



Appeal Decision

Site visit made on 29 January 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2020

Appeal Ref: APP/G5750/C/19/3222908

Land at 49 Evesham Road, Stratford, London E15 4AL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Rev. Josephine Collier against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 18 January 2019 under ref. 18/00399/ENFC.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the material change of use to a Use Class C4 house in multiple occupation (HMO)."
 - The requirements of the notice are to:
 - "1. Cease the use as a Use Class C4 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 ground set out in section 174(2) (d) 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.

Preliminary matters

2. I visited the site at the appointed time. The Council's representatives were present. The appellant was not there and there was no response at the front door of the appeal property. After waiting for a short while, I decided that the site visit should be aborted. I also note that the Council (in the questionnaire) and the appellant (on the appeal form) did not consider it essential for an Inspector to enter the site to check measurements or other relevant facts. Having studied the written representations of both parties, I consider that whilst an internal inspection was not possible, I have sufficient information to determine this ground (d) appeal without a further site visit being arranged. I am satisfied that this course of action would not result in any injustice to the parties.
3. The appeal concerns a 2-storey residential property within a long terrace on the western side of Evesham Road. I have read nothing to suggest that the base lawful use of the appeal property is anything other than as a Use Class C3 dwelling house. In this decision I refer to a house in multiple occupation as a "HMO". Use Class C4 covers the use of a dwelling house by not more than 6 residents as a HMO. An appeal has not been made on ground (a) – that

planning permission ought to be granted for the alleged Use Class C4 HMO. The planning merits of the case are not therefore before me.

4. From October 2010 a change of use from a dwelling house (Use Class C3) to a small HMO (Use Class C4) became possible under permitted development rights. However, the Council put in place planning controls over HMOs through an Article 4 Direction, covering most of the borough of Newham including the appeal site, which came into force on 31 July 2013. From that time express planning permission was therefore again required for a change of use from Use Class C3 to Use Class C4.

The appeal on ground (d)

5. In pursuing an appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the enforcement notice was issued, it was too late to take enforcement action against the matter stated in the notice. Thus, the appellant must show that, by then, the appeal property had been used continuously as a C4 HMO for a period of 10 years. The material date in this case is therefore 18 January 2009. The 10-year period begins with the date of the breach commencing; it need not necessarily be the 10 years immediately prior to the notice being issued.
6. I am afraid I am unable to identify anything of real substance in the appellant's submissions that clearly supports the appeal on this ground.
7. There are no obvious facts mentioned before April 2014 when the appellant contacted Keatons, an estate agent, to provide tenants as they had done before. In the appellant's response to the planning contravention notice (PCN) dated 5 December 2018, it was stated that the 3-bedroom property had been tenanted to the named individuals since 17 May 2014. The detailed information in the PCN pointed to the use of the property by 4 persons, Mr K and Mrs A Zylkiewicz, Mr S Siskanovs and Mrs A Piskurovska. Neither the PCN nor the enforcement notice appeal form was completed in a way to confirm that all the people mentioned formed a single family, all being related to each other. As established at a site inspection by members of the Council's Planning Enforcement Team on 18 June 2018, there were unrelated tenants residing in the property as a small HMO, even though it may have been Mr S Siskanovs who paid the rent and was the main contact.
8. If the C4 HMO use started no earlier than 17 May 2014, then 2 key matters arise. The appellant has not discharged the burden of proof on the ground (d) appeal. The property came into Use Class C4 after the Article 4 Direction came into force, in breach of planning control.
9. I should point out for the avoidance of doubt that compliance with the terms of the Selective Licence ("...issued in 2014 and expired on 31.12.2017", according to the Council) does not supersede or exempt the appellant from the planning regulations which are quite separate. The issue of that licence is of little assistance to the appellant in this appeal.
10. Having regard to the limited information before me, I find that the evidence is not sufficient to demonstrate, on the balance of probabilities, that 49 Evesham

Road had been occupied continuously as a C4 HMO for a period of 10 years before the enforcement notice was issued. The C4 HMO was not therefore immune from enforcement action through the passage of time when the notice was issued. The appeal on ground (d) must fail. I shall uphold the notice.

11. I have considerable sympathy for the appellant because she was still very much coming to terms with the great loss of her sister when the appeal was lodged. I should draw attention to the fact that the appellant remains at liberty to approach the Council with any further information that may come to light. The Council has powers to vary or withdraw an enforcement notice whether or not the notice has taken effect.

Andrew Dale

INSPECTOR