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# Appeal Decision

Site visit made on 22 July 2020

**by E Griffin LLB Hons**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 August 2020**

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**Appeal Ref: APP/X2410/C/20/3246769**

**214 Ashby Road, Loughborough, Leicestershire LE11 3AG**

- 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 Hollie Molloy-Westrop against an enforcement notice issued by Charnwood Borough Council.
  - The enforcement notice was issued on 7 January 2020.
  - The breach of planning control as alleged in the notice is: Material change of use of dwellinghouse (Use Class C3) to a house in multiple occupation (Use Class C4)
  - The requirements of the notice are:  
Cease the use of the dwelling as a house in multiple occupation (C4 Use Class)
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.
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## Decision

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

## Procedural Matters

2. An Article 4 Direction applies to the appeal site removing permitted development rights for a change of use of dwellinghouse (Use Class C3) to a house in multiple occupation HMO (Use Class C4). Express planning permission is therefore required for a change of use from Use Class C3 to Use Class C4.
3. An appeal against the refusal by the Council to grant planning permission for a change of use for the appeal property to Use Class C4 was dismissed on the 23 October 2019<sup>1</sup>. The appeal before me is proceeding on the limited grounds (b) and (g).

## Background

4. Complaints were first made that the appeal property was being used as a HMO in October 2018. After serving a Planning Contravention Notice (PCN), the Council was satisfied at the time that the occupation by the appellant as resident landowner and 2 couples fell within Use Class C3.
5. In September 2019, complaints were made that the property was being occupied by a new group of individuals and was being used as an HMO. Four occupants had moved out and two university friends and their partners had moved in. The dismissal against the Council's refusal to grant planning

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<sup>1</sup> APP/X2410/W/19/3234047

permission was issued on 23 October 2019. The appellant states that she applied for planning permission for a change of use after being wrongly advised and that she appealed the refusal in case at some point she wanted to move from Loughborough. Nevertheless, it is the case that planning permission has been refused for a change of use to Use Class C4. On the 8 October 2019, the Council attended at the appeal property and as a result of that visit served a second PCN. However, due to the lack of evidence of relationships between individuals, the Council asked the appellant to submit a Certificate of Lawful Use (CLU). The appellant states in her appeal form that "I understand evidence of relationships is now required and certificates however this was not communicated towards me clearly from the Council." The request for a CLU application was made by the Council in October 2019 but no application with supporting documentation has ever been made.

### **The appeal under ground (b)**

6. To succeed under ground (b) the appellant would need to show that the breach of planning control has not occurred as a matter of fact. The onus of proof rests upon the appellant and the test of evidence is the balance of probabilities. The appellant argues occupation by herself as resident landowner and four other occupants who form two couples continues to fall within Class C3.
7. Under the Use Classes Order<sup>2</sup>(UCO), Class C3 is defined as use by (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4). For the purposes of Class C3(a) the definition of single household which is found in Section 258 of the Housing Act 2004 includes members of the same family or their circumstances match a description specified for these purposes in regulations.
8. Class C3(a) does not apply as the occupants are not related to each other. Class C3 (b) does not apply as there is no reference by either party to the provision of care. In order to show that the use of the appeal property remains within Class C3, the occupants would need to be living together as a single household under Class C3(c).
9. Under the UCO, the use of a building as a dwellinghouse by more than six residents as a house in multiple occupation (HMO) comes under Class C4. HMOs are generally occupied by one or more households and who share one or more basic facilities (which is a toilet, personal washing facilities or cooking facilities) or the accommodation is lacking in one or more basic amenities.
10. The key difference between a Class C3(c) use and Class C4 is the relationship of the occupants and the manner in which they live together. The test of whether or not the use falls within Class C3(c) is are the occupants living together as a single household. Whilst there is no single criterion to decide if a single household is present, the Courts<sup>3</sup> have found that matters such as whether the persons living in the house came to it as a single group or whether they were independently recruited; what facilities are shared; whether the occupants were responsible for the whole house or just their particular rooms,

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<sup>2</sup> The Town and Country Planning (Use Classes) Order 1987 as amended

<sup>3</sup> Barnes v Sheffield CC( 1995) 27 HLR 719

whether individual occupants were able to lock other occupiers out of their rooms; whose responsibility it was to recruit new occupiers when individuals left; who allocated rooms; the size of the property; how stable the group composition is; and whether the mode of living is communal.

11. The appellant states that she occupies a downstairs bedroom and the other 4 occupants occupy the four first floor bedrooms. There is no suggestion that kitchen facilities are not shared or that the rooms are self-contained. The appellant told the Council that her mother paid the bills and occupants share food bills and no rent is paid. The appellant states that her friends and their partners have their own bedrooms as they need separate desks, chairs and wardrobes and bedrooms are not locked. No rent is paid and occupants take it in turns to do shopping.
12. There are third party comments from interested parties. Two parties refer to the appellant only occasionally being at the appeal property and not staying overnight. Whilst the appellant does not need to be resident at the appeal property in order for it to fall within Class C3 (c), it is necessary to clearly identify who is living at the property to be able to assess the nature of the relationships between the occupants to establish whether the use falls within Class C3(c) or Class C4.
13. Whilst the appellant's evidence does not need to be independently corroborated in order to be relied upon, it does not cover relevant matters in sufficient detail to enable me to draw a conclusion that the occupiers are living together as a single household within the meaning of Class C3(c). For example, there is no evidence before me as to what would happen if one person left, nor the method of room allocation, nor the stability of the group composition. It is not clear if occupants are responsible for the property as a whole or their own rooms or whether the appellant's mother cleans the whole house or just communal areas. It is not clear which of the occupants had established relationships between them before they moved in or if the group previously shared accommodation or were independently recruited. How the communal mode of living works is unclear and particularly how the presence of couples affects the manner in which the group lives together.
14. The appellant states that she is confused as to why 2 school friends with their partners occupying the appeal property with her was considered acceptable in planning terms but 2 university friends with partners is not. The Council indicates that they relied upon the replies to the original PCN when making their assessment. Nevertheless, irrespective of the history of the appeal property and its use, I am considering the occupation of the appeal property around the time of the issue of the notice and whether a breach of planning control has occurred as a matter of fact.
15. Whether or not occupants are in couples is likely to be relevant in determining whether the occupants form a single household. In the absence of detailed evidence, the presence of couples is more usually associated with C4 use in creating more than one household. It is not the case that the presence of couples automatically means that the use remains in Class C3(c) use.
16. I conclude on the evidence before me that the appellant has not discharged the burden of proof that rests upon her to show on the balance of probabilities that a Class C4 Use has not occurred as a matter of fact. The appeal under ground (b) therefore fails.

### **The appeal under ground (g)**

17. This ground relates to the time allowed for compliance. The period for compliance is 3 months. The appellant has stated that the period for compliance is too short and unrealistic. Whilst the appellant asked for 6 months for her and the other occupants to deal with exams and final year at university, the university term would have finished some time ago. It is unclear what the intentions of the occupants were beyond university and there are no formal notice periods to comply with. A third party refers to recent changes in occupation. On the basis of the evidence before me, I do consider that 3 months is a reasonable compliance period. The Council does, however, have powers under Section 173A of the Act which allows the Council to extend the compliance period should it be satisfied that there were justifiable reasons to do so. The appeal under ground (g) therefore fails.

### **Other Matters**

18. The appellant is critical of the Council's investigation and has set out in detail the communications between her and the Council which began when the appeal property had different occupants. She refers in particular to the Council not following normal procedures. The appellant was however given options prior to the service of the notice which were to reduce the number of occupants or to apply for a CLU. Nevertheless, my remit is limited to determining the appeal based upon the grounds before me.

### **Conclusion**

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

*E. Griffin*

INSPECTOR