



Appeal Decision

Site visit made on 4 July 2019

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 19 July 2019

Appeal Ref: APP/G5750/C/18/3209116

13 Lydeard Road, East Ham, London E6 2AB

- 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 Pakalapati Chandra Knight against an enforcement notice issued by the London Borough of Newham.
 - The enforcement notice was issued on 13 July 2018.
 - The breach of planning control as alleged in the notice is 'the material change of use to two self-contained flats'.
 - The requirements of the notice are as follows:
 1. Cease the use of the property as self-contained flats.
 2. Remove from the property one of the two kitchens, the internal dividing doorways and any internal partitioning that solely facilitates the use as self-contained flats, plus all duplicate doorbells, all duplicate signage and duplicate outside waste bins.
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on grounds (d), (f) and (g), as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Costs Application: An application for a partial award of costs has been made by the London Borough of Newham against Dr Pakalapati Chandra Knight. This is the subject of a separate decision.

Decision

1. The appeal is dismissed. See formal decision below.

Matters of clarification

2. At the site visit on 4 July, no one from the Council turned up at the allocated time. However, I was allowed into both flats by the respective tenants and, therefore, carried out an Access Required Site Visit (ARSV) without the presence of the Council. I am satisfied that this has caused no injustice.
 3. As indicated above the relevant fee was not paid and, therefore, I am not empowered to consider whether or not planning permission ought to be granted for the change of use of the house to 2 flats. Despite the appellant's agent indicating that evidence was being collated with regard to the ground (d) appeal, none has been submitted. In fact it appears that no detailed statement from the appellant has been received by the Planning Inspectorate. I have dealt with the appeal on the basis of the initial submissions by the appellant and the Council's statement and appendices. I have also taken into account the submissions of a third party.
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Background information

4. The appeal property is a two-storey terraced dwelling located on the west side of Lydeard Road, close to its junction with Southend Road. The surrounding area is predominantly residential comprising of similar sized terraced dwellings. The property is not a listed building and it does not lie within a conservation area.

5. A planning application (16/00570/FUL) was submitted on 14 April 2016 for the 'conversion of single house into 2 units (1x2 bed unit and 1x3 bed unit)'. This was refused permission on 9 June 2016. The application drawings indicated the existing layout as being a single dwelling at that time. On 13 April 2018 Planning Officers carried out a site visit and noted that the property had been sub-divided into the two self-contained flats which are now the subject of the enforcement notice. At that point there was a separate entrance door to the ground floor flat; the flats were separately occupied and the Council Tax section confirmed that they have been separately rated.

6. The Council Tax records indicate that Flat 1 (Ground Floor) was occupied by Mr Ravi Sagar DARA and that the flat was liable for tax from 02/01/18. Flat 2 (first and second floors) Council Tax was tenanted by Mrs Narinder Kaur and was liable for tax from 27/02/18. The appellant was noted as the landlord and was liable for the Council Tax for Flat 1 from 02/01/18 to 26/02/18 (when the property was empty). However, a further note indicated that the property was eligible for a 100% empty property discount for the first month for the unfurnished flat.

The appeal on ground (d)

7. To be successful on this ground the onus is on the appellant to show that the two flats have been used continuously as two separate dwellings since, or before, 13 July 2014. That is, 4 years prior to the notice being served. The property would not have been immune from enforcement action, unless clear and unambiguous evidence had been provided to show that this was the case.

8. In the appeal form at section E (d) the appellant states that '*The property has been continuously used as two self-contained flats in excess of 4 years without interruption*'. However, there is no evidence to back this up and the facts relating to the application made in 2016 and the Council Tax records (see above) clearly contradict this statement. Even if the application had been retrospectively submitted and the flats had been occupied continuously since 2014, one would have expected tenancy agreements and other evidence to prove that this had been the case. No such evidence has been submitted.

9. In conclusion on this ground of appeal I do not consider that the appellant has provided clear precise and unambiguous evidence to show, on the balance of probabilities, that the flats have been continuously and separately occupied as dwellings since (or before) 13 July 2014. The LPA was not precluded from taking enforcement action. The appeal must fail, therefore on ground (d).

The appeal on ground (f)

10. In support of this ground of appeal, the appellant indicates that the house could lawfully be used as a House in Multiple occupation (HMO) and that this change would not entail any physical changes. It is contended, therefore, that the requirements of the notice are excessive and that if changed to a HMO it would achieve the same outcome as sought by the LPA.

11. The LPA refers to the two purposes which the requirements of a notice can seek to achieve. The first is to remedy any breach of planning control and the

second is to remedy any injury to amenity which has been caused by the breach. In this instance it is stressed that the aim of the notice is to remedy the breach; that is the unlawful change of use from a dwelling house to 2 flats. It is not considered unreasonable to remove fixtures or fittings which facilitate the unauthorised change of use and in order to properly remedy the breach the requirements of the notice are both reasonable and necessary.

12. I agree with the LPA. Whilst accepting that a house can normally be changed to a small Class C4 HMO through permitted development rights, in this case, this is not possible due to an Article 4 Direction having been issued by the LPA which removed such rights Borough wide. Planning permission would, therefore, be required.

13. However, the fact is that alterations have been carried out to physically separate the house into two flats. Even if planning permission were to be granted, I do not consider that use in Class C4 or even for a larger Sui Generis HMO would necessitate the physical works which have resulted in the separation of the house into 2 flats. A HMO use would normally be for a group of people using separate (or shared) bedrooms with the other facilities such as kitchen and bathroom(s) also being shared. There can be no justified need in a HMO for completely separate flats. If left as such there would be the opportunity to continue using the property as 2 flats rather than some sort of hybrid HMO.

14. In this case, therefore, in order to remedy the breach I consider that all of the requirements are necessary and that they are not excessive. If carried out the appellant would not be precluded from applying for permission for a Class C4 HMO use. I do not consider that lesser requirements in this case would be sufficient to remedy the breach. The appeal, therefore fails on ground (f).

The appeal on ground (g)

15. The appellant considers that a 6 month compliance period is necessary due to the fact that there are tenants in the flats who are subject to Assured Shorthold Tenancy Agreements (ASTAs). The Council refers to the fact that it can formally extend the compliance period if there are difficulties relating to re-possession of such properties. It also refers to S179 of the Act where it can be a defence for a , a person to show that everything has been done in order to comply with a notice.

16. There are no details of the ASTAs and in these particular circumstances I agree with the Council that the breach must be rectified as soon as possible in the public interest. However, the Council does have the discretion to extend the compliance period if it considers that the reasons are justified.

Other Matters

17. In reaching my conclusions in this case I have taken into account all of the submission made by the appellant, the Council and a third party. These include the planning history; the history of the appeal process; the statements and reports and all of the photographic evidence. However, none of these carries sufficient weight to alter any of my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

18. The appeal is dismissed and the enforcement notice is upheld.

Anthony J Wharton

Inspector