

Appeal Decision

Site visit made on 5 October 2016

by George Mapson DipTP DipLD MRTPI

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

Decision date: 17 November 2016

Appeal Ref: APP/G5750/C/16/3144952
173 Shakespeare Crescent, London, E12 6NA

- 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 Muhammad Nadeem Khawaja against an enforcement notice issued by the Council of the London Borough of Newham.
 - The Council's reference is 16/00046/ENFC.
 - The notice was issued on 22 January 2016.
 - The breach of planning control as alleged in the notice is: "*Without planning permission the material change of use to a house in multiple occupation (HMO).*"
 - The requirements of the notice are: "*1. Cease the use as a house in multiple occupation. 2. Remove all fixtures and fittings that solely facilitate the use of the house as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds. 3. Remove from the site all debris arising from compliance with steps 1 and 2.*"
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since no appeal was made on ground (a) and no fees were paid, there is no application for deemed planning permission to be considered.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Background

The appeal building

2. No. 173 Shakespeare Crescent is a two-storey, end-of-terrace building, originally built as a single dwellinghouse.

Planning history

3. On 28 February 2014 the Council issued an enforcement notice (Ref. 12/01451/ENFC) alleging, without planning permission, the use of the property as four self-contained flats. An appeal was made against the enforcement notice but it lapsed.
4. On 19 November 2015 the Council carried out a site inspection of the property. The officer reported that the use as 4 self-contained flats appeared to have ceased, but instead the building was being used as an HMO. The officer found that the building was occupied by at least seven unrelated people, who were stated to be employees of a restaurant in Ilford.

5. Photographs were taken at the time of the visit and a layout sketch was made. This sketch showed that the 1st floor contained 3 bedrooms (numbered 1, 2 and 3) and a bathroom. Bedroom Nos. 1 and 3 each had a double bed and bedroom No. 2 had bunk beds.
6. The ground floor also contained 3 bedrooms (numbered 4, 5 and 6), a kitchen and a shower room. Bedroom No. 5 had 2 double beds and bedroom No. 6 had 2 single beds. Bedroom No. 4 (the ground floor front room) was locked. The officer was unable to gain access to it, but was told that 2 people occupied it.
7. The officer's report noted that since 15 October 2015 the property had been run by managing agents known as 'Heaven Homes Estate Limited', the company that acts as the appellant's agent at this appeal.
8. On 7 January 2016 the Council carried out another site inspection. The officer confirmed that the building was being used as a large HMO. It contained 6 bedrooms, with sleeping space within the main dwelling house for 14 people. A minimum of 7 people were found to be living in the main building at that time. On 22 January 2016 the Council issued the enforcement notice.

Legal grounds of appeal

Evidence and burden of proof

9. Grounds (b) and (c) are legal grounds of appeal. Where an appeal is made on these grounds, the decision depends entirely on factual evidence about the history and planning status of the building, structure or land in question and the interpretation of any relevant planning law or judicial authority. Planning merits are not relevant to an appeal made on these grounds.
10. The burden of proof regarding decisive matters of fact rests on the appellant. In this case, the appellant has asserted that the matters alleged in the enforcement notice either did not occur as a matter of fact or do not constitute a breach of planning control. He must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of those assertions. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).

The appeal on ground (b)

11. An appeal on ground (b) is that the breach of planning control has not occurred as a matter of fact.
12. The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 [the UCO] states that the use as a dwellinghouse falls within use class C3. This use class applies to premises occupied by: (a) a single person or by people to be regarded as forming a single household¹; or (b) not more than six residents living together as a single household (where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than use within Class C4).
13. The Council's evidence is that at least seven people, consisting of members of at least two unrelated households, were living at the property when the enforcement notice was issued. The appellant's own evidence is that two large families occupy the house because a single family cannot afford the rent of such a large house. On that basis, the occupants cannot be regarded as forming a single household and the Council is right to contend that the property is not in use as a Class C3 dwellinghouse, but as a large HMO.

¹ The UCO explains that for the purposes of Class C3(a) a "single household" shall be construed in accordance with section 258 of the Housing Act 2004.

14. Although the appellant has asserted that the alleged breach of planning control has not occurred as a matter of fact, he has failed to provide a reasoned rebuttal of the Council's case or any cogent evidence of his own to demonstrate the truth of his assertion. As such, he has failed to discharge the burden of proof placed upon him and accordingly, the appeal on ground (b) must fail.

The appeal on ground (c)

15. An appeal on ground (c) is that there has not been a breach of planning control (for example because no 'development' has taken place, or planning permission has been granted, or it is permitted development).
16. By virtue of Article 3 of the UCO, the use of a building for any other purpose within the same class does not involve development of the land. Changes to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [the GPDO] in April and October 2010 allowed a change from Class C3 to C4 (an HMO for between up to 6 people) and from C4 to C3².
17. Large HMOs - those with more than 6 people sharing - are unclassified by the UCO. In planning terms they are described as being '*sui generis*' (of their own kind). In consequence, a planning application will be required for a change of use from a dwellinghouse to a large HMO or from a Class C4 HMO to a large HMO where a material change of use is considered to have taken place.
18. For the reasons set out in respect of the appeal on ground (b) the present use of the appeal property as a large HMO cannot be regarded as one that falls within class C3. A specific grant of planning permission was required for such a change of use, but permission has been neither sought or nor granted.
19. The appellant has reiterated his contention that the property is not an HMO and that it is occupied by two families. Although he has asserted that there has been no breach of planning control, he has failed to provide a reasoned rebuttal of the Council's case, supported by evidence of his own, to demonstrate the truth of that assertion. He has failed to discharge the burden of proof placed upon him and accordingly, the appeal on ground (c) must also fail.

The appeal on ground (f)

20. An appeal on ground (f) is that the steps required to comply with the notice are excessive and lesser steps would overcome the objections.
21. The gist of the appellant's case is that there is no need to remove the fixtures and fittings that facilitate the unauthorised HMO use. In particular, he claims that the locks on the bedroom doors are necessary for the health and safety of the tenants.
22. The Council considers that the removal of all these items is reasonable and necessary to ensure that the building would no longer be used as an HMO.
23. The judgments of the courts in *Murfitt*³ and *Somak Travel*⁴ provide authority for the view that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted

² This meant that changes of use between dwellinghouses and HMOs could take place without the need for an application for planning permission, unless a local authority has specifically identified an area in which planning applications will be required. However, in the London Borough of Newham a Borough-wide article 4 direction was made on 13 July 2013 which removes permitted development rights to change the use of a class C3 dwellinghouse to a class C4.

³ *Murfitt v SSE* [1980] JPL 598.

⁴ *Somak Travel v SSE* [1987] JPL 630.

development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place.

24. Consequently, requirements to remove separate fixtures and fittings, including door locks, may be appropriate according to the circumstances⁵. What remedial works are necessary to prevent the unauthorised use depends on the facts of each particular case, and the courts have held that to be a matter for the Inspector's judgment⁶. I have also had regard to the judgment in *Lough*⁷ and considered whether the restrictions on the use of property, as required by the notice, would be proportionate⁸.
25. On the facts and circumstances of this case I find that the requirements are proportionate. They seek nothing more than is necessary to bring about the cessation of the unauthorised use. No lesser steps would give effect to the notice. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

26. An appeal on ground (g) is that the time given to comply with the notice is too short. The appeal form asks the appellant to state, with reasons, what is considered to be a reasonable compliance period. No alternative compliance period has been stated.
27. On 2 March 2016 the Planning Inspectorate wrote to the appellant's agent seeking further facts on the appeal made on ground (g). No response was received.
28. The appellant has failed to provide a reasoned rebuttal of the Council's case, supported by evidence of his own, to demonstrate a need for a compliance period of longer than three months. In the absence of any evidence to the contrary, I conclude that three months provides sufficient time to comply with the requirements of the notice. Accordingly, the appeal on ground (g) fails.

Overall conclusions

29. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

George Mapson

INSPECTOR

⁵ Bowring v SSCLG & Waltham Forest BC [2013] EWHC 1115 (Admin).

⁶ Hereford CC v SSE and Davies [1994] JPL 448.

⁷ Lough and others v FSS [2004] 1WLR 2557.

⁸ Planning Practice Guidance: *Ensuring Effective Enforcement* draws attention to paragraph 207 of the NPPF and the fact that local planning authorities have discretion to take such action. It explains that enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so.