
Appeal Decision

Site visit made on 4 January 2017

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 12 January 2017

Appeal A Ref: APP/B4215/C/16/3151585

Appeal B Ref: APP/B4215/C/16/3151586

74 Lauderdale Crescent, Manchester, M13 9DP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Dr Abidemi Nwator and Appeal B by Dr Princewill Nwator against an enforcement notice issued by Manchester City Council.
 - The enforcement notice, numbered ENF/13125/16, was issued on 5 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use from a dwellinghouse (Class C3) to a house in multiple occupation (Class C4).
 - The requirement of the notice is to cease the use of the property as a House in Multiple Occupation (Class C4).
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (c) & (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are allowed and the enforcement notice is quashed.

The appeals on ground (c)

2. The appellants bought the appeal property in December 2005 and it is not disputed by the Council that it was, from that date until September 2010, let as a shared house to 3-4 people. On 6 April 2010, the Use Classes Amendment Order 2010 introduced a new use class – C4: Houses in Multiple Occupation. As of this date, the property was deemed to have transferred to a C4 use, albeit that this did not amount to a material change of use under planning legislation which required planning permission.
3. In October 2010, further amendments to the Town and Country Planning (General Permitted Development) Order 1995 were made. As a consequence, the change of use of a property from C3 to C4 (and vice versa) became permitted development, for which planning permission would not be required. The Council issued an Article 4 Direction on 8 October 2010 (which took effect from 8 October 2011) removing the permitted development right to change from C3 use to C4 use.
4. It is the Council's position that the property reverted to a dwellinghouse within Class C3 from September 2010 until September 2013, when a material change of use to Class C4 took place, for which planning permission had been required

after 8 October 2011, when the Article 4 Direction came into force. This view that the property had reverted to a C3 use in September 2010 is based on e-mails sent by residents to the Council, including those seeking a Council Tax discount for single occupancy (on 10 October 2011) or student occupancy with only 2 occupants (3 October 2012). The evidence for a change to a C4 use is the e-mail notifying of 3 occupants (21 September 2013).

5. However, the appellants had notified the Council by e-mail on 26 September 2010 that there were 3 (named) occupants of the property. This was acknowledged at the time by the Council but appears not to have been cross-checked against the contrary information provided to the Council by tenants that there were only 2 occupants from September 2010 to October 2011. Evidence was later provided to show that a 4th occupant was added for this period.
6. Of greater significance, the appellants have supplied a comprehensive dossier of tenancy agreements, tenant profile checks, schedules of payments and copies of their business bank accounts for the whole of the period from 4 September 2010 to 9 September 2013. To my mind, this clearly demonstrates occupancy by 4 tenants. I note that the tenancy agreements for the property are for the property as a whole, rather than for individual rooms. It appears to me unlikely that 1 or 2 tenants would have been willing, or able, to pay the full rent for an under-occupied house.
7. To my mind, the appellants have demonstrated, on the balance of probability, that the property was occupied continuously as a house in multiple occupation throughout the period which is in dispute. Therefore, there was no change of use from Class C4 to Class C3 in September 2010 and no change of use from Class C3 to Class C4, for which planning permission would have been required, in September 2013. Planning permission was not required to continue the lawful C4 use. Therefore, the appeals on ground (c) succeed and I shall quash the notice.

The appeals on grounds (a) and (d)

8. Because of my conclusion on ground (c), there is no need to go on to consider the appeals on grounds (a) and (d).

B.S. Rogers

Inspector