



Appeal Decision

Site visit made on 20 July 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 27 July 2020

Appeal Ref: APP/G5750/C/19/3220336

Land at First and Second Floor, 320-322 Barking Road, Plaistow, London E13 8HL

- 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 Subodh Ranjan Sen against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 7 December 2018.
- 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.
- 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 three months.
- The appeal is proceeding on the ground set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Ground (c)

2. For an appeal to be successful under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
3. The allegation is that there has been a material change of use to a *sui generis* house in multiple occupation, which generally-speaking is use of a dwellinghouse by more than 6 residents not living as a single household and sharing basic amenities (sometimes called a 'large HMO'). The appellant accepts that this use has occurred since his submissions say:

"The council has been aware that the property in question is shared by 7 people since early 2017. In March 2017 the council granted the relevant licence accordingly (ref. 16/04525/HOHMOL (please see enclosed HMO licence) which stipulated that 7 individuals were permitted to reside in the property..."

4. The key issue therefore is whether a material change of use occurred to arrive at the above use. At the time of my site visit, it appeared that the appeal property was occupied by fewer than 7 residents. However, the test is whether the use alleged in the enforcement notice had occurred when it was issued and that it constituted a breach of planning control. The fact that it may

subsequently have ceased is not a reason for success, or for the notice to be quashed, as if this were the outcome then the Council would need to re-issue the notice should the alleged use recommence.

5. The appeal site is a 2-storey maisonette across the first and second floor above an existing commercial property on the ground floor. The appellant says that there has been no material change of use because the property was used for staff accommodation for a significant period of time, before and after purchase of the property in 1997, and then after a refurbishment was used for a mixture of staff and rented rooms. However, the burden of proof is on the appellant to satisfy me on the balance of probabilities that there has been no material change of use. No substantive evidence has been submitted as regards the level of occupancy involved in the above residential arrangements, and therefore there is a very limited case made that any change in the character and impact of the use is not material.
6. Further, the appellant's case is weakened by an application made to the Council¹ in 2012 for 'Change of use of 1st & 2nd floor maisonette residential accommodation (Class C3) into 11 bed HMO (Class Sui Generis)'. I am satisfied accordingly from that application, and in the absence of any substantive evidence from the appellant showing otherwise, that the lawful use at that time was materially different in use to the allegation. I also place significant weight on the Council submissions that the agent stated with the application that the property was vacant, which is in turn supported in a letter the Council reportedly received from the appellant in 2017 stating that it had been vacant from purchase in 1997 to refurbishment approximately 4 years before the date of the letter.
7. Therefore, I am not satisfied on the balance of probabilities that there has not been a material change of use of the appeal property to a *sui generis* house in multiple occupation. Further, the fact that an HMO licence has been issued under the Housing Act 2004 does not amount to planning permission. The appeal under ground (c) accordingly fails.

Conclusion

8. For the reasons given above I consider that the appeal should not succeed.

Andrew Walker

INSPECTOR

¹ 12/01110/COU