The Planning Inspectorate

Appeal Decision

Site visit made on 10 March 2020

by Jean Russell MA MRTPI

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

Decision date: 06 April 2020

Appeal ref: APP/N5090/C/19/3235545
Land at 20 Westside, London, NW4 4XB

- The appeal is made by Alan Goldberg o/b CSN Estates Ltd under section 174 of the Town and Country Planning Act 1990 (**TCPA90**) against an enforcement notice (ref: ENF/1927/18) issued by the Council of the London Borough of Barnet on 16 July 2019.
- The breach of planning control as alleged in the enforcement notice is *without planning permission the change of use from a single dwellinghouse C3 to a House in Multiple Occupation C4 (Sui Generis)*.
- The requirement of the notice is to *cease the use of the property as a House in Multiple Occupation*.
- The period for compliance with the requirement is: five (5) months.
- The appeal is proceeding on the ground set out under section 174(2)(g) of the TCPA90.

Formal Decision

1. It is directed that the enforcement notice be corrected and varied by inserting 'material' between 'the' and 'change' in paragraph 3; deleting 'C4' in paragraph 3; and substituting nine (9) months for five (5) months as the period for compliance. Subject to the corrections and variation, the enforcement notice is upheld.

The Enforcement Notice

2. The term 'C4' refers to class C4 or the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO), as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (UCO)[1]. If an HMO has more than six residents, it is 'sui generis', meaning that it falls outside of any class.

3. The notice describes the alleged HMO as '*C4 (Sui Generis)*' – but it cannot be both. The appellant states that the HMO has seven tenants; the evidence from the Council is also that there are more than six occupiers. It would cause no injustice to either party if I correct the notice and delete the erroneous 'C4'[2]. I shall also correct the notice to clarify that there has been a 'material' change of use, since it is that which amounts to development for which planning permission is required.

The Planning Application and Planning Merits

4. The enforcement notice was issued after the appellant made a 'related' planning application (ref: 19/3791/RCU) but before the end of the period in which the Council had to decide that application. Accordingly, in this appeal, the appellant could not plead ground (a) or seek planning permission for the alleged HMO use[3].

5. The appellant, the Council and third parties have made representations for this enforcement appeal which relate to the merits of the alleged HMO. Since there is

[1] 'C3' means 'use class C3' or use as a dwellinghouse as set out in the Schedule to the UCO.
[2] The power of correction is set out under s176(1)(a) of the TCPA90.
[3] S174(2A) of the TCPA90; the application was for the 'change of use from single family dwellinghouse to into a 7 room, 7 person HMO'. It was related to the notice because granting planning permission for the development proposed would involve granting permission for what is alleged by the notice to be in breach of planning control.

no ground (a) appeal, I cannot consider or make any determination on the planning impacts of the use.

6. The appellant has stated that an appeal (ref: APP/N5090/W/19/3239973) was made under s78 of the TCPA90 against the Council's decision on 27 September 2019 to refuse the 'related' application. I was not appointed to determine the 's78 appeal' but I have ascertained that it was dismissed on 31 March 2020.

The Appeal on Ground (g)

The Approach to Ground (g)

7. Ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant seeks 14 rather than five months to cease the HMO use.

8. Where an appeal is made on ground (g) alone, the appellant does not make any case that the alleged development is lawful, or that planning permission ought to be granted for the development, or the requirement(s) of the notice should be varied. The appellant will know that the notice will come into force in exactly the form it was issued. The only reason for appealing is to gain more time to comply.

9. So where the only ground is (g), the Inspector can usually take account of the time taken in the appeal process when deciding what would be a reasonable period for complying with the notice. In this case, however, the appellant pursued a grant of planning permission legitimately through his separate s78 appeal. He was entitled to assume success in that proceeding, although that was not the actual result. Since the s78 appeal has only just been dismissed, I will consider what would be a reasonable time for compliance with the notice from the date of this decision.

Findings on Ground (g)

10. The appellant made this appeal on the basis that five months would be insufficient time for the related application to be decided by the Council, and the s78 appeal to be determined by an Inspector. That argument has been superseded by events.

11. The appellant also seeks to extend the period for compliance so that the occupiers of the HMO can have more time to find alternative places to live. This is an important consideration; when the notice comes into force, those people will lose their homes. The HMO was still occupied on the date of my visit, and that is consistent with the fact that I attended the site before the s78 appeal was decided.

12. It is never possible to guarantee that occupiers can *find* somewhere new to live, but I must ensure anyone who will be deprived of their home is given a reasonable period of time to look for other housing. The appellant states that the occupiers would require a two month period of notice to quit after the expiry of their six month assured shorthold tenancy agreements (ASTs). I must accept those claims since they are not disputed by the Council.

13. Moreover, on the date of this decision, the UK is subject to lockdown in response to the Coronavirus/Covid-19 pandemic; it would be unreasonable to expect the HMO occupiers to look for new housing in the near future. Indeed, until 30 September 2020, under the Coronavirus Act 2020, landlords are required to give all renters three months' notice if they intend to seek possession. I am also concerned that Council might have difficulty enforcing the notice if the current five month period for compliance is not varied.

14. There is no evidence to support the appellant's request that the period for complying with the notice is extended to 14 months. For the reasons given above, however, I conclude that it is reasonable and proportionate to extend the period

from five to nine months, that is, until some three months after 30 September 2020. The appeal on ground (g) succeeds to that extent, and so the enforcement notice will be upheld with a variation as well as corrections.

Jean Russell

INSPECTOR