
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2020

Appeal Ref: APP/N5090/C/19/3235403
121 Watling Avenue, Edgware HA8 0LY

- 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 Besnik Dedei against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 15 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the property to a House in Multiple Occupation (Use Class C4).
 - The requirements of the notice are to cease the use of the property as a House in Multiple Occupation.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

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

Procedural Matters

2. In light of the Covid-19 coronavirus pandemic, the consequent travel limitations, and following consideration of the grounds of appeal and the submitted evidence, my view was initially that this appeal could be determined on the basis of an unaccompanied site visit. I sought the views of the main parties and there were no objections to this approach.
3. However, following further consideration of the legal grounds of appeal, notwithstanding that there was also an appeal on ground (a), the appeal has been determined without a site visit. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit'.
4. The appellant confirmed in his Final Comments statement that the appeal on ground (e) was withdrawn. I have therefore proceeded on the basis of the remaining grounds.

The ground (c) appeal

5. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. In this case the appellant submits that the change of use of the property to a house in multiple

- occupation (HMO) was permitted development (PD) as it happened before the Article 4 Direction came into effect on 29 May 2016.
6. The Council's records show that the change of use may not have occurred until December 2018 when the appellant submitted a HMO licence application to the Council.
 7. Section 55(1) of the 1990 Act as amended defines the making of a material change of use of land as development and section 57(1) requires that planning permission is necessary for development, subject to some specific exclusions. Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) sets out that development consisting of a change of use of a building from a use falling within Class C3 Dwellinghouses of the Schedule to the Use Classes Order¹ to a use falling within Class C4 HMOs of that Schedule is PD.
 8. I consider that the use of the property did change before the introduction of the Article 4 Direction. This is because it is apparent from the tenancy agreements that before May 2016 the property was being used by two households. One bedroom was let to two individuals who both signed a single tenancy agreement on 1 June 2015 and this agreement was continually renewed until recently when it became a periodic tenancy to date. They were the first household. A second bedroom was let to a third person who signed a tenancy agreement on 9 December 2015 and who occupied the room until 8 December 2016. They formed the second household. The appellant confirms that they all shared the kitchen and bathroom. The Class C3 use had therefore ceased as use for Class C3 purposes is limited to occupation by a *single household* (my emphasis).
 9. Use Class C4 is defined as use of a dwelling by not more than six residents as a 'house in multiple occupation'. The Class C4 Interpretation states that HMO has the same meaning as in section 254 of the Housing Act 2004. For the purposes of the Housing Act 2004, a building is a HMO if the living accommodation is occupied by persons who do not form a *single household* (section 254(2)(b)) and *two* or more of the households who occupy the living accommodation share one or more basic amenities (section 254(2)(f)).
 10. From December 2015 the appeal site was occupied by two households who shared a kitchen and bathroom. The use of the building had therefore changed from Use Class C3 to Use Class C4. As this occurred before May 2016 the change is PD as it accords with Class L of the GPDO.
 11. With regard to the continuity of that use, a third household occupied the property from September 2016 to October 2018. Although the second household moved out December 2016 and the third household left October 2018, a new household moved in November 2018. Thus, the property has continually being occupied by more than one household to date and as such the C4 use has continued since it began, without any other intervening uses. The appeal on ground (c) therefore succeeds.

Conclusion

¹ Schedule to the Town and Country (Use Classes) Order 1987 as amended by the Town and Country Planning (Use Classes)(Amendment)(England) Order 2010

12. For the reasons given above I conclude that the appeal should succeed on ground (c). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

D Fleming

INSPECTOR