

Case Name: *Welwyn Hatfield Borough Council v Secretary of State for Levelling Up, Housing And Communities & Anor* [2022] EWHC 3175 (Admin) (12 December 2022)

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Commentary: This was an appeal by Welywn Hatfield Borough Council ("the Council") under section 289 of the Town and Country Planning Act 1990 from the decision of an inspector to allow an appeal against an enforcement notice ("EN"). The case concerned a two storey, detached house with a rear garden and forecourt parking area.

During a period of four years preceding the issue of the EN, the house had been converted into four self-contained bedsitting rooms with their own kitchen and bathroom facilities plus two further bedrooms (not self-contained) and a bathroom and kitchen accessible to all occupiers. The rear garden and forecourt parking area were also available for use by all occupiers of the house. The Council issued an EN on the basis that these arrangements had resulted in the sub-division of the house into five self-contained flats, in breach of planning control.

The owner appealed the EN under ground (b) on the basis that the use had changed to four self-contained units and two bedrooms not to five flats as alleged. The inspector allowed the appeal and identified that the breach of planning control was best described as a change of use to an HMO within Use Class C4. The inspector decided that he could not correct the EN without causing injustice and quashed it.

The Council's appeal under section 289 was rejected. The issue that Timothy Mould KC (sitting as Deputy High Court Judge) was asked to resolve was whether the inspector had erred in law in concluding that, following the internal conversion works, the house remained in use as a single dwellinghouse in multiple occupation and had not been subdivided to form multiple dwellinghouses. Timothy Mould KC followed the approach in *Moore v Secretary of State for the Environment* (1998) 77 P&CR 114. Whether the four self-contained units were being used as single dwellinghouses was a question of fact and degree for the inspector to determine on the basis of the evidence before him, including what he observed during his site visit. The inspector was entitled to conclude as he did, given the existence of the two bedrooms that were not self-contained and communal facilities available for use by all occupiers.

Case summary prepared by Nikita Sellers