



Appeal Decision

Site visit made on 3 October 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Appeal Ref: APP/R5510/C/18/3213614

93 Whitehall Road, Uxbridge UB8 2DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Syed Muhammad Arif Shah against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 11 September 2018 under ref. HS/ENF/014062.
 - The breach of planning control as alleged in the notice is: *Without planning permission the material change of use of the property to a House in Multiple Occupation (Use Class C4).*
 - The requirements of the notice are to:
 - (i) *Cease the use of the property as a House in Multiple Occupation (Use Class C4).*
 - (ii) *Remove from the land all debris, items, fixtures and fittings, furniture, building materials, plant equipment and machinery resulting from compliance with Point (i) above.*
 - The period for compliance with these requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (f) and (g) 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. Whitehall Road is a predominantly residential street with a controlled parking zone.
3. In this decision I refer to a house in multiple occupation as a "HMO". An Article 4 Direction covering the Uxbridge South ward, within which the appeal site is located, came into force on 24 March 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, the alleged breach in the enforcement notice, covers the use of a dwelling house by not more than 6 residents as a HMO.

The appeal on ground (b)

4. In order to succeed on this ground, the burden of proof falls on the appellant to show, on the balance of probability, that the matters alleged in the notice have not 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 11 September 2018.

5. The Council's investigation of no. 93 commenced with a site inspection on 11 December 2017. At that time, there was a tenancy agreement in place for a single tenant (Mr Yesufu), but the appellant's statement of appeal confirms that this tenant proceeded to sublet rooms in the property to friends. Although the Council has provided no photographs dated 11 December 2017, the Council's officer found that the bedrooms contained lockable doors and the appellant's wife, who was present, confirmed that 4 rooms within the property were occupied by unrelated persons. This would have amounted to the use of the property as a C4 HMO. It is not clear when this breach actually commenced after the signing of the relevant tenancy agreement on 14 July 2017, but Mr Yesufu gave up possession on or about 13 February 2018.
6. The Council has produced photographs from visits on 9 March 2018 and 19 June 2018 but written reports from those visits have not been provided. An officer from the Council visited the property on 26 June 2018 at which time there was a tenancy agreement (signed on 1 April 2018) in place for Mr Onwukwe and Ms Pondeva. Whilst Mr Onwukwe declares that 2 cousins of Ms Pondeva were staying with them in June 2018, the Council's officer was advised by one of the 2 male persons present on 26 June 2018 that 4 other unrelated persons were residing at the property. Again, there were locks on all the bedroom doors. The photographs from this visit show that these were push-button locks. Whilst it may be reasonable to have one well locked room in the house for the secure storage of personal belongings, an arrangement where all the doors to the bedrooms/main habitable rooms are locked (with rather elaborate locking mechanisms on 26 June 2018) points to occupation by unrelated individuals in a C4 HMO.
7. It would appear that the property may have been occupied differently from the tenancy agreements that have been presented. It is how the property has actually been occupied that is important, not the existence of tenancy agreements to named individuals. Section 174(2) frames ground (b) in the past tense. There is a very high degree of probability that the use as a C4 HMO had occurred by around December 2017. It is more probable than not that such a use was also being carried on around June 2018. The appellant has not discharged the burden of proof. Even if the property is not currently occupied as a Class C4 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 succeed.

The appeal on ground (f)

8. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the notice alleges that there has been a material change of

use and it requires the unauthorised use to cease. The notice does not 'under-enforce' and so its purpose is to remedy the breach rather than any injury to amenity. That being the case, the appellant must show that the requirements of the notice are excessive to remedy the breach and that lesser steps would achieve the same end.

9. The purpose of the notice can only be achieved in this case by ceasing the Class C4 HMO use of the property and by the removal of items introduced to enable the building to be so occupied. That is what the steps in this notice broadly seek to do. They go no further. I have not been provided with evidence to demonstrate that the steps can be reduced, whilst still achieving that purpose. In the light of all this, the appeal brought under ground (f) must fail.

The appeal on ground (g)

10. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed. A period of 3 months has been given. The appellant suggests that a reasonable date for compliance would be by 31 July 2020. The essence of the appellant's case is that the property is let on the basis of an assured shorthold tenancy with the tenants expecting an 11-month period of tenancy. The appellant goes on to explain the full range of possession proceedings that may need to take place before he is lawfully entitled to possession of the property.
11. I have also had due regard to the reasons for issuing the notice. Effective enforcement is important to maintain public confidence in the planning system. It is the responsibility of all persons having interests in the property to comply with the terms of the notice. Compliance should not be driven solely by the worst-case legal scenarios advanced by the appellant.
12. There is no conclusive evidence to show that the 3-month compliance period is not an adequate period of time for any affected tenants to seek alternative accommodation or to adapt their lives to the altered accommodation arrangements at the appeal property. In such circumstances, I am not persuaded that the future date sought by the appellant is justified, or indeed that there is any need to extend the period for compliance with the notice. The compliance period of 3 months is a proportionate response to the breach of planning control that has occurred. However, in the event that the appellant is able to convince the Council that a longer period is necessary, if genuine difficulties are encountered, the Council will be aware that it has the discretion to extend the period for compliance with the notice, regardless of this appeal decision, under the provisions of section 173A (1) (b) of the 1990 Act as amended. In the light of all this, the appeal on ground (g) fails.

Andrew Dale

INSPECTOR