

Appeal Decision

Site visit made on 2 May 2017

by **K R Saward Solicitor**

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

Decision date: 5 May 2017

Appeal Ref: APP/B5480/C/16/3159560

1 Beaumont close, Romford RM2 6LJ

- 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 Amjad Ali against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 19 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a dwellinghouse (Class C3) to a sui generis House in Multiple Occupation (HMO).
 - The requirement of the notice is to cease using the property as a House in Multiple Occupation.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(c) &(g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

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.

Application for costs

2. An application for costs was made by the Council against Mr Amjad Ali. This application is the subject of a separate Decision.

Procedural matters

3. All boxes were ticked in the Appeal Form to indicate that an appeal was being brought on all grounds. The appellant subsequently clarified that he wished to appeal on grounds (a),(c) and (g) only. The appellant did not submit a statement of case to expand upon the grounds of appeal, but it appears that the case brought on ground (c) may be intended as an appeal on ground (b). The Council has responded to the issues raised and so no injustice would arise if I were to consider both those grounds. The appeal proceeds on that basis.
 4. Access could not be obtained to all rooms during my site visit. With its Appeal Statement the Council had produced sketched floor plans. From what I saw, these appeared to accurately reflect the layout although one ground floor room (annotated R3) has been partitioned off to create two rooms.
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Reasons

The appeal on grounds (b) and (c)

5. A ground (b) appeal is that the matters alleged in the notice have not occurred. Ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. Under both grounds the appellant has the burden of proof and the test of the evidence is the balance of probabilities.
6. The appellant states simply that "The house (under C3 use) had already been converted to a House in Multiple Occupation (C4) under permitted development rights, before the notice was issued."
7. For the enforcement notice to be issued a change of use must have already occurred. It is not entirely clear, but the appellant may mean that the property was in C4 use before a Direction made by the Council under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 GPDO) came into force¹ to remove permitted developments for a change of use from Class C3 to Class C4.
8. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (UCO), as amended, is the use of a dwellinghouse by not more than six residents as a "house in multiple occupation". The allegation in the enforcement notice is not for a change of use to a House in Multiple Occupation (HMO) under Class C4 but to a large *sui generis* HMO i.e. one with more than six occupants. They are not the same in planning terms.
9. The appellant has not disputed or provided any evidence to contradict the Council's submissions that this is a large HMO. These include online advertising in August 2016 for a room to rent at the property indicating it to be up to a 9 bedroom house with communal living area and kitchen. Details of subsequent site visits by Council Officers on 15 and 18 August 2016 report the property to be occupied by eight people on both occasions with capacity for possible occupancy of ten people if one person was to occupy each spare room containing a double bed.
10. During my site visit I only saw five tenants (in four rooms) and the parties' representatives agreed that a fifth room was occupied by one male. However, three ground floor rooms were locked and inaccessible as were three rooms in the loft space. I saw four vacant rooms, three of which contained double beds. There would be no reason for those beds if the rooms had not been occupied at some point in the past. The relevant date was when the notice was issued. I also find it improbable that all locked rooms were unoccupied. The layout tallies with it being a large HMO.
11. In the absence of evidence to the contrary, I have no reason to believe that the property has been in use for anything other than a large *sui generis* HMO.
12. A change of use of a building from a Class C3 dwellinghouse to a *sui generis* HMO does not benefit from permitted development rights² and requires express planning permission. That being so, a ground (c) appeal is bound to fail.

¹ on 13 July 2016

² under Article 3(1) and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Conclusion on grounds (b) and (c)

13. The appellant has not discharged the burden of proof and I find as a matter of fact that at the relevant date the property was in use as a *sui generis* HMO as alleged in the notice and that such use constitutes a breach of planning control. The appeal on grounds (b) and (c) fails.

The appeal on ground (a) and the deemed planning application

14. The appellant states that he seeks planning permission for the development. No arguments have been advanced to justify that position.
15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires development to be determined in accordance with the development plan unless there are material considerations that indicate otherwise.
16. The Council has raised policy objections regarding the loss of a family dwelling, overcrowded and cramped living conditions for current and future occupiers and the effect of the use on the mix of housing sizes and types. These are expressed to be contrary to the Council's Core Strategy³(CS), Policy CP1 which concerns the supply of new homes, CP2 which seeks housing to meet the needs of the borough, DC4 which sets the criteria for sub-division of residential uses including the provision of HMO's and DC61 which protects living conditions, amongst other things. The Council also identifies conflict with Policy 3.5 of the London Plan, 2015 which promotes the highest quality of development and Policy 3.8 thereof which seeks a range of housing choice.
17. Further objection is raised by the Council from potential harm to neighbouring amenity through increased comings and goings, noise and disturbance, parking and cycle provision. Such matters are identified as being contrary to CS Policy DC4 which requires HMO's not to have an adverse impact on the surrounding area and not to give rise to significantly greater levels of noise and disturbance to occupiers of nearby properties than would an ordinary single family dwelling. CS Policy DC33 sets parking standards and DC35 requires safe and secure parking whereas Policy 7.1 of the London Plan seeks a good quality environment and Policy 7.15 thereof concerns managing the effects of noise.
18. It is unclear how CS Policy CP1 is offended in this particular instance. Otherwise, I have no reason to disagree with the Council's contention that the use is contrary to the development plan for the reasons cited. There are no considerations advanced to warrant a decision other than in accordance with the development plan.
19. Therefore, I can only conclude that the appeal on ground (a) and the application for deemed planning permission must fail.

The appeal on ground (g)

20. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed.
21. The appellant states that "the occupants are already living in the house with long contracts. It needs longer period than specified in the notice." No further information has been supplied to specify how much longer is needed and to substantiate why the period of two months does not suffice for compliance.

³ Core Strategy and Development Control Policies Development Plan Document, 2008

22. In the absence of any justification from the appellant, the ground (g) appeal fails.

KR Saward

INSPECTOR