The Planning Inspectorate

Appeal Decision

Inquiry held on 22-24 July 2014
Site visit made on 22 July 2014

by Jean Russell MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 September 2014

Appeal Ref: APP/X5210/C/13/2209838
Land at Bravo House, 24-32 Kilburn High Road, London, NW6 5UA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Eastlight Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN11/1014.
- The notice was issued on 25 October 2013.
- The breach of planning control as alleged in the notice is: the unauthorised change of use of the property from a HMO [house in multiple occupation] to 82 x Self-contained flats.
- The requirements of the notice are:
  1) The use of the above property as self-contained flats shall cease.
  2) Remove any associated fixtures and fittings associated with the self-contained units.
- 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), (f) and (g) of the 1990 Act as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under s177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Decision.

Preliminary Matters

1. An application for costs was made at the inquiry by Eastlight Ltd against the Council of the London Borough of Camden. This application is the subject of a separate decision.

2. All oral evidence to the inquiry was given on oath.

3. The Council conceded at the inquiry that the appeal should succeed on ground (d) and the enforcement notice should be quashed. The appellant withdrew grounds (b) and (c).[1] However, the Council did not withdraw the notice and it is still necessary for me to determine the appeal on grounds (d), (a), (f) and (g).

Planning and Enforcement History

4. The Council granted planning permission (ref: 2003/0455/P) on 1 November 2004 for 'change of use from Class B1 offices to…a "Sui generis" residential hostel (comprising 52 bedrooms and communal facilities) on basement to 4th floors…' Planning permission (ref: 2005/0291/P) was then granted on 6 April 2005 for '…a 59 bedroom residential hostel with communal facilities…'

[1] Inquiry document 21

5. Planning permission (ref: 2005/3051/P) was granted 23 December 2005 for 'revision (incorporating addition of new 5th floor extension containing 10 additional bedrooms) to planning permission approved on 6th April 2005…for…a 59 bedroom residential hostel with communal facilities on basement to fourth floors…' Thus, the December 2005 permission authorised the development of a residential hostel with 69 bedrooms in total.[2] It is agreed that the December 2005 permission was implemented – while the 2004 and April 2005 permissions were not.[3]

6. The plans subject to the December 2005 permission showed that the hostel would include a communal lounge on the ground floor and two communal kitchens on each of the ground, first, second, third, fourth and fifth floors. I shall describe these as the 13 communal rooms.[4] The 69 bedrooms and 13 communal rooms are now alleged to be in use as 82 self-contained flats. Each is provided with an en-suite shower room and kitchenette as described below.

7. The Council states that, on 18 January 2012, it served a Planning Contravention Notice (PCN) on the appellant and the Manager of Bravo House to ascertain whether there had been a change of use from residential hostel (sui generis) without planning permission.[5]

8. On 28 May 2013, the appellant applied for a Lawful Development Certificate (LDC) under s191(1)(a) of the 1990 Act, in order to ascertain that the existing use of the building 'as 82 self-contained studios' (C3 residential use) was lawful. I refer to this as the LDC application and it was refused by the Council.

9. The Council issued an enforcement notice on 5 July 2013 in respect of Bravo House alleging an unauthorised change of use from a HMO to 82 self-contained flats. This notice was withdrawn and the appealed notice was issued on 25 October 2013.[6]

The Enforcement Notice

10. The appellant argued that the notice is a nullity – without legal effect. However, there is no crucial information missing from the face of the notice and its contents are generally in accordance with the law. It is not null but, to do justice to the appellant, I shall consider whether the notice is invalid or incapable of being corrected under s176(1) of the 1990 Act without causing injustice.

11. The appellant suggests that there is no explanation as to why the notice alleges a change of use from a HMO. Had ground (c) been pursued, I would have had to ascertain what was authorised by the December 2005 permission, in order to determine whether a material change of use occurred in breach of planning control. However, the validity of the notice does not depend upon whether the lawful use was as a HMO, because it is not necessary for a notice to state what a change of use is *from*. Given this and the withdrawal of ground (c), I shall correct the notice to simply allege the making of a material change of use to 82 self-contained flats.[7]

[2] The December 2005 was granted subject to a different occupancy condition to those imposed on the 2004 and April 2005 permissions, but this is not relevant to the ground (d) appeal. The permission was also granted subject to a s106 planning agreement dated 23 December 2005, which included clauses essentially restricting the use to a hostel and for no purpose within Class C of the *Town and Country Planning (Use Classes) Order 1987* (UCO) as amended, with no part being used as separate, independent, self-contained dwelling units or being sold, leased, licensed or disposed of as a separate unit of use or occupation. Any breach of the s106 is not within my remit.
[3] There is also a separate coffee shop on the ground floor of the building but this is not relevant to the appeal.
[4] Other communal facilities in the building, which remain in place, are a basement car park with cycle parking spaces, and an office, laundry room and WC on the ground floor.
[5] Document 4
[6] S171B(4)(b) enables a LPA to take further enforcement action in respect of any breach of planning control if, during a four year period ending with that action, they had purported to take action in relation to that breach.
[7] It is necessary to insert the word 'material' before 'change of use' in the allegation since it is a material change of use that constitutes development requiring planning permission.

12. The appellant also raised concerns about the requirements of the notice. However, there is no doubt as to the meaning or purpose of step (1) – it seeks cessation of the unauthorised use. Step (2) does not state which fixtures and fittings should be removed, but it was held in *Ormston v Horsham RDC* [1965] 17 P and CR that the developer is best placed to know the state of the property before the development is carried out and it is enough for a notice to require that land is restored to its previous use if the owner knew what that was.

13. I find that principle relevant because the appellant knows that kitchenettes and en-suite shower rooms were installed in the 13 communal rooms in order that they could be let out and used as studio flats. Step (2) is worded so as to provide the recipient of the notice with sufficient certainty as to what he needs to do.[8] The requirements are not so imprecise as to render the notice invalid.[9]

The Appeal on Ground (d)

14. This ground of appeal is that, at the date the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The onus of proof is on the appellant and the standard of proof is 'the balance of probability'. If there is no evidence to contradict or make the appellant's version of events less than probable and the appellant's evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.

15. S171B(2) provides that where the breach of planning control consists of a change of use to a single dwellinghouse, no enforcement action may be taken after the end of four years beginning with the date of the breach. The period for immunity should be taken from when the Council first purported to enforce, and so the material date is 5 July 2009, four years after the date of issue of the first notice.

16. Considering the date of the breach in the case of a material change of use requires a comparison of the use as it existed on the date of the notice and four years before. In the case of a change of use to a single dwellinghouse, it is necessary to look at two key factors, neither of which is decisive: when the premises were capable of providing viable facilities for living and when the use commenced.[10]

17. The appellant's claims are that the December 2005 permission was implemented by June 2008; the 69 bedrooms were let between June and November 2008 and each of them contained an en-suite shower room and kitchenette with a fitted microwave and fridge; the 13 communal rooms were not used because the tenants had private facilities;[11] the decision to convert the communal rooms to studio flats was made by the end of 2008; and the works were completed and the flats were occupied by spring 2009.

18. The appellant has argued that the original 69 bedrooms were immune from enforcement action by the material date because they provided facilities for day-to-day living from June 2008 and so were always self-contained even when tenants had access to communal facilities.[12] It is clear that the 69 bedrooms were let on

[8] The Council suggested at the inquiry that the notice could be corrected essentially to require reinstatement as a hostel or HMO. However, a notice cannot require a revival of a former use. It may require restoration of the land to its previous condition, but step (2) did not go that far and correcting the notice to that end would have made it more onerous and caused injustice.
[9] That said, if I had upheld the notice, I would have made minor corrections to the requirements as discussed at the inquiry. Step (1) would have been clearer if written in an active rather than passive voice – 'Cease the use…' rather than 'the use….shall cease'. Step (2) would have been more precise if it referred to fixtures and fittings 'installed to facilitate', rather than 'associated' with the unauthorised change of use.
[10] *Impey v SSE & Lake District SPB* [1981] JPL 363; *Backer v SSE* [1983] JPL 167
[11] The communal kitchens contained primary cooking facilities, including ovens and hobs, which were not installed in the bedrooms
[12] Where a building is subdivided into self-contained flats, each has the benefit of the four year rule.

the timescale described above. However, the appellant does not dispute that the December 2005 permission was implemented for use of the property as a hostel. Since the appeal on ground (c) is withdrawn, it is not for me to consider the character of the use when there were 69 bedrooms with communal facilities.

19. The correct approach therefore, in respect of this ground (d) appeal, is for me to ascertain the date of the breach as alleged – when the material change of use to *82* flats occurred. I shall consider when works were undertaken to remove the communal facilities from and install viable facilities for living in the 13 rooms, and when private residential use commenced in the 13 rooms, so that all 82 units in the property were in use as functionally separate, self-contained dwellings.[13]

20. Once a material change has occurred in breach of planning control, the use must continue substantially uninterrupted, such that enforcement action could have been taken at any time, before it can accrue immunity.[14] There is no dispute that the 82 flats have been let without substantial interruption since the date of the breach.

The PCN and Gerald Eve Note

21. The appellant company – the owner of Bravo House – claims that it did not receive the PCN alleged to have been served on 18 January 2012. Mr Eden, director of the management company, told the inquiry that he never saw the PCN; he did not receive it directly or via his Facilities Manager; he was not aware of it until the LDC application was refused. The Council has not kept a signed and dated copy of the PCN; the date only appears on the unsigned cover letter. The Council has not kept any record of posting the PCN and there is no witness statement of service.

22. The appellant's then agent, Gerald Eve LLP, and Council officers visited the site on 9 February 2012. On 10 February, the agent sent a letter and note to the Council 'to explain the use of Bravo House…and to provide information on the conversion of 12 communal kitchens and a communal lounge into single person bedsits'. The Council considered the note to be a PCN response. However, the letter and note do not refer to the PCN or address all of the Council's questions. The author of the note wrote to the appellant on 30 May 2014 to confirm that 'we…were not aware of a PCN ever having been issued'.[15]

23. Thus, 'the Gerald Eve note' cannot considered as a formal response to any PCN and this reduces its weight particularly in relation to the sworn evidence before me. However, that finding alone is not sufficient to make the appellant's case. Whether or not the PCN was served, representatives of the appellant responded to other correspondence in January 2012 and agreed to the Council making a site visit to investigate a possible breach of planning control. Gerald Eve LLP was instructed to handle the matter.[16] Whether or not it was a PCN response, it is understandable that the Council took the note as setting out the appellant's then version of events.

24. The Gerald Eve note stated that the decision to convert the communal rooms was made some nine months after June 2008; tenants were notified; three kitchens were converted to bedsits which were occupied from June/July 2009; the situation was monitored; tenants made no complaints as to the loss of the kitchens; the remaining kitchens and communal lounge remained unused; and the remaining

[13] I am satisfied that the 82 flats can be described as self-contained dwellings because they afford basic facilities required for day-to-day domestic existence. It is not for me to consider, in the context of this ground (d) appeal, whether the loss of the communal rooms has resulted in the accommodation failing to meet amenity standards.
[14] *Thurrock BC v SSETR and Holding* (CA) [2002] JPL 1278
[15] Appendix GAM4b) to Mr Murdoch's proof of evidence; Appendix GAM3 contains an email from the Council dated 30 March 2012, which refers to Gerald Eve's 'comments' and 'statement' but not PCN response.
[16] Document 18; Mr Eden told the inquiry that he recalled a note being left on the site by the Council requesting that contact be made with an officer.

communal rooms were converted, three to four at a time, so that 13 additional bedsits or 82 in total had been 'created by the start of 2010'.

25. Thus, the Gerald Eve note suggests that the date of the breach was after 5 July 2009. However, the problems for the Council are not just the status of the note – whether it was a response to any PCN – but also that it is contradicted by other evidence. The Council suggested at the inquiry that a site visit by an independent planning professional during the material period would normally be determinative. It is true that the alleged use had not acquired immunity by February 2012, but it also appears that the author of the note was fallible.

26. Indeed, in his 30 May 2014 letter, the author of the note states that because it was 'based on information provided verbally by The Bravo Group on behalf of Eastlight Ltd at the time of the site visit…[and] Gerald Eve LLP had no direct knowledge of or involvement with Bravo House until 2012…discrepancies may have arisen…we were informed…that the converted kitchens were occupied by residents by June/July 2009 [but] we thought that only three kitchens had been converted by this time.' The author does not say that the note was erroneous, but that it could have been.

27. I heard discussion as to who gave Gerald Eve the 'verbal' information set out in the note. Mr Eden told the inquiry that he attended the site visit but simply showed the Council officers and planning agent around; he was 'silent in the meeting'. He could not remember informing the consultant about how the building operated. Mr Eden was the only representative of Bravo House at the site visit. He knew when the communal rooms were converted and the appellant now relies upon his first hand knowledge. Even so, there is nothing to show that Mr Eden advised Gerald Eve. The note does not refer to him. The Council did not submit any first hand account of the site visit.

28. The credibility of the Gerald Eve note is also undermined by likely factual errors. Mr Eden and Mr Nawaz told the inquiry that there was no consultation of tenants prior to the work to convert the kitchens. The note refers to the communal lounge being converted after June/July 2009, but that room is now Flat G06 and there is evidence, as set out below, that this flat was then occupied.

29. Moreover, the conclusion of the note was that the conversion of the communal rooms to 'bedsits has not resulted in any material change in impacts from the development and all bedsit accommodation and related facilities within Bravo House is operated as (sui generis) hostel accommodation, fully in accordance with the relevant planning permissions…' Yet the note post-dated the alleged change of use; the Council deduced from it that the breach occurred at the start of 2010.

The Use of the Building and Assured Shorthold Tenancies

30. Turning to the actual use of Bravo House, the evidence that tenants chose not to utilise the communal rooms is limited.[17] By the appellant's timescale, the decision to convert the rooms was taken when the 69 bedrooms had scarcely all been let. However, the appellant has submitted a schedule of the Assured Shorthold Tenancies (ASTs) for Bravo House and copies of the tenancy agreements for the 13 flats that were the communal rooms.[18] These rooms are now Flats G04, G05, G06, G07, 108, 116, 208, 216, 308, 316, 408, 506 and 508.[19] For all except Flats G06

[17] Mr Eden told the inquiry that he noticed that the rooms were unused 'from day one' because they remained so clean, but he did not supervise the building at night and there is no first hand evidence from any on-site worker employed before July 2009. As tenants, Mr Nawaz and Mr Sewerniak did not use or see any use of the communal facilities, but they admitted at the inquiry that they could not have known of all activity in the kitchens. The Gerald Eve note states that the rooms were unused but on the basis of verbal information provided by an unknown party.
[18] Appendix RE5 to Mr Eden's proof of evidence; Document 10
[19] As shown by comparing the December 2005 and LDC plans

and 116, the first tenancy agreement was made prior to the material date of 5 July 2009 – between 1 January and 31 March 2009.

31. In relation to Flats G05, G07, 108, 208, 216, 316, 408, 506 and 508, the agreements were not witnessed and the signature pages were undated. However, the tenants' initials appear on all other pages, including page 1 which states 'THIS TENANCY AGREEMENT is made today [date given]'. The tenancy agreements for Flats G04 and 308 are not even initialled, but the Council accepts that the ASTs can be taken at face value.

32. Moreover, the appellant has submitted copies of invoices to tenants for their electricity bills. I agree with the Council that the invoices carry little weight on their own, since they were not produced by the electricity company and there is not a full set. However, the names on and periods of the invoices for Flats G04 and 308 – and G05, 108, 408, 506 and 508 – correspond to the ASTs. The invoices indicate that tenants were charged for electricity usage for periods that included or were prior to the material date.

33. The first tenancy agreements for Flats G06 and 116 are dated 6 June 2011 and 1 November 2009 respectively. The appellant has a straightforward explanation as to why there were no ASTs for those flats at the material date. Flat G06 was initially occupied by the then Facilities Manager, Ms Sramova. She did not give evidence for the appeal, but her successor did. Mr Kassa told the inquiry that he arranged to meet Ms Sramova at Bravo House in 'early' July 2009 when she was due to leave her post. They had lunch in her room, which was Flat G06.

34. Mr Kassa began to shadow Ms Sramova from 13 July, from when they would again eat in her room. When Mr Kassa replaced Ms Sramova on 29 July, he moved into Flat G06. Mr Kassa did not give a specific date as to when he first saw Flat G06, except that it was the week before 13 July 2009. However, he saw Ms Sramova's 'things' in the room and Mr Eden told the inquiry that she moved into Flat G06 in February 2009. It is likely that this room was occupied by the material date.

35. Flat 116 was also initially occupied by an employee of Bravo Management Ltd: the site caretaker, Mr Blazinski. The appellant submitted a copy of Mr Blazinski's contract which stated that his employment commenced on 24 February 2009 and he would 'have a suitable furnished flat (Flat 116) on-site'. The contract was signed and dated by Mr Blazinski and Ms Sramova on 24 February 2009.

36. The Council put it to the inquiry that the ASTs do not show whether rooms were rented out within a HMO or as self-contained flats – but that could only be right in respect of the original 69 bedrooms. The evidence of occupation of the other 13 rooms indicates that they were no longer in communal use and so, on the Council's interpretation, there had been a material change of use of the hostel or HMO. The ASTs and the other evidence described points to this change of use occurring before the material date and the date set out in the Gerald Eve note.

Other Evidence from the Appellant

37. Mr Eden has had management responsibility for Bravo House since June 2008. In his statutory declaration submitted with the LDC application, Mr Eden stated that the appellant decided to convert the unused communal rooms at the end of 2008 and he was responsible for overseeing the work – removal of the kitchen facilities and installation of the kitchenettes and en-suite bathrooms. The works began in January 2009 and all of the flats were occupied by March 2009.

38. At the inquiry, Mr Eden thought that works might have begun in December 2008 rather than January 2009. Given the fallibility of human memory, this is not a

significant change to the evidence. The tenancy agreement for Flat G04 is dated 1 January 2009, soon after or even before Mr Eden said that works commenced. He explained that demand for the flats was high and the tenancy might have been signed before the flat was ready. I accept that the prospective occupier may have wished to secure the accommodation in advance.

39. I find it surprising that Mr Eden did not submit any documents to back his claims about the timescale of the conversion works, such as invoices from contractors or receipts for the kitchenettes and bathrooms put into the former communal rooms. However, an appellant's evidence does not need independent corroboration in order to be accepted – and I have seen a sworn declaration from Mr Nejad, who installed the swipe card access and fire alarm systems in the building.

40. Mr Nejad stated that he visited Bravo House in 2007, when he saw the kitchens and lounge. He visited again 'early in 2009' when he saw that the communal rooms 'had been converted to studio flats'. Mr Nejad submitted a copy of an invoice stating that 82 heat detectors were installed between January and March 2009. Notwithstanding that the original hostel was not completed by 2007, and the invoice does not refer to 82 flats, Mr Nejad's evidence generally supports the claim that the change of use took place before July 2009.

41. Mr Nawaz was a tenant of Bravo House between July 2008 and March 2013. Mr Sewerniak was a tenant from December 2008 until May 2013; he has rented another flat in the building since October 2013.[20] In their statutory declarations, Mr Nawaz and Mr Sewerniak both stated that there were communal kitchens when they moved into the building; they did not use the facilities; they were unsurprised that the kitchens were converted; the conversion works took place at the beginning of 2009; and they were not aware of any works after spring that year.

42. Mr Sewerniak gave little further evidence to corroborate the latter claims. In his proof of evidence, he described working long hours and returning to his main home at weekends. He told the inquiry that he was not aware of the works to convert the communal rooms; he presumed that they occurred when he was out. He could not recall when he realised that the kitchens were now flats and he admitted that this was something he had been informed about, perhaps when his declaration was prepared in May 2013. Mr Sewerniak's evidence does not undermine, but it is neither of much assistance to the appellant's case.

43. Mr Nawaz also told the inquiry that he was busy with his work in 2009 and that he lived privately. He did not see any conversion works or new tenants moving into the former kitchens on his floor. However, he did recall noticing the loss of the facilities and he associates this with the time that two of his colleagues moved out of Bravo House. The ASTs confirm that those individuals moved out on 24 and 28 February 2009, and the former kitchens on their floor were let on 10 February and 28 March. I find Mr Nawaz' sworn evidence to be plausible.

44. As noted above, Mr Kassa was appointed as Facilities Manager in July 2009. He told the inquiry that he did not see all the rooms in Bravo House when he first visited; he was 'shown around' but only viewed Flats G06 and 110 with the latter (not a former kitchen) being the only one then vacant. However, he understood from Ms Sramova that there were 82 flats and he also told the inquiry there was no change to the facilities after he moved in. He did not see any contractors or builders. His sworn evidence carries significant weight in favour of the appeal.

[20] Mr Sewerniak's main home is in Wiltshire but he rents a flat in Bravo House for use when he works in London

45. Mr Groom moved into Bravo House in August 2011 and succeeded Mr Kassa as Facilities Manager in February 2012. When Mr Groom was appointed, he learned that there were 82 self-contained flats and no communal facilities. He told the inquiry that there were no building alterations, save for maintenance, or changes to the facilities when he was there. Since there is no dispute that the alleged change of use had occurred by February 2012, Mr Groom's evidence is of little assistance to either party.

46. However, statutory declarations from three letting agents add to the appellant's case. Messrs Galer, Bakth and Panayioutou inspected the property in February or March 2009 and they were 'able to see that it was laid out to provide 82 self-contained studios…there were no communal facilities'.

Other Evidence from the Council

47. A HMO licence was granted in respect of Bravo House on 1 July 2009.[21] The appellant made the application on 29 January 2008 and the form stated that there would be 69 separate letting units or habitable rooms and 12 shared kitchens. However, I heard that the licence inspection was made on 28 November 2008, when the 13 communal rooms were undoubtedly still intact. It may be that the lawful use of the building was as a HMO (or hostel) on 1 July 2009, but the licence does not show the actual use on that date.

48. The Council has produced a webpage downloaded from bravolifestyle.co.uk on 17 January 2012, which stated that Bravo House 'comprises of 69…long term studios'. I heard that the appellant simply failed to update the website and that is credible, if only because there were actually 82 flats by 17 January 2012. On that date, the Council was about to serve the putative PCN. Moreover, the webpage describes the retained communal facilities in Bravo House – such as the concierge service and laundry room – but it does not refer to any kitchens or lounge. It does not show that the breach had not occurred by the material date.

49. The 13 converted flats were not registered for Council Tax purposes until 2012 or 2013. The terms of the tenancy agreements were that Council Tax was excluded from the rent, but tenants' details would be passed to the Council who would then invoice the tenants directly. I heard no convincing explanation for the 'oversight' of the building managers in providing the Council with details of the 69 but not 13 flats. Again, however, it is known that the breach occurred before 2012 and so it cannot have coincided with the Council Tax registration. This evidence does not make the case for or against the appeal.

50. The Council responded to the Gerald Eve note by asking the appellant to remedy the breach. In an email dated 23 May 2012, the appellant's then agent confirmed that there are no primary cooking facilities for tenants and six rooms would be reinstated as communal kitchens, with the timing of the works to be confirmed, given that the rooms were let on six month leases.[22] In fact, no works were undertaken for over a year and then the appellant made the LDC application. The Council originally argued that the appellant agreed to re-install the kitchens as a tactic to delay enforcement action until it could be argued that the change of use would be immune. I could not dismiss the appeal on that basis.

51. It is undisputed that works were delayed in part because an Environmental Health officer (EHO) was involved in negotiations as to what rooms could be converted

[21] Although issued by Environmental Health, a HMO licence is capable of being a relevant document since such licensing is mandatory under the Housing Act 2004 which contains the definition of a HMO cited in the UCO.
[22] Appendices HP8 and HP7 to Miss Parker's proof of evidence

and what standards had to be met.[23] On 15 May 2013, the EHO wrote to the appellant's agent stating that 'the primary issue is what will be acceptable with planning – and whether they will accept self-containment. Once this issue is determined, we can get into more detail about what will be required…I suggest we meet again after a decision has been reached with planning…'[24]

52. By 15 May, it could be said that the appellant knew the Council would not 'accept self-containment'. In an email dated 8 April 2013, the Council sought confirmation that kitchens would be re-installed; when tenancies of the rooms were due to end; and what timescale would be expected for reinstatement. The email stated that the development is in breach of the [December 2005] permission and enforcement action would be pursued if the matter was not resolved in a prompt timeframe. On 16 May 2013, the Council wrote again to the appellant's agent, asking for confirmation of the intended course of action by 30 May.[25]

53. However, there is no evidence that the appellant deliberately delayed undertaking remedial works during the entire period of negotiation with the Council. There is no evidence that the appellant sought to deceive the Council with the Gerald Eve note; it rather appears that the note was simply wrong. The appellant was entitled to pursue the course of action that it chose, to apply for an LDC in order to obtain a determination of lawfulness.

Conclusion

54. I have had regard to all other matters raised. The Council made fatal errors in this case. They failed to record that the PCN was served or to ascertain whether the Gerald Eve note represented a formal response. They failed to verify the findings of fact in the note, although they recognised that it pointed to a breach of planning control. After failing to corroborate the note or establish its status, the Council did not enforce against the breach for sufficiently long that the unauthorised use came to be immune under the four year rule.

55. As indicated above, some of the appellant's witnesses were ambiguous, and their evidence is contradicted by the Gerald Eve note. I have also seen few details of the works undertaken to remove the communal facilities and create 13 flats with viable facilities for living. However, there is sworn evidence that the works took place between December 2008 or January 2009 and March 2009. The claim that the use commenced between January and March 2009 is supported by documents – the ASTs, electricity invoices and Mr Blazinski's contract of employment – and sworn evidence of individuals with personal knowledge of the property prior to and during July 2009. This evidence in total carries more weight than the Gerald Eve note and other evidence of the Council.

56. I cannot speculate as to whether the Council's decision to refuse the May 2013 LDC application was well-founded.[26] However, on the evidence before me, I conclude that the alleged material change of use had occurred by 5 July 2009 on the balance of probabilities. By the date of the first notice, no enforcement action could be taken. The appeal on ground (d) succeeds and the notice is quashed. It follows that the appeals on grounds (a), (f) or (g) do not fall to be considered.

57. In reaching this conclusion, I have had regard to s177(1)(c) of the 1990 Act, which gives me the discretion to issue a LDC under s191 to determine that the existing

[23] Appendices HP8, HP9 and HP10 to Miss Parker's proof of evidence
[24] Document 19
[25] Appendix HP11 to Miss Parker's proof of evidence
[26] That decision was not appealed and one of the appellant's key witnesses, Mr Kassa, did not see the building until July 2009.

use of the land was lawful on the date that the appeal was made.[27] The appellant alluded to this power but it should only be exercised in exceptional circumstances.

58. The fee charged for consideration of a deemed planning application is double that for a planning application made directly to a local planning authority under s70 of the 1990 Act. If an appeal succeeds on ground (d) where ground (a) is also pleaded and the fee is paid – as in this case – the monies will be refunded, leaving the appellant free to apply direct to the Council for a LDC, paying only a single fee. However, if an LDC is issued in respect of the original appeal, the double fee will be appropriated.[28] The appellant has not suggested that I should disadvantage them and it would be unnecessary to do so when success on ground (d) is sufficient for the alleged development to be deemed immune from enforcement action.

DECISION

59. The enforcement notice is corrected by deleting the text of paragraph 3 in its entirety and substituting: '*without planning permission, the making of a material change of use of the property to 82 self-contained flats*'. Subject to this correction, the appeal is allowed and the enforcement notice is quashed.

Jean Russell

INSPECTOR

[27] This power applies in respect of grounds (c) or (d); advice as to its use was set out in *Circular 10/97: Enforcing Planning Control*, which is now replaced by the online Planning Practice Guidance (PPG).
[28] Regulation 10(12) of the *Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989*

APPEARANCES

FOR THE APPELLANT:

Saira Kabir Sheikh QC	Instructed by Christine Hereward, Howard Kennedy FSI
She called	
Maajid Nawaz	Former tenant of Bravo House
Peter Kassa	Former Facilities Manager and occupier of Bravo House
Robert Groom	Former Facilities Manager of Bravo House
Ryszard Sewerniak	Current tenant of Bravo House
Roy Eden	Director of Bravo Management (UK) Ltd
Graham Murdoch BSc (Hons) MRTPI	The appellant's agent, Murdoch Associates

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson of Counsel	Instructed by Andrew Maugham, Head of Law, Council of the London Borough of Camden
He called	
Hannah Parker BA MPlan	Principal Planner, Planning Appeals and Enforcement, Council of the London Borough of Camden

DOCUMENTS

1 The Council's letter of notification regarding the inquiry
2 The enforcement notice issued on 25 October 2013
3 The enforcement notice issued on 5 July 2013
4 Planning Contravention Notice (undated and unsigned), with cover letters to the Company Secretary, Eastlight Ltd and the Manager of Bravo House (dated 18 January 2012 but unsigned)
5 The planning application forms and decision notice pertaining to planning permission ref: 2003/0455/P granted 1 November 2004
6 The planning application forms and decision notice pertaining to planning permission ref: 2005/0291/P granted 6 April 2005
7 The planning application forms and decision notice pertaining to planning permission ref: 2005/3051/P granted 23 December 2005
8 Opening submissions on behalf of the appellant
9 Email correspondence between Elizabeth Beaumont (for the Council) and Mr Murdoch between 9 and 25 July 2013
10 Assured Shorthold Tenancy agreements for the 13 communal rooms from date of first letting to July 2013
11 *Camden Core Strategy 2010-2025* – cover sheet and Policies CS11 and CS19
12 *Camden Development Policies 2010-2025* – cover sheet and Policy DP3
13 *Camden Planning Guidance 2: Housing*
14 Statement of Particulars of Employment for Hubert Blazinski (Appendix RE2 to Mr Eden's proof of evidence)
15 Spreadsheet of rents paid in the appeal flats
16 Copies of invoices to tenants for electricity costs and cover note
17 Notes of the Inspector's opening remarks
18 Email correspondence between Ms Beaumont, employees of 'Bravo Investment' and a former agent for the appellant, between 17 January and 9 February 2012, regarding a site visit to investigate an unauthorised change of use

19 Letter dated 15 May 2013 from Janet Wade (Environmental Health officer) to Charles Moss (on behalf of the appellant)
20 Email from Christine Hereward, signed on behalf of the Council and the appellant, confirming the Council's concession that the notice should be quashed and the appeal on ground (d) should succeed, and that the appellant withdraws grounds (b) and (c).

PLANS

A Plans subject to the 2004 permission
B Plans subject to the April 2005 permission
C Plans subject to the December 2005 permission
D Plans submitted with the May 2013 LDC application – the building as it is now