



Appeal Decision

Site visit made on 28 January 2020

by Iwan Lloyd BA BTP MRTPI

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

Decision date: 26 March 2020

Appeal Ref: APP/G5750/C/19/3223686

Land at 33 St Antonys Road, Forest Gate, London E7 9QA

- 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 Tayab Miah against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 18/00982/ENFC & 19/00106/ENFNOT, was issued on 8/02/2019.
 - 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 the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (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.

Procedural matters

2. The Council interpret the appellant's submission as if it was a ground (d) appeal in relation to immunity. However, having carefully considered the submission it relates to the establishment of the use within the specified use class not being a breach of planning control, which in my view is a ground (c) appeal.

The ground (c) appeal

3. The appeal property is a mid-terraced building with a ground and first floor level. The ground (c) is that there has not been a breach of planning control because the appellant asserts that the property was established as a HMO in May 2009 under Class C3¹ dwellinghouse – 'Use as a dwellinghouse (a) by a single person or by people living together as a family, or (b) by not more than 6 residents living together as a single household'. Later iterations of the Use Classes Order came into effect in April 2010 and by then the appellant claims the HMO was established. The appellant also asserts that there was no

¹ The Town and Country Planning (Use Classes) Order 1987

intention to convert the property to Class C4 HMO. However, this amendment of the Use Classes Order came into effect in April 2010 after the HMO came into use.

4. The appellant contends that on 1/05/2009, 4 unrelated tenants were residing at the property, and on 17/01/2011, 3 people were living at the address, and on 5/04/2015, 3 people were living there and sharing the facilities of the house as an HMO.
5. In 2013 the Council introduced an article 4 direction which excluded the permitted development right to change the use of a building from a use falling with Class C3 dwellinghouse of the Use Classes Order to a use falling within Class C4 HMO comprised within Class I of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 as amended.
6. The Council alleges a material change of use to a sui generis HMO. This means a use which is outside and is not specified in the Use Classes Order. The Council's claim is that when the property was inspected in 2017 officers noted that the ground floor rooms were not bedrooms and that in 2018 when the additional HMO licence was issued the whole property was used as sui generis HMO. The 2019 inspection noted that 6 bedrooms over two floors were used as an HMO accommodating 11 people.
7. As a matter of fact and degree the material change of use from that of a dwellinghouse in HMO use housing three to four persons to a large sui generis HMO occupying 6 bedrooms and 11 persons on the balance of probability occurred in 2018. This change of use is a material change in the character of the use which brings the alleged use outside of the terms of Class C3 dwellinghouse use exceeding 6 residents living together as a single household. The alleged use is also materially different in character to the existing C3 use, because 11 persons as opposed to 4 materially increases the coming and goings, and the pattern of movement inside and outside the property resulting in an increase in environmental effects on nearby residents in relation to noise and disturbance.
8. The existing Class C3 use changed to a sui generis HMO also deprives the borough the loss of a family dwellinghouse a form of housing protected from conversion by planning policy. To this end the existing Class C3 use fulfils a proper planning purpose which is a relevant consideration in relation to the assessment that a material change of use has occurred. The consequences of the loss of a family dwellinghouse in Class C3 use to a sui generis HMO relate to the frequency of occupying residents moving in and out of the property which in turn has adverse implications for community cohesion.
9. The combination of these effects described on the character of use of land are material such that as a matter of fact and degree a material change of use has occurred within the scope of planning control under section 55(1) of the Act as amended. No planning permission has been granted for this development in breach of planning control.
10. The appeal on ground (c) therefore fails.

Iwan Lloyd

INSPECTOR