
Appeal Decision

Site visit made on 26 July 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 23 August 2017

Appeal Ref: APP/A5840/C/16/3165048
19 Searles Road, London SE1 4YU

- The appeal is made by James Bent under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 16/EN/0108) issued by the Council of the London Borough of Southwark on 15 November 2016.
 - The breach of planning control alleged in the notice is "the change of use of the Land from a house in multiple occupation falling within C4 Use Class of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a house in multiple occupation within Sui Generis Use Class of the Town and Country Planning (Use Classes) Order 1987 (as amended)".
 - The requirements of the notice are as follows: -
 - “(i) Cease the use of the property as a sui generis large house in multiple occupation within the meaning of the Town and Country Planning (Use Classes) Order 1987 (as amended) by not allowing more than 6 unrelated occupiers to reside at the property;
 - (ii) Remove from one of the 7 bedrooms the sleeping facilities and the locks to the corresponding door so that the property is composed of no more than 6 bedrooms and so making that room available for communal use.”
 - The period for compliance with these requirements is six months.
 - The appeal is proceeding on the ground set out in section 174(2)(a).
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the change of use of 19 Searles Road, London SE1 4YU from a house in multiple occupation within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a house in multiple occupation occupied by more than six residents, subject to the following conditions: -
 1. If, within one month of the date of this decision, details of the facilities to be provided within the site for the storage of refuse and recycling containers have not been submitted in writing to the local planning authority for their written approval and if the facilities are not provided in accordance with the approved details within three months of the local planning authority's approval, the use of the house as house in multiple occupation occupied by more than six residents shall cease until such time as the facilities are approved and provided. If no such details are approved within twelve months of the date of this decision, the use of the
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house as a house in multiple occupation occupied by more than six residents shall cease until such time as the facilities are provided in accordance with the approved details. The facilities provided shall be retained as approved.

2. If, within one month of the date of this decision, details of the facilities to be provided within the site for the storage of cycles have not been submitted in writing to the local planning authority for their written approval and if the facilities are not provided in accordance with the approved details within three months of the local planning authority's approval, the use of the house as house in multiple occupation occupied by more than six residents shall cease until such time as the facilities are approved and provided. If no such details are approved within twelve months of the date of this decision, the use of the house as a house in multiple occupation occupied by more than six residents shall cease until such time as the facilities are provided in accordance with the approved details. The facilities provided shall be retained as approved.

Reasons for the decision

2. The planning application deemed to be made in this appeal is to change the use of the house from a 'small HMO' (Class C4 - limit of six residents) to a 'large HMO' (unclassified – more than six residents). The main issue in deciding whether planning permission should be granted is whether residents will have acceptable living conditions if there are more than six of them.
3. The reasons given by the Council for issuing the enforcement notice state: "The quality of the accommodation is deficient. The property is incapable of accommodating a large HMO use ... because it has insufficient communal living space internally in respect of shared living space for dining sitting and externally in terms of the extent of the garden and private amenity space".
4. These reasons reflect the conclusion of the inspector who dealt with appeal APP/A5840/W/16/3151519, which was an appeal against the Council's refusal to grant planning permission for a large HMO. The inspector stated: "Therefore, whilst I also note the comments of the Council's licensing team, overall, for the reasons given, I find the level of internal and outside living space proposed; particularly the amount of shared living space when compared with the number of bedrooms would result in harmful living conditions for future occupiers".
5. I have examined the licensing situation in more detail. The Council decided when they granted an HMO licence for the house that it is "reasonably suitable for occupation by not more than the maximum of 8 persons in 7 households". The licence gives details of the rooms on each floor of the house (with the exception of the conservatory), including their sizes and the numbers of people and households allowed in each room. It includes a living room for the residents. It states that the total number of people must not exceed the maximum stated and that no changes must be made to the use, layout or maximum occupancy level of the house without the Council's consent. Full details of all tenants and their tenancy start dates and a copy of their tenancy agreements have to be provided to the Council.
6. I saw nothing on my inspection of the house to suggest that there was anything incorrect about this assessment of the adequacy of the internal living

conditions for the number of people and households specified. In my view, the internal arrangements are acceptable for the approved level of occupancy and the Council have through the licensing system the powers they need to ensure that they remain so.

7. The licence does not deal with external amenity space. As the previous inspector noted, it is extremely limited since it consists of an L-shaped strip of land alongside and to the rear of the conservatory. It is not clear, however, what account the inspector took of the conservatory, which was not shown on the application plans. In addition, the fact that there are public gardens within a minute's walk of the house and on the same side of the road was not mentioned in the decision.
8. The conservatory has been erected on what used to be external amenity space at the rear of the house. If it were not present, there would be no question about the sufficiency of the external amenity space. In my view, it would be sensible to look at the conservatory as a garden room that provides amenity space which is more useable and to attach significance to the proximity of the public gardens for residents wanting access to additional outdoor facilities.
9. The reasons for issuing the notice refer to several planning policies. The ones that specifically relate to the main issue in this appeal are the amenity provisions of the Southwark Plan Saved Policies 3.2, 3.11, 4.2 and 4.7. I am satisfied that the use of the house as a large HMO in the circumstances I have described would not be in conflict with any of these provisions.
10. I have concluded that there are insufficient reasons to justify refusing planning permission for a large HMO. The appeal has therefore succeeded and the notice has been quashed. I have imposed two planning conditions, which are similar to those suggested by the Council in this event. The first requires storage facilities to be provided for refuse and recycling containers; the second requires storage facilities to be provided for cycles. The reasons for these conditions are: (1) to protect the environment and (2) to promote sustainable means of transport. I have considered the appellant's assertion that one month is not a long enough period for the details required by the conditions to be submitted to the Council, but I do not agree, as this should be a straightforward exercise.

D.A.Hainsworth

INSPECTOR