO and also that the lower ground and garden units both exist. From the information before me I am satisfied that the property includes these uses and that accordingly the allegation, subject to the modifications discussed above, is correct. Accordingly the appeal on ground (b) must fail.

The appeal on ground (c)

13. The ground (c) appeal is that there has not been a breach of planning control. There is no dispute between the parties that the site comprises a large HMO and the self-contained lower ground and garden units. Large HMOs are materially different from dwellinghouses. I have not been provided with any evidence to persuade me that the change of use of the property, originally a single dwellinghouse, would not have required planning permission.

14. The only factor that could safeguard the lawful status of the use would be if it was too late to enforce against it due to the passage of time. This, however, is a ground (d) argument. An appeal on ground (c) would be considered independently of the question of immunity periods, the relevant question being *'would the development have required planning permission?'.* The ground (c) appeal therefore fails.

The appeal on ground (d)

15. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellant to demonstrate that the use as a large HMO had continued for a period of not less than 10 years before the notice was issued, that is from 20 April 2008. In terms of the lower ground unit and the garden unit, which I have identified as distinct planning units, it would be necessary to demonstrate that the use of each had continued for four years respectively prior to the notice being issued.

16. The onus rests with the appellant to demonstrate, on the balance of probability, that the uses have been continuous over this period with the exception of any non-material breaks in occupation.

17. The Council dispute this ground but say that even if the development could be regarded as immune from action by applying the test of the passage of time, the appellant has taken steps to deliberately conceal the existence of the current use of the property. This in turn means that he is unable to rely on the aforementioned immunity periods. The allegation of deliberate concealment

was set out as the primary justification for the Council's enforcement notice, which I shall therefore address next.

Deliberate Concealment

18. It is the Council's case that the existence of the HMO use was deliberately concealed, such that the normal immunity period test should not apply. The test for deliberate concealment is set out in case law[2]. It would be necessary to establish that positive and deliberately misleading false statements were made by the owner which contributed to preventing the discovery of the breach of planning control.

19. The essence of the Council's claim in this regard relates to a Planning Contravention Notice (PCN) issued in September 2009 and the subsequent responses given to it. The PCN was served in the context of the aforementioned 2003 planning permission and alleged the material change of use of the premises from a single family dwellinghouse into a house of multiple occupation. The responses to questions put stated, amongst other things, that the number of rooms corresponded to the approved plans associated with the 2003 planning permission; that the property, though vacant at the time, was in residential use permitted by the 2003 planning permission. It was also indicated that this consent, implemented during 2003, meant that planning permission would not be required for the use said to exist at the time[3].

20. In terms of the direct responses given to the Council's PCN, I find they were very brief, in the context of the alleged breach of planning control and the appellant's sworn evidence at the Inquiry confirming that the HMO use of the flats occurred immediately following implementation of the planning permission. It seems to me that more information could reasonably have been expected to be given regarding the HMO use of the flats. Notwithstanding this there is no evidence before me to indicate that the responses were factually incorrect or untruthful. The same is true with regard to the letter dated 23 September 2009, from Mr Anish, which appears to be directed at distinguishing the implementation of the four flats from use as a single dwelling house. Despite the response to a later PCN in November 2017, specifically referring to the property as an HMO, this does not alter my findings in this regard.

21. In addition I give some weight to the consideration that the appellant, under the impression that he had complied with his planning permission for 4 flats, was going along with the Council's requirements, particularly considering generally positive dialogue with the licensing division of the Council, albeit a separate regime of control. Furthermore it remained open to the Council to challenge the PCN responses further by asking directly, 'was an HMO use occurring at the property?' or about the letting arrangements for individual rooms when they were last occupied. This may have served to reveal the HMO use.

22. Moving on in time, a later email from the appellant's planning consultant stated that he understood it to be agreed that the alleged breach as set out in the PCN was not occurring; that the house was laid out as four flats as granted by the 2003 permission, the lawful use of the property; that the internal

[2] *Welwyn Hatfield BC v SoSCLG [2011] 2 AC 304*
[3] See DP9 letter dated 8 October 2009 (Appendix 6 to the Council's evidence)

arrangement was almost identical to that approved and that there was no good reason to repeat the application for flats[4].

23. On its face the statement that the house was laid out as four flats, and that the alleged breach of planning control, namely the use of the dwelling as an HMO, was not understood to be occurring could be viewed as masking the true position. However it seems to me that Mr Gibbs' comments specifically sought to refute the suggestion from the Council's Senior Enforcement Planner at the time that a further planning application should be made for change of use to flats. Furthermore his sworn evidence to the Inquiry was that he saw nothing inconsistent between converting a property to four flats and using the flats as an HMO. In this context I am not persuaded of an attempt to hide the facts.

24. Therefore whilst I am not persuaded that the appellant was particularly forthcoming about the precise use of the property, his approach did not go so far as to positively mislead the Council with untruthful information. Nor is my view in this specific regard altered by the Council's suggestion that the HMO is being operated in breach of certain licensing conditions, namely the number of occupiers, and the taking of deposits from tenants.

25. In the case of *Welwyn Hatfield*, the deception of the Council involved obtaining false planning permissions designed to mislead the Council into thinking that a building was something other than what it was. This was deception designed to undermine the regular operation of the planning system. In the case of *Matilda*[5] it was held that the concept of deliberate concealment is not confined to the issue of concealment from being visible. In that case, a statement which asserted that a caravan site continued to be certified when that was not the case was found to be directly relevant.

26. I conclude, for the above reasons, that this appeal case is distinguishable from *Welwyn Hatfield* and *Matilda* and that deliberate concealment has not occurred.

27. With this finding, I therefore turn to the matter of the immunity periods.

The Immunity Periods

28. The chronology of events upon which the appellant relies to support his case that the property would be immune from enforcement action, differs between the garden unit and the main building. I shall therefore deal with these parts of the property separately.

Main building including lower ground unit

29. The appellant has provided various evidence, including a witness statement and electoral registration records, to suggest that the property has had a long history of HMO use dating back to the 1960s. However in 2003 planning permission was granted for the change of use of the property to four flats. Although the Council has said that it does not believe the 2003 permission was implemented on the basis that the physical layout of the property was found to differ from the approved plans[6], it also said it was persuaded that enforcement action would not be expedient[7], and when questioned further at the Inquiry, that there was not considered to be a material difference between the two.

[4] See email dated 24 May 2010 (Appendix 7 to the Council's evidence)
[5] *R (oao) Matilda Holdings Ltd v SSCLG [2016] EWHC 2725 (Admin)*
[6] See email dated 5 February 2010 (Appendix 7 the Council's evidence)
[7] See Council's proof of evidence – para. 2.11

30. It was the appellant's sworn evidence, when questioned at the Inquiry, that once the flats had been implemented during 2003, straight away they were each put to use as a separate HMO.

31. From the above information, it seems in summary that the building was physically laid out as four flats, in a way that did not materially vary from the 2003 planning permission, and made ready for occupation. On this basis I find, on the balance of probability, that the 2003 planning permission was implemented, even though it appears that the flats were not subsequently occupied by single households. The implementation of this permission resulted in a new chapter in the planning history of the building, at which point even if any lawful use rights had been accrued beforehand, due to the passage of time, they would then have been lost. However, the flats were then immediately put to an HMO use, in relation to which there is no suggestion that such a change would have benefitted from permitted development rights at this time.

32. I have been provided with various items of evidence indicating that the use of the main building as an HMO has progressed since the granting of the 2003 planning permission. This evidence includes statutory declarations provided by neighbouring residents; an HMO licence granted by the Council in 2014 and valuation reports commissioned at regular intervals in order to support bank lending in relation to the property. Furthermore the appellant's sworn evidence that the self-contained lower ground unit was formed in 2011 is also undisputed.

33. I have no reason to take issue with the appellant's point that the development and management of HMOs are the mainstay of his business. However for the developments to gain immunity through the passage of time, I need to be satisfied, on the balance of probability, that there have not been any significant periods when the building was not occupied, such that the residential use was interrupted and it would not then have been possible to take enforcement action, had the Council sought to, during the entire immunity period.

34. Despite the submission by the appellant of a selection of tenancy agreements over the key period, I am not satisfied that this information is sufficiently comprehensive to demonstrate that there has not been a material break in the occupation of the building. The Findermonkey (FM) data provided appears to be a record of at least some of the residents who have lived at the appeal property. No records, (agreements or FM), however are provided for 2009. Accordingly this fails to show continuity of use. Furthermore no tenancy agreement records have been provided for the early part of 2010. From the appellant's own evidence, there has been at least one occasion when no tenants were resident at the property[8]. Even if the building was renovated around this time it is unclear exactly when, for how long and whether this was the only reason for the building being vacant. This serves to underline the need for greater clarification in this area.

35. The appellant was at pains to implore the Council to sift through a box of information brought to the Inquiry, which appears to have contained recently discovered tenancy agreement records. However the onus is on the appellant

[8] See DP9 letter dated 8 October 2009 (Appendix 6 to the Council's evidence)

to submit evidence in support of its case, not on the Council to seek and find such information.

36. The Council argues that the key period would have been interrupted by the development of the adjoining lower ground unit in 2011. It says that this would have resulted in the creation of two dwellinghouses in a building previously used as a single dwellinghouse. Consequently it says that this was development, in accordance with S55(3)(a) of the Act; a new chapter in the planning history of the premises commenced, from which time the respective immunity period would be restarted. This section of the Act specifically refers to the sub-division of a single dwellinghouse. By contrast, according to the appellant, the new unit was split from a large HMO, therefore materially different to a dwellinghouse. I am not therefore persuaded that the development would have been caught by S55(3)(a).

37. The Council's evidence demonstrates that a holiday letting agreement, in relation to the property, was issued in 2013 for a period of less than 90 days[9]. It argues, in accordance with S25 of the Greater London Council (General Powers) Act 1973, that the use of temporary sleeping accommodation (for a period of less than 90 consecutive nights) would involve a material change of use of the premises and of each part thereof which is so used. Accordingly the Council claim that this also caused the immunity period to be restarted.

38. Although the Council say that it is likely there were many more such short-term agreements, the appellant has submitted evidence of agreements lasting for longer than 90 days. Nevertheless having regard to case law[10], it seems to me that the effect of S25 is unequivocal and does not allow for a fact and degree assessment. I am not therefore persuaded that the use of the premises for temporary sleeping accommodation, no matter how infrequently, would not have resulted in a material change of use of the premises, therefore causing the immunity period to be restarted.

39. However irrespective of whether my interpretation of the above matters reflect the correct position in law, it does not overcome the concern I have raised above regarding the lack of evidence to persuade me regarding continuous use, on the balance of probability.

40. Drawing the aforementioned considerations together, the appellant has not provided sufficient evidence to persuade me, on the balance of probability, that the HMO and adjoining self-contained lower ground unit have been subject to continuous residential use over the key periods, or that the use was not interrupted by a further material change of use. The appeal on ground (d) therefore fails with regard to these aspects of the development.

Garden unit

41. It is the appellant's case that the garden unit, constructed substantially from timber, was first used for residential purposes in 2001[11].

42. The appellant has provided a signed and dated affidavit from a Mr Adrian Copot. Within this document Mr Copot explains that he lived in the "garden

[9] Appendix 9 to the Council's evidence.

[10] *Fairstate Ltd v FSS & Westminster CC [2005] EWCA Civ 238*

[11] Sworn evidence given by the appellant at the Inquiry

flat" between 2007 and 2014, that the unit was self-contained and, since moving out, his brother became a tenant there and still lives there. This declaration appears to me to be sufficiently precise and unambiguous. Despite Mr Copot not attending the Inquiry to give evidence, given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give this significant weight.

43. For its part the Council has provided a succession of aerial photographs of the site from various years ranging between 2003 and 2017. Whilst it accepts that a building appears to be shown on some of the photographs, it says that there appear to have been no outbuildings between 2006 and 2013. This would be at odds with the declaration of Mr Copot. It also refers to complaints in 2013, which included residential occupation of an outbuilding at the property and a subsequent Council visit to the site which appeared to reveal no outbuilding, as evidence that the structure was removed and later re-constructed. The Council also refers to the absence of reference to a residential outbuilding within valuation reports produced in 2006 and 2010 as further evidence that the garden unit has not been in place for the requisite length of time.

44. In terms of the aerial photographs provided it seems to me that, in the cases where a rear outbuilding cannot be clearly identified, this could be explained by the structure being hidden by dense tree cover in the rear garden. Furthermore I am not persuaded that the inclusion of reference to a residential outbuilding within valuation reports would have been imperative, such that omitting reference would be strong evidence that the structure was physically absent from the site.

45. In addition it was apparent from my visit that the garden unit is located within an enclosed part of the rear of the site, substantially screened by fencing and dense tree cover and appears physically separated from a garden / patio area located immediately behind the main dwelling. Therefore, in this context, the explanation that no outbuilding was sited in the grounds of the property during an unannounced site visit by the Council in 2013, because the outbuilding was not readily visible, is in my view plausible. Furthermore references by the complainant, at that time, to a building being constructed relatively recently may have been referring to one of the more recent storage buildings.

46. I concur with the view expressed by the Council that if it was in place, the Council's Committee / delegated report from 2003 would have been expected to have referred to the garden unit as a material consideration in granting planning permission for the flat conversion. However, that the presence of the garden unit may have been overlooked cannot be ruled out and in any event its absence at this time would not conflict with the sworn evidence of Mr Copot when he refers to later occupation of the unit.

47. Despite the Council's point about the relative economic benefits of demolishing and rebuilding small residential garden units to avoid enforcement action, when drawing the above considerations together, I conclude, on the balance of probability, that the garden unit has been present on the site and continuously occupied for the requisite period of time. The ground (d) appeal therefore succeeds in relation to this specific unit and there is no need for me to go on to consider the ground (a) appeal in this regard. I shall allow the appeal insofar

as it relates to the garden unit and in doing so shall delete from the notice references to it from the allegation and the requirements.

The appeal on ground (a)

Main Issues

48. In the light of my findings on the ground (d) appeal, the main issues are the effect of the development on i) the availability of family housing in the Borough; ii) the living conditions of occupiers and iii) the living conditions of neighbours with particular regard to noise disturbance.

49. There is no need for me to consider the merits of granting planning permission in relation to the garden unit, as I have already reached the conclusion that this unit benefits from immunity from enforcement action due to the passage of time.

Reasons

Family Housing

50. The Council has set out that the supporting text to Policy DMP17 of the London Borough of Brent Development Management Policies Document 2016 (DPD) states that the conversion of existing housing into smaller dwellings provides many additional homes, but family housing to meet local needs is also a Brent priority. This strategy is reflected in the objective of maintaining family sized housing (three bedrooms or more) when property is converted to form additional dwellings. I am not persuaded that this approach is inconsistent with the National Planning Policy Framework objective of creating mixed and balanced communities.

51. I have found that the conversion of the property to four flats was lawfully implemented, by way of the 2003 permission. It is apparent from the approved physical layout associated with that permission that two of the flats would have provided at least three-bedrooms. Accordingly the loss of this accommodation to a large HMO would have been in conflict with Policy DMP17 of the DPD.

52. Policy DMP20 of the DPD sets out that non-self contained or self-contained residential accommodation with shared facilities will be supported subject to a range of criteria. The appellant has in particular referred to Policy BH7 of the Council's emerging Draft Local Plan 2018 which seeks to modify Policy DMP20, adding the criterion that over-concentration of this type of accommodation should be avoided by ensuring that no more than 4 of the 11 adjacent properties should be HMOs. Whilst there is no information before me to indicate that the development subject to the enforcement notice would be in breach of this requirement, it does not overcome the conflict with Policy DMP17.

53. Furthermore Policy DMP20 seeks a planning agreement to ensure that developments of shared accommodation meet a specific Brent or, in the case of education, a London need. I have not been provided with any compelling information as to why such a requirement should be set aside in this case.

Living Conditions of Occupiers

54. It is apparent that the sixteen units accommodated within the main building as an HMO, exceed the number for which the Council has granted a license in 2014. Although I have not been made aware of any specific space standards in relation to the HMO, I concur with the view that this is an indicator of overcrowding, given that the licence stipulated a maximum number of occupiers based on the amenities provided and the sizes of rooms available. Furthermore I have not been provided with any information to persuade me that the lower ground unit would comply with the internal space standards prescribed by government[12]. I therefore find, on the balance of probability, conflict with Policy DMP1 of the DPD and with the national standards insofar as they seek high levels of internal amenity space to be provided.

Living Conditions of Neighbours

55. The occupation of the property by residents independently of one another, is likely to give rise to a wide variation in movement patterns. Furthermore it is likely that there could be a significant number of visitors, associated with the unrelated identities of the occupiers. The pattern of occupation could potentially give rise to a large number of comings and goings to and from the property, and potentially at times when neighbouring occupiers would reasonably seek to enjoy the peace and quiet of their homes.

56. However I am mindful that in this case statutory declarations have been made by longstanding neighbouring residents on either side of the development. Despite similarity in the wording of the statements, the residents refer to the HMO use not having a detrimental impact. Accordingly I give weight to these statements and also to an apparent lack of complaints in recent years with regard to disturbance arising from general comings and goings. Drawing these considerations together, on balance, I do not find conflict with Policy DMP1 of the DPD insofar as it seeks to avoid development having unacceptable impacts in terms of noise.

Planning balance and ground (a) appeal conclusion

57. I have found conflict with the Council's development plan in terms of the loss of family housing, even though the premises would appear not to have been used as such for several years, and in terms of the standard of accommodation provided. Set against this it appears to me that the property has been operated as a large HMO without resulting in harm to the amenities of neighbouring residents. I also have no reason to doubt that the site is well located in relation to public transport and other amenities.

58. Furthermore the appellant's agent has referred to an emphasis, set out in the emerging draft London Plan, on the London-wide need for smaller units of accommodation (typically one and two bedroom properties), that such properties are generally more appropriate in accessible locations and that Councils should not set prescriptive dwelling size mix requirements. In view of the draft status of the emerging London Plan, I give this consideration limited weight. Nevertheless I am mindful of the Council's recognition within Policy DMP17 of the DPD of the value of converting properties into smaller homes,

[12] Technical housing standards – nationally described space standard March 2015

although no evidence has been presented of a shortage of HMO accommodation in the Borough.

59. There is a right under s57(4) of the Act, when an enforcement notice has been issued, to revert to the last use, provided it was a lawful use. That right does not extend to a past lawful use when there has been one or more intervening unlawful uses between it and the use alleged. I have identified such an intervening unlawful use, by way of the material change of use of the property in 2011, following the implementation of the adjoining self-contained flat (the lower ground unit). Accordingly there can be no automatic reversion to four flats as this can no longer be regarded as the lawful use of the property. Therefore, I am not persuaded that the four flat use and any permitted development rights that may, in principle, flow from this, by way of Schedule 2 Part 3 Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) carries any significant material weight in support of the retention of the use in its current form.

60. Therefore on balance, drawing the above considerations together, the factors in support of the use do not in my view outweigh the policy conflict I have identified. I therefore conclude that it would not be appropriate to grant planning permission for the HMO and self-contained flat use in this case. The ground (a) appeal fails.

The appeal on ground (g)

61. The ground (g) appeal is that the time given to comply with the requirements would be too short. I have not been provided with any documentary evidence setting out the current tenancy arrangements in place, or why it would be impractical for tenants to get rehoused within the given period. The period would also be sufficient in my view to allow for remedial works to be carried out.

62. However, in view of the above findings, particularly the current tension between the Council's development plan and the emerging London Pan, I consider that it would be appropriate for the compliance period to be increased to enable the appellant to explore with the Council, potentially through a fresh planning application, whether a family sized dwelling in combination with an HMO could be formed at the property. The ground (g) appeal therefore succeeds to this extent.

Overall Conclusion

63. For the reasons given above I conclude that the appeal should succeed in part only, and the notice is corrected to delete the relevant allegation and requirements for one part of the matter the subject of the notice, but otherwise I will uphold the notice with corrections and a variation and refuse to grant planning permission on the other part.

Formal Decision

64. It is directed that the enforcement notice be corrected as follows:-

deleting the words "Without planning permission, the material change of use of the premises to a large House in Multiple Occupation (HMO), comprising fourteen units of accommodation and the erection of two self-contained dwellings in the rear garden of the premises" in Schedule 2 and substituting

them with the words "Without planning permission, the material change of use of the premises to a large House in Multiple Occupation (HMO), comprising sixteen units of accommodation and one adjoining self-contained dwelling"; and

deleting the wording in STEPS 1 to 3 in Schedule 4 in its entirety and substituting the following wording instead:-

" STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO) and cease the use of the adjoining self-contained dwelling; STEP 2 Remove all items associated with the use of the premises as a House in Multiple Occupation (HMO) and remove all items associated with the residential use of the adjoining self-contained dwelling from the premises; STEP 3 Remove bathrooms/showerrooms so that there are NO MORE than FOUR in the premises."

65. Subject to the above corrections, the appeal on ground (d) is allowed only insofar as it relates to the self-contained dwelling which I have referred to in my decision as the 'Garden Unit', on land and premises known as 52 Blenheim Gardens, London NW2 4NT.

66. It is directed that the enforcement notice be varied as follows:-

deleting the words "6 months" in Schedule 5 and substituting the words "12 months" instead.

67. The appeal is dismissed and the enforcement notice is upheld, as corrected and varied, insofar as it relates to the change of use to a large House in Multiple Occupation (HMO), comprising sixteen units of accommodation and one adjoining self-contained dwelling on land and premises known as 52 Blenheim Gardens, London NW2 4NT and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Merrett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Kevin Leigh of Counsel

He called

Mr Michael Phillips	Appellant
Mr Gareth Rose	Abbeylord Properties employee
Mr Matthew Gibbs	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Edmund Robb of Counsel:

He called

Mr Nigel Wicks	Planning agent

Documents submitted at the Inquiry:-

1. Statement of Common Ground.
2. Council's Costs application.
3. Complaint record E/13/0764 (2013) relating to the site.
4. CBRE Valuation report, 9 July 2013.
5. Email dated 31 July 2019 from CBRE regarding visits to the site in 2013 and 2016.
6. Various Holiday Letting Agreements relating to the property.
7. Email dated 16 May 2019 from Council regarding licensing of the property.
8. Case law: *R (oao) Matilda Holdings Ltd v SSCLG [2016] EWHC 2725 (Admin); Fairstate Ltd v FSS & Westminster CC [2005] EWCA Civ 238; Fairstate Ltd v FSS & Westminster CC [2004] EWHC 1807 (Admin); Welwyn Hatfield BC v SoSCLG [2011] 2 AC 304;* Sanders & Sanders v FSS & Epping Forest DC [2004] EWHC 1194 (Admin).