



Appeal Decision

Site visit made on 12 September 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2019

Appeal Ref: APP/G5750/C/18/3217200

Land at 62 Keppel Road, East Ham, London E6 2BD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Saji Property against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 16 November 2018 under ref. 18/00665/ENFC.
 - 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 to:
 - "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 these requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Background and matters of clarification

2. The appeal concerns a 2-storey terraced residential property evidently with some accommodation in the roof space. Keppel Road is a predominantly residential street in a controlled parking zone.
3. Like the parties, in this decision I refer to a house in multiple occupation as a "HMO". An Article 4 Direction covering most of the borough of Newham including the appeal site came into force on 31 July 2013, such that from that date express planning permission must be granted on application to change from a Class C3 dwelling house to a Class C4 HMO. Class C4 covers the use of a dwelling house by not more than 6 residents as a HMO. In fact, the allegation in the enforcement notice refers to a *sui generis* HMO; the term *sui generis* denotes a use which falls outside of any use class and in this case that would specifically be a large-scale HMO with more than 6 residents.

The appeal on ground (b)

4. An appeal on ground (b) should be directed to the consideration of whether the matters alleged in an enforcement notice have occurred as a matter of fact.

The relevant date for assessing whether the alleged breach of planning control set out in a notice has taken place is the date of issue of the notice. Hence, my focus must be on any pertinent matters which had occurred by the time the notice was issued on 16 November 2018. The burden of proof falls on the appellant, the relevant test of the evidence being made on the balance of probability.

5. The appellant asserts that the property has not been converted into a HMO but rather it is being used as a single dwelling house by a large single family on a rental basis. It is stated that the family consists of "...one couple and 3 adults (part of one family)."
6. However, this assertion is contradicted by the appellant's response to the planning contravention notice (PCN), provided on 30 October 2018 according to the Council, wherein it was stated that the property was being used as a HMO and had been so used for only 2 years. The detailed information in the PCN pointed to the use of the property as a 4-bedroom, 5-person HMO, with bedroom 5 on the loft floor being then unoccupied.
7. This response may well have underestimated the occupancy levels and the number of bedrooms. At a site inspection on 31 October 2018 conducted by the Council's officers, in conjunction with officers from the Metropolitan Police Service, it was found that the property was arranged with a total of 6 bedrooms, providing a total of 11 sleeping spaces, as indicated on the sketch internal layout plan provided by the Council. One of the tenants offered information concerning the number of people occupying the property and the duration of the occupancy of some of those residents which varied from one day to 2 years.
8. The property's relevant history includes an application to the Council's Property Licensing Team for a HMO Mandatory Licence. This is handled under the Housing Act 2004 and the application was given the ref. 18/29069/HOHMOL according to the Council. The existence of this application is not explained by the appellant.
9. The appellant has not discharged the burden of proof. Even if the property is not currently occupied as a sui generis HMO, it does not mean that this use has not occurred. Taking into account the information before me, I find on the balance of probability that the matter alleged in the notice had occurred when the notice was issued. The appeal on ground (b) does not therefore succeed.

The appeal on ground (c)

10. In appealing on ground (c), the onus is on the appellant to demonstrate on the balance of probability that the matter stated in the enforcement notice, when it occurred, did not amount to a breach of planning control. However, I am unable to identify anything in the appellant's submissions that expressly supports the appeal on this ground.
11. I should point out for the avoidance of doubt that compliance with the terms of the HMO Mandatory Licence and the Housing Act 2004 does not supersede or exempt the appellant from the planning regulations which are quite separate.

12. I have read nothing to suggest that the base lawful use of the appeal property is anything other than as a Class C3 dwelling house. No planning permission has been applied for or obtained for a material change of use to a Class C4 HMO, after the refusal of an application for a certificate of lawfulness for a proposed 4-bedroom HMO (maximum 6 persons) under ref. 18/02984/CLP. More importantly, the appellant has not shown or made out any case that the use of the property as a sui generis or large-scale HMO did not denote a material change of use from a Class C3 dwelling house.
13. The character of the occupation of the property as a dwelling house by a single family or household, as opposed to its occupation by more than 6 (and up to 11) individuals, many leading separate lives, is likely to have very different effects upon the surroundings. For example, the latter form of occupation is likely to bring with it more comings and goings generally by people and vehicles, more generation of rubbish and a more intensive use of the property, both inside and out. Thus, there would be a significant difference in the character of activities as a matter of fact and degree, thus giving rise to a material change of use. This required but did not benefit from a grant of planning permission.
14. I therefore conclude on the balance of probability that the material change of use alleged by the notice constitutes a breach of planning control. Accordingly, the appeal on ground (c) must fail.

Andrew Dale

INSPECTOR