
Appeal Decision

Site visit made on 27 September 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 12 October 2016

Appeal Ref: APP/G5750/C/16/3146825

264-266 Romford Road, Forest Gate, London E7 9HZ

- 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 Mr Kamran Butt against an enforcement notice issued by the Council of the London Borough of Newham.
 - The Council's reference is 14/02130/ENFC.
 - The notice was issued on 19 February 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use to a mixed use comprised of a brothel/massage parlour and a house in multiple occupation (HMO).
 - The requirements of the notice are: 1) Cease use of the property as a mixed use of brothel/massage parlour; 2) Cease use of the property as a house in multiple occupation; 3) Remove from the property all fixtures and fittings that solely facilitate the use as a mixed use of brothel/massage parlour; 4) Remove from the property all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds; and 5) Remove from the site all debris arising from compliance with steps 1, 2, 3 and 4.
 - The period for compliance with the requirements is one month from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) 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.

Procedural Matter

2. A concurrent appeal is also being considered by the Planning Inspectorate regarding the property. That appeal relates to the Council's decision to refuse to grant planning permission in relation to the proposed change of use and extension of the building to form a hotel with 35 rooms and a restaurant and bar¹. The issues in relation to that appeal are distinct from, and not related to, those at issue in the appeal before me. Consequently, that appeal will be determined independently by another Inspector and my decision makes no comment on the merits of that appeal.

¹ LPA reference: 15/01336/FUL & Appeal reference: APP/G5750/A/16/3145498

The Appeal on Ground (b)

3. An appeal on ground (b) is made on the basis that the breach of planning control, as alleged in the enforcement notice, has not occurred as a matter of fact. When submitting an appeal on ground (b), the onus of proof, on the balance of probability, falls on the appellant to demonstrate that the alleged breach did not take place.
4. Much of the appellant's submission refers to how the property has been used since the enforcement notice was served on 19 February 2016. For example, he notes that there was no evidence of use as a brothel on follow up visits made by the Council on 09 and 23 March 2016. Similarly, I found no evidence of use as a brothel on the day of my accompanied site visit. However, the relevant date in relation to a ground (b) appeal is the date of service of the enforcement notice. The question is whether the alleged breach had taken place at the time the notice was served. The fact that a use may have ceased following the service of a notice would not invalidate the notice or lead to success on ground (b).
5. With regard to the use of two rooms as a brothel, the Council have provided details of their investigation in the lead up to serving the notice, including their enforcement case summary log. A visit was undertaken on 20 January and officers noted that two of the double rooms on the first floor appeared to be laid out as a brothel. A follow up visit on 03 February, described as a 'Late Night Operation Miami visit' in the Council's log, was made along with the Police. The Council officer's notes describes that rooms numbered 1 and 2 on the first floor were in use as a brothel and that two Romanian girls were present along with a man named as 'Peter'. According to the officer's notes Peter formally ran a brothel at another property. The rooms were fitted out with double beds with sheets but no duvets, heaters, oils, baby wipes and lamps on the floor. No personal belongings were found in the rooms.
6. In addition to the officer's case log, a witness statement has been provided from PC Cookson who attended the visit on 03 February along with the Council officer and his colleagues PC Scott and PS Atkins. The statement describes that the two rooms contained mattresses and that they were equipped with condoms, baby wipes and lubricants. The statement gives details of the two females who were present along with the man known as 'Peter'. Whilst the full names are set out within the witness statement I have not repeated them within my decision. According to PC Cookson, Peter appeared to be acting as a pimp/ minder.
7. Photographs of the rooms in question, taken on 20 January 2016, appear to verify how the rooms were laid out and accord with the details provided by the Council and the witness statement of PC Cookson. The appellant maintains that the witness statement and the details provided by the Council cannot confirm use as a brothel because 'there is no visual evidence recorded'. I am unclear if that statement is intended to imply that no visual evidence of sexual activity taking place has been provided. If that is the intention, I consider that it would be difficult for the Council to obtain such evidence; once alerted to the presence of council officers or police officers in the building anyone engaged in such acts would be highly unlikely to continue.
8. Moreover, as stated above, the burden of proof in planning enforcement matters is judged on the balance of probability. That is a different test than

may be required in a criminal case. The evidence before me, including the way in which the rooms were laid out, the facilities within them, the details of the individuals present and the description of their behaviour at the time of the visit on 03 February, all suggest that the two rooms at first floor level were in use as a brothel at the time. On the balance of probabilities, I conclude that part of the premises was in use for that purpose. Considering that the burden of proof rests with the appellant, no evidence has been put forward that would lead me to doubt the evidence provided by the Council and the Police.

9. The appellant does not appear to dispute that the property is in use as a House in Multiple Occupation (HMO). He acknowledges that the former use as a public house had ceased and that a number of rooms had been let at the time the notice was served. Occupiers of those rooms would appear to have had access to the shared kitchen at first floor level and shared toilet and bathroom facilities. The photographs taken by the Council at their site visit on 20 January 2016 show that a number of rooms contained beds, sofas, televisions and other electrical equipment, clothes and other personal effects. Those included the ground floor front and rear rooms, the outbuilding to the rear, the first floor middle room, the first floor front right, and the loft floor rear right room. The shared kitchen was also equipped with a cooker, washing machine, fridge, microwave and sink. Foodstuffs and cutlery are clearly in evidence in the photographs.
10. The layout of the property was unaltered at the time of my visit, as compared to the layout shown in the sketch plan provided by the Council at appendix 5 of their statement. A number of rooms appeared to be occupied, including the two ground floor rooms, two of the rooms at first floor level and two at second floor level. The outbuilding was unoccupied and a number of rooms were vacant, although a large number of unused beds and mattresses were in evidence throughout the property. The appellant suggests that three of the rooms have been let². Whilst that may be the number of rooms that had been let on a formal basis, the photographic evidence provided by the Council, and the description of the property as witnessed by officers who had visited, indicate that more than three rooms were in use for residential purposes. That use would appear to be on-going.
11. Consequently, in view of the above, the evidence before me indicates that the alleged breach of planning control had occurred at the time the notice was served and that the property was in use for a mixed use comprising a brothel and HMO. Therefore, I conclude that the appeal on ground (b) should fail and, accordingly, I shall dismiss the appeal and uphold the enforcement notice.

Chris Preston

INSPECTOR

² Paragraph 5.3 of the Appeal Statement and paragraph 3.4 of the response to the Council's statement