



Appeal Decision

Site visit made on 13 July 2020

by Thomas Shields MA DipURP MRTPI

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

Decision date: 29 July 2020

Appeal Ref: APP/N5090/C/20/3249776

8 Fuller Street, London, NW4 4QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mr R Shah against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 20 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the property into a C4 House of Multiple Occupation (HMO).
 - The requirements of the notice are:
Cease the use of the property as a House in Multiple Occupation.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice in the second line of Section 3 be corrected by deleting "4 years" and substituting instead "10 years".
2. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

Preliminary matters

3. The appellant originally included ground (d) in his appeal. However, the notice erroneously referred to a time limit of 4 years for taking enforcement action, rather than 10 years applicable to a material change of use of a Class¹ C3 dwelling house to a Class C4 HMO. Powers available under s176(1) of the Act permit me to correct the error provided that it would not result in any significant injustice to any party. In this regard the appellant's evidence on use as a HMO did not extend back to a 10 year period before the notice was issued, although it did predate the effective date of the Council's Article 4 Direction², indicating the potential for an appeal to be made on ground (c).
4. I wrote to the parties on this matter inviting the appellant to withdraw the ground (d) appeal and for both parties to make representations on ground (c). The appellant confirmed his withdrawal of ground (d) and its substitution with ground (c). Only the Council submitted further comments on ground (c) which I have taken into account in reaching my decision. Given these circumstances

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

² London Borough of Barnet Article 4 Direction effective 29 May 2016

I consider that no injustice would result in my correcting the notice to refer to 10 years, and I have therefore done so.

The appeal on ground (c)

5. An appeal on ground (c) is a claim that the matters alleged in the notice do not constitute a breach of planning control.
6. Section 55(1) of the Act defines the making of a material change of use of land as "development". Section 57(1) states that planning permission is required for development, subject to certain exclusions. One such exclusion, s57(3), are the circumstances in which planning permission has been granted for the development by a Development Order. Since 2010 Article 3 and Schedule 2, Part 3, Class L of the GPDO³ grants planning permission ("permitted development") for development consisting of a change of use of a Class C3 dwellinghouse to a Class C4 HMO, and *vice versa*.
7. The appellant's evidence is that the change of use of the dwellinghouse to a C4 HMO commenced before 29 May 2016 (the date on which the Council's Article 4 Direction disapplying Class L permitted development rights came into effect) and that the use has continued thereafter.
8. The appellant has submitted copies of a number of documents in support of the claimed use. I use his same numbering but refer to some of them as follows in date chronological order.
9. **Document 1** is an email to the appellant dated 5 September 2014 from a director of Ashford Place, a registered charity which as part of its services provides resettlement for single homeless people. It refers to their intended future management of a property at Hendon for £87.15 per individual let. Although it does not give a specific address the appellant claims it relates to No.8 Fuller Street, the appeal property.
10. **Document 3** is licence agreement for shared housing and occupation of one room and use of shared communal facilities at the appeal property for Hassan Yousif. Although there is no provision for signatures or dates to endorse the document, it states the licence start-date to be 29 September 2014 with a weekly charge of £87.15.
11. **Document 4** is in two parts. The first is a licence agreement in the same unsigned format as Document 2, also for occupation of one room and use of shared communal facilities at No.8 for Amini Koyestan, to commence on 7 October 2014 at £87.15 per week. The second part is a letter from Ashford Place to the Council's Housing Benefit section, also dated 7 October 2014. It refers to Amini Koyestan as a tenant of No. 8 and requests that her housing benefit is paid directly to the landlord (the appellant).
12. **Document 2** is an email dated 13 February 2015 from Ashford Place to the appellant and lists four occupiers "currently living" at No.8. The four listed occupiers include Amira Yousuf, Amini Koyestan and Yousif Hassan (stated as *Hassan Yousif* in Document 3) each paying to the appellant £348.60 per month. That equates to £87.15 each per week.

³ Town and Country Planning (General Permitted Development)(England) Order 2015

13. **Document 5** is a signed tenancy agreement dated 20 April 2016 for the whole property for occupiers Ramos, Natario and a third person (which appears to read as 'Conrad') for £1900 per month.
14. Taking all the above documents together, I consider there is a reasonable degree of consistency and corroboration between them in terms of referencing the appeal address, the nature and dates of shared occupation, named occupiers and rents. In particular, the letter dated 7 October 2014 to the Council from a third party (Ashford Place) directly corroborates the nature of accommodation for Amini Koyestan in Document 4. That third party corroboration is continued in 2015 in Document 2 for two additional tenants, one of whom is named in Document 3.
15. The Council query the validity of the submitted tenancy agreements. In this regard I acknowledge the lack of provision for signatures on the licence agreements makes each of those documents somewhat deficient in terms of evidencing that such an agreement was legally entered into. Nonetheless, for the reasons I have set out above in respect of consistency and corroboration of the appellant's claim that the use began before the Article 4 Direction came into effect, I attach some weight to these documents in support of the appeal.
16. The Council suggests that the use as a HMO had ceased for some time before later recommencing after the Article 4 Direction came into effect. They refer to officer notes of a visit to the property in 2018. The actual notes have not been submitted in evidence but the Council state they record that: *"The inside of the property was in a poor state; it was stripped out and looked inhabitable"*⁴.
17. Given the planning history of the site it may be the case that the building was observed as stripped and uninhabitable in connection with building works approved in 2017; subject of their own investigation in 2018, around the same time as the officer's recorded observation. However, that notwithstanding, the Council's description of the property does not contradict the appellant's evidence that the use as a HMO commenced before 29 May 2016. Neither does it provide evidence that the HMO use had reverted to a C3 dwellinghouse, or to any other use, to indicate that the HMO use had been extinguished. In this regard it should be noted that a building's lawful use granted by a planning permission (in this case the GPDO) does not expire during periods of unoccupancy.
18. While Valuation Office Agency records reflect the current configuration of the property and its occupiers is "with effect" from 11 May 2019, and that an application for a HMO licence was not made to the Council until 18 July 2019, these factors also do not provide convincing evidence to refute the appellant's claim that the use continued (without extinguishment). They are also not inconsistent with the appellant's submitted tenancy agreements in Documents 6-10 in support of the continuing use.

Balance of the evidence

19. The burden of proof, on the balance of probability, rests with the appellant. However, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less

⁴ Given the context I assume that "inhabitable" is a drafting error of *uninhabitable*

than probable, there is no good reason to dismiss an appeal, provided the applicant's evidence alone is sufficiently precise and unambiguous.

20. In this context the appellant's documentary evidence is not comprehensive in content for the entirety of the relevant period, however it is not imprecise or ambiguous, and to some extent incorporates corroboration by a third party. For the reasons set out previously I attach some weight to them in support of allowing the appeal.
21. Against the appellant's evidence, the Council's evidence undoubtedly provides initial grounds for investigating whether a breach of planning control may have occurred. However, as I have set out earlier, it falls short of providing any convincing evidence to refute the appellant's claim that the use commenced lawfully prior to 29 May 2016, the effective date of the Article 4 Direction. As such I find, on the balance of probability, that it did so lawfully commence in accordance with the planning permission granted by the GPDO. On this basis I further find there to be no convincing evidence to indicate, on the balance of probability, that between 29 May 2016 and the date the enforcement notice was issued, the lawful use as a C4 HMO was extinguished by a change of use to any other use.

Conclusion

22. For all these reasons, I conclude on the balance of probabilities that the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice is corrected and quashed.
23. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act does not need to be considered.

Thomas Shields

INSPECTOR