



Appeal Decision

Site visit made on 23 January 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 March 2020

Appeal Ref: APP/N4720/C/19/3228864

7 Hanover Square, Leeds LS3 1AP

- 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 Mr Thomas Hanton against an enforcement notice issued by Leeds City Council.
 - The enforcement notice was issued on 18 April 2019.
 - The breach of planning control as alleged in the notice is: without planning permission the making of a material change of use of a single C3 residential dwelling to a C4 House in Multiple Occupation with three or more residents in occupation.
 - The requirements of the notice are: Cease the use of the property as a C4 House in Multiple Occupation and ensure that no more than two unrelated adults are living in the premises to comply.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (b) (c) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 falls to be considered.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. As part of the appeal process, the appellant has requested that a dual C3/C4 use for the appeal site be considered under Schedule 2, Part 3, Class V of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, such a use is not part of the allegation set out above and so is not before me for the purposes of this appeal.
3. As the enforcement notice will be quashed, the deemed planning application does not fall to be considered. If it had, however, I would not have been able to take the dual use request into account in any case. Although the material considerations would in many ways be similar, the proposal for such a dual use would be distinct from a proposed change of use to C4, and therefore would need to be assessed on its own merits.

Ground (b)

4. The appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

5. The appeal site is a three storey mid-terraced property with five bedrooms. Class C3(c) permits a dwellinghouse to be occupied by not more than six residents living together as a single household where no care is provided to residents. The appeal site is subject to an article 4 direction removing the right to change from a Class C3 dwellinghouse to a Class C4 HMO without planning permission. The direction came into force in February 2012.
6. The property was purchased by the appellant in November 2014. It is stated that the previous occupant and her husband had let out rooms in the house, but there is little documentary evidence to corroborate this. The appellant confirms that he occupied the building himself, along with three friends and fellow students who lived together as a single household of four people. The following year, four friends lived together with the appellant as a single household of five persons.
7. The appellant then moved out, but let the house to five individuals who continued to live as a single household, and he contends that the house has been occupied in this manner ever since, which would be consistent with a Class C3(c) use. As a result, it is his case that there has not been a material change of use of the property to an HMO falling within Class C4.
8. The key difference between a C3(c) use and a C4 use is the relationship of the occupants and the manner in which they live together. Whilst there is no single criterion to decide if a single household is present, the Council make reference to the nine 'helpful indicators' arising from the Barnes V Sheffield City Council 1995 case. These are: a) whether the persons living in the house came to it as a single group or whether they were independently recruited; b) what facilities were shared; c) whether the occupants were responsible for the whole house or just their particular rooms; d) whether individual tenants were able to, or did, lock other occupiers out of their rooms; e) whose responsibility it was to recruit new occupiers when individuals left; f) who allocated rooms; g) the size of the property; h) how stable the group composition was; and i) whether the mode of living was communal.
9. I have been provided with a copy of the tenancy agreement for the term of 12 months from 01/07/2018 to 30/06/2019. From this document, some relevant conclusions can be drawn against the nine indicators cited by the Council. Firstly, the agreement is for the rental of the whole house by a lead tenant with named joint tenants. It is thus clear that the individuals came to the house as a group and were not independently recruited.
10. The agreement also indicates that the tenants are responsible for the property as a whole, and not just their own rooms. If any tenant left during the term of the agreement, it appears that the responsibility to find a new tenant would fall to the remaining tenants, or else they would be liable to cover the outstanding rent. There is no suggestion that rooms were allocated to the tenants, and it is reasonable to assume that each group is left to themselves to choose their rooms. On my site visit, I observed that there were no locks on the bedroom doors. These circumstances all point to the presence of a single household, in contrast to an HMO, where rooms would normally be let on an individual basis.
11. Following my site visit, the appellant forwarded a copy of the tenancy agreement for the 12 month term from 1 July 2020 to 30 June 2021. This agreement appears to be similar to the one discussed above, with a new set of five tenants. Further evidence has been made available to show that this

group of five individuals previously shared a property, strongly pointing to an established relationship between them, and thus a stable group composition in this particular case.

12. With regard to the other criteria, namely the size of the property and the shared facilities, these do not point conclusively to either a C3(c) or a C4 use in this case. There is little evidence of how communal the mode of living is at the appeal property, but in the light of the considerations above, this is not determinative.
13. In addition, I have been supplied with a copy of the HMO licence which came into force on 7 February 2017. Although the licence was issued subject to a stringent list of conditions, there is little evidence before me to show that these have been adhered to or implemented. Many of the conditions require documentary evidence, and it would be a simple matter for such evidence, if it exists, to be produced. Conversely, the Council are under a duty to make sure that the licence is being complied with. Nonetheless, there is little evidence of any attempt on the Council's part to inspect the property as an HMO within the three years since the licence was issued. This lack of evidence on either side casts further doubt as to whether the building is in fact being operated as an HMO.
14. Although the use of the dwelling may have changed between Class C3(a) and C3(c), this is not a material change of use requiring planning permission. Although I recognise the Council's concern over the proliferation of student housing in the city, the evidence above strongly points to a Class C3(c) use, whereby the appeal property is occupied by a group of individuals living together as a single household. In the absence of any convincing evidence that the use should be identified as a Class C4 HMO, I conclude that the breach of planning control alleged in the notice has not occurred as a matter of fact.

Conclusion

15. For the reasons above, the appeal succeeds on ground (b) and the enforcement notice will be quashed. In these circumstances the appeal under the various grounds (a), (c), (f) and (g) as set out in s.174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under s.177(5) of the 1990 Act as amended do not fall to be considered.

Elaine Gray

INSPECTOR