The Planning Inspectorate

Appeal Decisions

Inquiry held on 28 February 2017
Site visit made on 1 March 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 21 March 2017

Appeal A: APP/P1560/C/16/3152145
Appeal B: APP/P1560/C/16/3152146
4 Edith Road, Clacton-on-Sea CO15 1JU

- 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 K Wright (Appeal A) and Mr M Mann (Appeal B) against an enforcement notice issued by Tendring District Council.
- The enforcement notice, numbered 15/00069/CHGUS2, was issued on 28 April 2016.
- The breach of planning control as alleged in the notice is: the creation, (as an unauthorised material change), of a mixed use of a hostel for assisted living, a house in multiple occupation (Class C4 of the Town And Country Planning (Use Classes) Order 1987 as amended) together with associated rooms and units used as self-contained flats. The flats are shown edged blue on plan 2 attached to the enforcement notice.
- The requirements of the notice are 1. Cease the unauthorised material change of use and 2. Cease the use as a hostel for assisted living and 3. Cease the use as a house of multiple occupation and 4. Cease any use of Rooms 401, 404, 413, 4A Edith Road and 4B Edith Road as shown edged blue on plan No.2 annexed to the enforcement notice as self contained residential flats and 5. Remove from Units Rooms 401, 404, 413, 4A Edith Road and 4B Edith Road as shown edged blue on plan No.2 annexed to the enforcement notice any locks, numbers, kitchenettes and self contained meters which would enable them to be used as self contained residential flats.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended.
- All the evidence to the Inquiry was given under oath.

Appeal C: APP/P1560/C/16/3152149
Appeal D: APP/P1560/C/16/3152150
6 Edith Road, Clacton-on-Sea CO15 1JU

- 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 K Wright (Appeal C) and Mr M Mann (Appeal D) against an enforcement notice issued by Tendring District Council.
- The enforcement notice, numbered 15/00061/CHGU, was issued on 28 April 2016.
- The breach of planning control as alleged in the notice is the creation, (as an unauthorised material change,) of a mixed use of a hostel for assisted living, house in multiple occupation (Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended) together with an associated unit used as a self-contained flat. The flat is shown edged blue on plan 2 attached to the enforcement notice.
- The requirements of the notice are 1. Cease the unauthorised material change of use and 2. Cease the use as a hostel for assisted living and 3. Cease the use as a house of multiple occupation and 4. Cease any use of 6A Edith Road as shown edged blue on

plan No.2 annexed to the enforcement notice as a self contained residential flat and 5. Remove from 6A Edith Road as shown edged blue on Plan No.2 annexed to the enforcement notice any locks, numbers, kitchenette and self contained meters which would enable it to be used as a self contained residential flat.

- The period for compliance with the requirements is 6 months
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
- All the evidence to the Inquiry was given under oath.

Decisions

Appeals A & B: APP/P1560/C/16/3152145 & 46

1. I direct that the enforcement notice be corrected and varied by the deletion of the allegation and the substitution of the following words: *'an unauthorised material change of the property to a mixed use of a house in multiple occupation (Class C4 of the Town And Country Planning (Use Classes) Order 1987 as amended) together with associated rooms and units used as self-contained flats. The flats are shown edged blue on plan 2 attached to the enforcement notice.'*

2. I also direct that the requirements of the enforcement notice be deleted and replaced with the following words: '*Cease the unauthorised material change of use of those parts of the premises in use solely as a house of multiple occupation (i.e. all rooms and units except 401, 404, 413, 4A & 4B).'*

3. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Appeals C & D: APP/P1560/C/16/3152149 & 50

4. I direct that the enforcement notice be varied by the deletion of the allegation and the substitution of the following words: *'an unauthorised material change, of the property to a hostel for assisted living, a house in multiple occupation (Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended) together with an associated unit used as a self-contained flat. The flat is shown edged blue on plan 2 attached to the enforcement notice.'*

5. I also direct that the requirements of the enforcement notice are deleted and replaced with the following words: '*Cease the unauthorised material change of use of those parts of the premises in use solely as a hostel for assisted living and house of multiple occupation (i.e. all units except unit 6A).'*

6. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld.

Application for costs

7. At the Inquiry an application for costs was made by the appellants against Tendring District Council. This application is the subject of a separate Decision.

Procedural matters

8. Although there are 2 enforcement notices for 2 separate properties, the appeal sites are in the same ownership and the enforcement notices have similar allegations. The submissions for the appeals on ground (d) are also similar for both properties and I have therefore dealt with both appeals in this one document.

9. The wording of the enforcement notices is, in my view, somewhat confusing in their phrasing and, after discussion at the Inquiry, it was agreed by the parties that it could be altered to read more clearly without prejudicing either side. I have therefore altered the allegations accordingly.

10. Notwithstanding my findings on the appeal on ground (b) in Appeals A & B relating to the use of No. 4 Edith Road, as no such appeal has been made for Appeals C & D, the enforcement notice in those cases will remain unaltered in that respect.

Appeal sites

11. The appeal premises are 2 former private houses, with accommodation on 3 storeys, in a street of similar properties near the seafront in Clacton. They are both semi-detached but No. 4 is attached to No. 2 Edith Road and No. 6 to No. 8. Both properties have been extended into the roof space and at the rear. No. 4 was also known at one time as the Sandpiper Guest House and No. 6 as the Lodge Hotel.

12. At the time of the site visit there were bedsitting rooms within the main building at No. 4, some with en-suite facilities, some with kitchenettes and some with both (401, 404 and 413), a communal kitchen on the first floor, a kitchen that was not in use on the ground floor and communal bath or shower rooms and WCs on the first and second floors. There are also 2 separate units (4A and 4B), both self-contained with kitchen and bathrooms, accessed separately from the rear of the main building.

13. No. 6 has similar rooms, but although some are fitted with kitchenettes none have en-suite bathrooms and there are shared facilities on each floor and communal kitchens on the ground and first floors. To the rear there is a unit that is self-contained with a bed/sitting room, kitchen and bathroom.

Reasons

Appeals A & B – ground (b)

14. An appeal on ground (b), that the allegation of the use of the property as a hostel has not occurred as a matter of fact, has been made in respect of the property at No. 4 Edith Road only.

15. It seems that the allegation of a hostel use has been made for both properties because they, and the building at No. 8 Edith Road, were leased by a charity known as the April Centre between 1 November 2009 and 1 May 2015, which let out the rooms in them to tenants. The tenants were selected by the April Centre and the properties were not available to the general public. No. 8 was granted planning permission for a mixed use as a homeless hostel and guest house in 2005. All 3 properties were, and are still, in the same ownership and the Council consider that the hostel use also occurred, and may still be occurring in Nos. 4 and 6.

16. The appellants maintain that the history of No. 4 shows that it has never been in a hostel use and also that the use of No. 6 has consistently been as a HMO rather than a hostel. However, as No. 6 is physically attached to No. 8, its use may have been considered to be more akin to the authorised hostel use in that property.

17. A letter from a previous employee of the April Centre confirms that the occupants were considered as tenants and had 6 month Assured Shorthold Tenancies. I have seen nothing that contradicts that statement and this confirms that the use be as a House in Multiple Occupation (HMO). The letter goes on to explain that there were no bed and breakfast facilities at the properties whilst being operated by the April Centre.

18. However, the tenants apparently included ex-prisoners and people with drug and alcohol addiction problems who required support and help to try and get their lives back on track. The Council considers that the support given to them by the April Centre in this regard brings the use of the building into the category of a hostel rather than use as a HMO.

19. Hostels were previously included in the same use class as hotels until 1994 when they were changed to a 'sui generis' use following concerns that hotel accommodation was not being used for tourism purposes but was being used to house other groups such as benefit claimants, which could have an impact on the amenities of the surrounding area. There is, however, a range of uses to which a 'hostel' can be put, such as housing for students or nurses, transient accommodation for those being re-housed elsewhere, shelter for those in need of a safe place to stay on a temporary basis or a tourist facility for those travelling on a budget and ready to accept a standard of accommodation lower than that generally found in a hotel.

20. However, in my view, as one of the characteristics of a hostel is the temporary nature of the accommodation. Where occupants have entered into a tenancy agreement and the premises is their only home, I consider that the use may then fall to be categorised as an HMO or flat, depending on the facilities available.

21. I note that one of the Council's witnesses reports that he was told that there were restrictions placed on who could visit the residents and when, but the appellants say that the manager of the property only acted to prevent anti-social behaviour that appeared to occur when some of the residents congregated together in particular areas of the building. This would not, in my view, be sufficient to indicate a hostel use throughout the building.

22. The April Centre occupied the premises from 2009 to 2015 but had vacated the premises by the time the enforcement notice was issued. Given my findings as set out above and the lack of any other evidence that persuades me that there was a hostel use taking place in No. 4 after the April Centre vacated the building, the appeal on ground (b) in respect of this use succeeds. The enforcement notice will be corrected accordingly.

All Appeals – ground (d)

23. The defining characteristic of an HMO is a property where some of the facilities needed for day to day living, such as food preparation and storage areas or bathrooms are shared between more than one household occupying a single dwelling. It is not generally the case that meals or other such services are supplied and each occupant normally fends for themselves in this regard. It is also normal for the occupants to have some form of tenancy agreement, which is obviously not the case with hotel guests.

24. The appellants consider that the enforcement notices were issued well after the time for taking action against any change of use expired. The onus is firmly on them to demonstrate, on the balance of probabilities, that their version of events is correct and, provided this is sufficiently precise and unambiguous it will be accepted, unless it is undermined or contradicted by other evidence from the Council.

25. To refute the appellants' claim that the properties had been in an HMO use from 2003 onwards, the Council has produced evidence that shows it was sending people in need of emergency accommodation to the properties until 2009 and its witnesses told the Inquiry that premises used by the Council for this purpose were expected to provide a bed and breakfast service. From this evidence, I do not doubt that the Council were still sending people to stay at Nos. 4 and 6 Edith Road on a temporary basis until the April Centre took over in 2009.

26. I have been given no details of any tenancy agreements for these people and can only conclude that, whilst their stay might have lasted some time, their use of the rooms was on the basis of guest house or bed and breakfast occupation. The Council's witnesses gave evidence that the properties were on a list of guest houses which would be telephoned to inquire about vacancies when the need arose and clients were then booked in and paid for by the Council on a nightly or weekly basis. This situation appeared to have continued up to the time that the April Centre took over the premises in 2009, and certainly after the relevant date of 28 April 2006.

27. It is true that the premises were also considered to have an element of HMO use in 2003 and this is confirmed by the Council issuing licences to cover this use in 2007 and later, to the April Centre, in 2011. This issue of such a licence is not, however, conclusive proof that the whole building had been given over to an HMO use.

28. After regulations changed in 2004, a licence was required for premises over 2 storeys high where there were 5 or more occupants in 2 or more households being housed on a long term basis. Whilst not all guest houses used by the Council needed such a licence, Nos. 4 and 6 Edith Road met the above criteria. These regulations did not, however, apply in the case of hotel guests staying for business or leisure purposes and the licence does consequently not confirm that the C1 guest house use of the buildings had completely ceased.

29. The appellants point to the evidence of the Council's Environmental Health Officer, who told the Inquiry that, when he visited the property in June 2006, he concluded that the buildings were predominantly in an HMO use. However, this officer was not assessing whether there had been a change of use in planning terms, but only whether the property needed to be licenced, given the use that the Council was then making of it.

30. There may well have been times when the HMO occupancy levels were more than the C1 use, but the evidence from the Council casts significant doubt that the C1 use had been wholly discontinued by April 2006, and the referral of people from the Council's housing department on what could be a nightly stay basis meant that there was an element of C1 hotel/guest house use still operating up until 2009. It is, however, clear that the guest house use had finally ceased completely by the time the April Centre took over the buildings and that it has not recommenced since then.

31. The numbers of referrals for emergency housing from the Council may have varied over time, but as long as the property was available for such clients and also, as confirmed by some of the Council's evidence, for members of the general public, an element of C1 use remained. The evidence is also ambiguous on the levels of each use and it is not therefore possible to conclude that any guest house use was ancillary to the HMO use or that the HMO use had been established without the guest house element by the relevant date. I therefore conclude that the properties were in a mixed use between 2006 and the time that the April Centre took over the houses in 2009.

32. There was a material change at that time, but the evidence presented by the appellants, as challenged by the Council, is not precise or unambiguous enough to allow me to conclude that the HMO use, excluding the C1 hotel use, is immune from enforcement action and the appeal on ground (d) in respect of this part of the use consequently fails.

33. However, this does not necessarily mean that the self-contained flats can now also be enforced against as part of the change of use. Although the Council submitted that the whole of each property was in a mixed use and that the '10 year rule' relating to time limits for enforcement should apply to the flats or units with kitchen and bathroom facilities, I disagree. A planning unit can be formed from only part of a building and a self-contained flat can be a 'dwellinghouse' for the purposes of s.171B(2) of the Town and Country Planning Act 1990 (as amended) to which a time limit for enforcement action of 4 years applies.

34. I consider that those units within the properties that have private cooking and bathroom facilities are self-contained flats, to which the '4 year rule' applies. I therefore need to consider whether these rooms have been self-contained for more than 4 years prior to the issue of the enforcement notices on 28 April 2016.

35. The planning history of the properties record that flat 4A at the rear of No. 4 Edith Road was granted planning permission for a change of use from owners' accommodation to guest rooms in 2004 and the plans show the layout as I found it at the site visit.

36. The findings of the *Gravesham*[1] case confirmed that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. The notion that a building which had that characteristic ceased to be a dwellinghouse because it was occupied only for a part or parts of the year or at infrequent or irregular intervals or by a series of different persons was firmly rejected. Therefore, whether or not the unit was rented out or used by the owners, it is nevertheless a self-contained dwellinghouse and has been for many years.

37. Plans accompanying the notices are dated November 2010 and show kitchens and bath or shower rooms in the rooms identified by the blue edging (401, 404, 413 in No. 4 Edith Road, 4B to the side of No. 4 and flat 6A to the rear of No. 6. There was no suggestion from the Council that the dates of these plans were inaccurate and I saw at the site visit that the facilities in the rooms are still present. I conclude therefore that these rooms and units are separate dwellinghouses which are now immune from enforcement action.

[1] *Gravesham Borough Council v Secretary of State for the Environment and Michael W. O'Brien* (1984) 47 P&CR 142 [1983]

38. In summary, I consider that the appellants' evidence is not precise and unambiguous enough to allow me to conclude that No. 4 and 6 Edith Road have been an HMO with associated self-contained flats for long enough to be immune from enforcement action.

39. Parts of Nos. 4 and 6 Edith Road were in a mixed use as an HMO and C1 guest house on the relevant date in 2006, when the Council was still referring residents to the guest houses. This changed in 2009 when the April Centre took over the lease and began operating what I have found to be an HMO with associated flats. Although I have found there was no hostel use in No. 4, this part of the enforcement notice for No. 6 has not been challenged. However, if No. 6 had ever been used in this way, it appears that this use has ceased in any event.

40. Even if the self contained flats had not been created by 2006, they were present by 2010 at the latest and are now separate planning units that are immune from enforcement action, but the material change from a guest house/HMO to an HMO is not. Consequently, the enforcement notices will be varied to reflect my findings and the appeals on ground (d) succeed only in respect of the flats.

Katie Peerless

Inspector

APPEARANCES

FOR THE APPELLANT:

Peter Le Grys MA DipTP MRTPI	Stanfords Land and Property Consultants
He called	
Keith Wright	Appellant
Mr Le Grys also gave evidence	

FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga	Of Counsel instructed by L Trembath , Solicitor for Tendring District Council
He called	
Grant Fenton-Jones BSc (Hons)	Environmental Health Team Leader, Tendring District Council
Robert Goswell	Technical Officer, Private Sector Housing Team, Tendring District Council
Peter Russell	Housing Needs and Strategic Policy Manager, Tendring District Council
Jenny Haggis	Benefits Manager, Tendring District Council
Christopher Stathers	Enforcement Team Leader, Tendring District Council

DOCUMENTS

1 Statement of Common Ground
2 Notes of Council's opening statement
3 Housing benefit information 4 & 6 Edith Road