
Appeal Decisions

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: 3 March 2017

Appeal A Ref: APP/B4215/C/16/3154287

11 Tarleton Street, Manchester, M13 9BS

- 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 Dr Hai Li against an enforcement notice issued by Manchester City Council.
 - The enforcement notice, numbered ENF/13119/16, was issued on 16 June 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 appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) & (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Appeal B Ref: APP/B4215/W/16/3163382

11 Tarleton Street, Manchester, M13 9BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr Hai Li against the decision of Manchester City Council.
 - The application Ref: 113464/FU/2016, dated 20 July 2016, was refused by notice dated 21 October 2016.
 - The development proposed is change of use from Class C3 to a Class C4 HMO.
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Formal decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Appeal A, ground (b)

3. The appellant has provided evidence of her own occupation and of that by family members and tenants to the effect that, from the date of her purchase of the property in 2006 until September 2014, the house was occupied as a

Class C3 dwellinghouse. The appellant says she moved out in 2014. This evidence is not disputed by the Council.

4. However, it appears from the e-mail to the Council regarding council tax, dated 10 September 2014 that, from that date, the house became occupied by 4 student tenants. A further on-line form submitted to the Council to obtain a discount on council tax on 2 October 2015 listed 4 different student tenants as occupying the property. The appellant disputes the accuracy of these documents, but has not provided any clear documentation to cast doubt on them. Her e-mail of 17 September 2014 gives the names of 2 students who would be occupying the property; this does not preclude the possibility that others also occupied the property.
5. The appellant has not provided copies of tenancy agreements or rental payments and her evidence is rather imprecise as to how many people occupied the property and when. She refers to other students of various nationalities whom she helped adapt to the city of Manchester and others who appear to have used the house as their residential/correspondence address, without indicating who actually resided at the house and for which period.
6. Ground (b) is a legal ground of appeal, in which case the courts have held that the onus on proving the case lies with the appellant. I am not satisfied that the burden of proof has been discharged in this instance. Therefore, it appears to me that, on the balance of probability, the use of the appeal property changed from a Class C3 dwellinghouse to a Class C4 house in multiple occupation in September 2014. The material change of use alleged in the notice has therefore occurred as a matter of fact and the appeal on ground (b) fails.
7. The breach of planning control occurred within 10 years of the issue of the notice. The appellant appears to misinterpret the notice in suggesting that the Council needs to show that the breach occurred for a period of 10 years.

Appeal A, ground (c)

8. The main basis for this ground of appeal appears to be the lack of conflict with the terms of the appellant's mortgage. However, that is not relevant to the exercise of planning control.
9. The Council made an Article 4 Direction removing permitted development rights for the change of use of Class C3 dwellinghouses to Class C4 houses in multiple occupation across its area on 8 October 2010. This came into force on 8 October 2011. I concluded above that the change of use from Class C3 to Class C4 took place in September 2014. As a result of the Direction, planning permission was required for this material change of use and a breach of planning control occurred. The appeal on ground (c) fails.

Appeal A, ground (a) and the deemed application, and Appeal B

10. The appeal property is a modern, 2 storey town house within an area known as "Grove Village", an area subject to a major housing regeneration programme by a consortium acting on behalf of the Council. In this area, the Council's objective is "to create a well-managed, mixed tenure urban village, transforming not only the physical environment through housing refurbishment, clearance, new builds and environmental creativity, but also

through community engagement, targeting unemployment and increasing the life chances and integrity of the diversely rich community”.

11. The main issues in both appeals are the impact of the use on the housing strategy for the area and on the living conditions on neighbouring residents.
12. The Council’s Core Strategy aims to deliver thousands of additional homes, with a priority given in Policy H5 to family housing. Policy H11 would resist the change of use from a C3 dwelling house to a C4 HMO in areas where there is a high concentration of HMO and student occupation. A stringent approach is to be applied to locations such as this which have benefitted from specific regeneration activity aimed at increasing the provision of family housing. The Council’s Article 4 Direction, removing permitted development rights for the conversion of C3 dwellinghouses to C4 HMO reflects this approach.
13. There is clear evidence from the Council of very substantial unmet demand for 3 bedroom housing from eligible families on the social housing register. In addition to those households which are in need, there are many others who want, but do not need, to move.
14. The continuing use of the appeal property as a house in multiple occupation would result in the loss of a 3 bedroom dwelling that is suitable for family housing in an area where the Council has the specific policy intention of increasing the amount of family housing and controlling the loss of such housing. Allowing this appeal would be contrary to this policy and would also be likely to be seen as a precedent which would encourage other such changes of use.
15. The appellant indicates that there are other C4 uses along this street but I have no information as to whether they were permitted by the Council under the present planning policy regime, whether they acquired lawfulness by other means or, indeed, whether they are lawful. Therefore, this is not a matter to which I can attach much weight.
16. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found no such considerations of sufficient weight as to alter my conclusion that the use of the appeal premises as a House in Multiple Occupation unacceptably conflicts with the aims of the development plan and, in particular, Policies H5 and H11.
17. The occupation of the appeal premises by multiple, unrelated tenants, and their visitors, appears to me likely to result in a greater intensity of activity than would be expected from single family occupation. I note that there have been no complaints from neighbours. However, there is the potential for residents with different patterns of work, such as shift work, and other social/leisure activities to cause disturbance to neighbouring residents. I note that the appellant seeks to manage her tenants in a responsible way, with consideration for neighbours, but this may not be the case in the event that the property was disposed of.
18. To my mind, the use conflicts with Core Strategy Policies SP1, H11 and DM1 which seek to ensure a high standard of development that makes a positive contribution to neighbourhoods.

19. I have taken account of all other matters raised but have found nothing of sufficient weight to alter my conclusion that Appeal A ground (a) and the deemed application, and Appeal B should fail.

The appeal on ground (g)

20. The Council has recognised that the compliance period may not align with the date of expiry of existing tenancies, which appear to end in September 2017. Whilst I agree that it would be unduly disruptive for tenants to have to leave prior to the end of their tenancy, the date of issue of this decision will result in the compliance period extending until September 2017. There is therefore no need to extend the compliance period and the appeal on ground (g) fails.

B.S. Rogers

Inspector