



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 June 2020

Appeal Ref: APP/T5150/C/19/3237935

8 Sidmouth Road, London NW2 5JX

- 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 Dr Abbas Shir Afkan against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 19 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO), occupied by more than six people.
- The requirements of the notice are:
 - STEP1 Cease the use of the premises as a House in Multiple Occupation (HMO), ensuring that there are NO MORE than SIX occupants and SIX beds in the premises
 - STEP2 Remove all kitchens and cooking facilities, except ONE, from the premises and remove all associated debris and materials arising from this removal from the premises
 - STEP3 Remove all bathrooms and bathroom facilities, except TWO, from the premises and remove all associated debris and materials arising from this removal from the premises
 - STEP4 Remove all partition walls facilitating the unauthorised change of use of the premises and remove all associated items, debris and materials arising from this removal from the premises, so that the layout is returned back to a single family dwellinghouse.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. In response to travel restrictions as a result of the COVID-19 pandemic the file was reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and surrounding area given the grounds of appeal and points in dispute. Both the appellant and the Council were given an opportunity to comment on this approach and I have taken any responses into account.
2. Whilst ground (g) has not been pleaded, in light of the current pandemic both main parties were given the opportunity to provide any comments in respect of the impact of the pandemic on the compliance period and any comments received have been taken into account.

Application for costs

3. An application for costs was made by the Council of the London Borough of Brent against Dr Abbas Shir Afkan. This application is the subject of a separate Decision.

The appeal on ground (b)

4. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.' Therefore, the onus is on the appellant to demonstrate that the property was not in use as an HMO occupied by more than six people at the relevant date, being the date of issue of the notice 19 August 2019.
5. The appellant's submissions on this ground are limited but the appellant stated that the property is occupied by four families and that they share at least one basic amenity, one kitchen, two toilets and a shower, as a small HMO which falls within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (UCO), as amended.
6. The definition of an HMO within Class C4 of the UCO is the, use of a dwellinghouse by not more than six residents as a "house in multiple occupation". An HMO shared by more than that number of people, often referred to as a large HMO, is outside the scope of this use class, and is therefore a sui generis use.
7. It is undisputed that the property was a single dwellinghouse falling within Class C3 of the UCO prior to conversion works taking place and that the property was in use as an HMO at the relevant date. The point in contention is whether there were more than six residents at that time.
8. The appellant's case is contradicted by the Council who visited the property on 2 August 2019 accompanied by the appellant's estate agent who managed the property. They stated that the agent confirmed that the property was occupied by 10 people. I have also had regard to a third-party representation which refers to the property being tenanted by eight or more persons.
9. Photographs taken by the Council during that visit show nine bedrooms, with one, which the agent told them, was double occupancy. They also show two kitchens and a number of shared toilet and bathroom facilities. Aside from the kitchens and bathrooms, each room contained a bed but did not appear to be used solely for sleeping. The photographs depict fridges, some hot drink making facilities and evidence of food being stored within rooms. Each bedroom had its own key lockable door. Additionally, an HMO license was on display, reference HMOL/10005/16 and was for an HMO for up to 10 persons.
10. The appellant argued that there is only one kitchen and that the estate agent was responsible for keeping the records of tenants. It seems unlikely to me that the appellant, as the owner of the property, would have no knowledge of the number of tenants living in it. However, beyond stating that the house is occupied by four families and it is not occupied by 10 people, they have provided no details about how many occupants there were. Since the relevant consideration in this case relates to the number of occupants, whether there were one or two kitchens has no bearing on this matter.

11. The Council's evidence points clearly to the use of the property as an HMO occupied by more than six people when the enforcement notice was served. The appellant has not produced any substantive evidence to rebut the Council's submissions in this regard.
12. Consequently, the appellant has failed to demonstrate on the balance of probabilities that the property was not in use as an HMO occupied by more than six people at the date of the notice. I conclude as a matter of fact that the breach, as alleged, has occurred. The ground (b) appeal therefore fails.

The ground (c) appeal

13. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
14. Section 55 of the Act defines the making of any material change in the use of any buildings or other land as development. Section 57(1) provides that planning permission is required for development. I have found the use to be as an HMO occupied by more than six people (*sui generis*) and it is undisputed that the property was in use Class C3 before the current use.
15. Article 3, Schedule 2, Part 3, Class L (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out that development consisting of the change of use of a building falling within Class C3 of the schedule to the UCO to a use falling within Class C4 is permitted development. However, as has been shown in my findings on the ground (b) appeal, the number of occupiers exceeds six and so the appellant cannot rely on permitted development rights.
16. The appellant stated that the property is occupied by four families who live as 'one' however, he has provided few details about the occupants, in particular their relationship with others residing at the property or the extent to which the facilities are shared. The layout of the rooms, in particular the lack of common areas outside of the kitchens and rear garden and the presence of fridges, hot drink making facilities, food and personal hygiene items, normally found in kitchens and bathrooms, in bedrooms, indicates that the property is occupied by a collection of individuals.
17. I acknowledge the presence of a sports centre and other facilities on the opposite side of the road which may generate a reasonable number of vehicle and pedestrian movements throughout the day and, that externally the house appears as a single dwellinghouse. However, it is my view that use as a large HMO is materially different from use as a single dwellinghouse.
18. Coming and goings to and from the property by individuals are likely to be more frequent due to the movements generated by a collection of individuals occupying the property, rather than a single family, due to different timetables, working and socialising patterns.
19. Furthermore, in the absence of alternative amenity space such as lounge areas, it seems occupants would spend a reasonable amount of time in their bedrooms. The result being a number of individuals carrying out tasks and spending time in bedrooms that would normally be associated with a ground floor living space. This is a very different pattern to that of a family, or possibly

- a household with a more generous and functional communal space. Similarly, given the absence of communal space the rear garden is likely to be well used.
20. It seems likely to me that the use as an HMO occupied by more than six people would cause general disturbance to the neighbours, particularly the adjoining residential property and others in the immediate vicinity, due to an increase in residential activity associated with the use of the property. In this respect I note the Council stated that they have received complaints about the use.
21. I therefore consider that use as a large HMO as a matter of fact and degree is materially different in character and scale from use as a single dwellinghouse. The new use therefore amounts to development as there has been a material change in the use of the property. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

The ground (f) appeal

22. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires that the unauthorised use of the property should cease, and the layout be returned to reflect that of a single dwellinghouse. I therefore find that the purpose of the notice is to remedy the breach of planning control.
23. The appellant's argument in respect of this ground of appeal is that the property always had four bathrooms however, I have no layout plans or evidence of what existed before to support that submission.
24. The appellant provided no further justification as to why more than two bathrooms are required to serve a single dwellinghouse. It appears to me that the number of bathrooms in the premises have facilitated the unauthorised use and in the absence of any evidence to the contrary the removal of all but two bathrooms is necessary, along with the other steps, to secure the cessation in the use of the premises as an HMO.
25. The requirement to cease the use as an HMO would in effect prevent the appellant from exercising permitted development rights in respect of the change of use to a Class C4 HMO, once the property was returned to the previous lawful use as a Class C3 single dwellinghouse. There is no evidence before me to suggest that such rights are restricted in respect of this property and consequently, in this regard the requirement is excessive. I shall therefore vary the requirement to refer to use as an HMO occupied by more than six people, this reflects the breach of planning control.
26. Step 1 of the requirements along with requiring the use as an HMO to cease, requires that there are no more than six residents and six beds in the property. However, the lawful use of the property is as a single dwellinghouse and there is no limit on the number of people that can occupy a dwellinghouse as a single household under Class C3(a). Consequently, I consider the requirement that there is no more than six residents and six beds is excessive. In order to

remedy the breach of planning control it is reasonable and sufficient to require the use as an HMO occupied by more than six people to cease. Similarly, as the lawful use of the property is as a single dwellinghouse the reference in step 4 to 'family' is not necessary.

27. I shall vary the requirements to reflect my findings on these matters and to this limited extent the appeal on ground (f) succeeds.

The appeal on ground (g)

28. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
29. Whilst the appellant did not make an appeal on this ground, in light of the current pandemic both parties were asked for comment on the effect of this on the compliance period. The Council responded and commented that it would be reasonable to add a further three months to the compliance period, the effect being that the appellant would have six months in which to comply with the requirements.
30. It is reasonable to ensure anyone who will be deprived of their home is given a reasonable period of time to look for other housing. Consequently, in light of the current pandemic, I conclude that it is reasonable and proportionate to extend the period from three to six months.
31. Additionally, the Council also referred to their powers under s173A(1)(b) to extend any period for compliance if necessary, a matter which is entirely at their discretion, without prejudicing their right to take further action.

Other Matters

32. The appellant raised various matters including misgivings about the Council's approach to the investigation, the lack of affordable accommodation in the area, that the property is not in a substandard condition and that the occupants are friendly and polite and not claiming benefits. However, these matters have no bearing on whether the use is lawful on any of the other grounds subject of this appeal.
33. That the Council have not shared the details of complaints with the appellant, is a matter between the main parties away from this appeal and does not alter my judgement.

FORMAL DECISION

34. It is directed that the enforcement notice is varied by:

- (1) The deletion of the words 'NO MORE than SIX occupants and SIX beds in the premises' and the addition of the words 'occupied by more than six people' in STEP1 of the requirements, so that it reads: *STEP1 Cease the use of the premises as a House in Multiple Occupation (HMO) occupied by more than six people.*
- (2) The deletion of the word 'family' in STEP4, so that it reads: *STEP4 Remove all partition walls facilitating the unauthorised change of use of the premises and remove all associated items, debris and materials arising from this removal from the premises, so that the layout of the premises is returned back to a single dwellinghouse.*

- (3) Substituting six (6) months for three (3) months as the period for compliance.

35. Subject to the variations above, the appeal is dismissed, and the enforcement notice is upheld.

Felicity Thompson

INSPECTOR