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## Appeal Decision

Site visit made on 21 February 2017

**by Mr N P Freeman BA(Hons) DipTP MRTPI DMS**

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

**Decision date: 16 March 2017**

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**Appeal Ref: APP/G5750/C/16/3156465**

**60 Walton Road, Plaistow, London, E13 9BP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mogado Joey Mogado against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 16/00180/ENFNOT, was issued on 5 August 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the material change of use to a *sui generis* house in multiple occupation (HMO)
- The requirements of the notice are:
  1. Cease the use as a *sui generis* house in multiple occupation.
  2. Remove 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.
  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 after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended.

**Decision: The appeal is dismissed and the enforcement notice upheld.**

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### Preliminary matter

1. At the site inspection I noted that although there was some furniture in the property there did not appear to be any beds or personal possessions suggesting that it is presently unoccupied. However, the test in terms of this appeal is whether the use alleged in the enforcement notice was taking place when it was issued. The fact that it may subsequently have ceased is not a reason for success or for the notice to be quashed as if this were the outcome then the Council would need to re-issue the notice should the alleged use re-commence. It is also evident from the appellant's representations that the property has been used as a HMO with a licence granted to this effect. There is no ground (b) argument that the breach alleged has not occurred as a matter of fact but rather that there has been no breach of planning control.

### Ground (c)

2. The Council refer to an inspection made on 27 July 2016 when it was revealed that 9 people were living in the house as five separate households each residing in one of the five bedrooms. Although there was a communal kitchen and bathroom facilities it was apparent that the bedrooms had individual locks and the licensing, tenancy agreements and Council Tax records back up the Council's claim that the property was in use as an HMO by separate individuals or families at that time. This has not been disputed and the only argument put

forward by the appellant is that the existence of a HMO licence, granted under the Housing Act and dated 14 August 2014, means that no planning permission is required for such a use. This is a flawed argument as the licence has been issued under a different piece of legislation and it does amount to planning permission for such a use. Such a finding is consistent with that of my colleague who dealt with a similar appeal in Newham in 2015<sup>1</sup>.

3. In terms of planning legislation a HMO which is being occupied by more than six people sharing will as a general rule fall within the category of a large house in multiple occupation which is a *sui generis* use in terms of The Town and Country Planning (Use Classes) Order 1987 (as amended). This may not always be the case and will depend on whether the use has intensified so as to become of a different character from a Class C3 dwellinghouse, as so defined in the same Order. In this particular case I consider that the occupation by 9 people of a relatively modest 2 storey terraced house resulted in intensification to a level which changed the intrinsic character from a dwellinghouse.
4. Moreover even if this were not the case, I am mindful that the Council have made an Article 4 Direction under The Town and Country Planning (General Permitted Development) Order covering the majority of the Borough, including this street, which takes away the permitted development right for a change of use from Class C3 to Class C4 (HMO for 3-6 persons). So even if the use that was taking place when the notice was issued did not amount to a large house in multiple occupation it was certainly at least an HMO and by virtue of the Direction such a use would have required planning permission.
5. For these reasons the use that was taking place at the time the notice was issued amounted to a material change of use for which there was no planning permission or permitted development rights for its introduction. Consequently the appeal on the basis of ground (c) fails.

### **Ground (g)**

6. The appellant argues that the period for compliance with the requirements of the notice of 3 months is too short as the tenancy agreements that exist require 2 months' notice to be given by both sides. As this notice period is less than the compliance period it would still allow 1 month for the requirements to be met and these in themselves are not especially onerous and could reasonably be completed within that time period. Additionally as the property did not appear to be occupied when I visited this is not a situation where existing occupants would need to find alternative accommodation to reside in. For these reasons I find that the compliance period is reasonable and there is no success on this ground either.

### **Conclusion**

7. For the reasons given above I consider that the appeal should not succeed.

*N P Freeman*

INSPECTOR

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<sup>1</sup> APP/G5750/C/14/2211058 & 2211059 – 99 Windsor Road, Forest Gate, E7 0RA – decision dated 20-01-15