
Appeal Decisions

Site visit made on 25 August 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26th October 2020

Appeal A: APP/N5090/C/19/3238310 **29 Bertram Road, London, NW4 3PR**

- 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 Manoj Patel against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0643/19, was issued on 26 September 2019.
 - 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 in Multiple Occupation (HMO).
 - The requirement of the notice is cease the use 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)(c) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/N5090/X/19/3239456 **29 Bertram Road, London, NW4 3PR**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Manoj Patel against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/5230/191, dated 25 September 2019, was refused by notice dated 16 October 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is a change of use C3(a) to C3(c) use as a dwellinghouse for not more than six residents living together as a single household where no care is provided to residents.
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Decisions

Appeal A

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

Appeal B

2. The appeal is dismissed.

Applications for costs

3. In Appeal A, an application for a full award of costs was made by the Council against the appellant, and an application for a full award of costs was made by the appellant against the Council. In Appeal B, an application for the full award of costs was made by the appellant against the Council. These applications are the subject of separate decisions.

Preliminary Matter in Appeal B

4. The decision notice issued by the Council defines the use as:

“C3(a) to C3(c) for not more than six residents living together as a single household where no care is provided to residents”.

However, the Informative on the decision notice states:

“The information available is insufficient to demonstrate that, on balance of probability, the property known as 29 Bertram Road, London NW4 3PR has been in use as an HMO (within class C4) continuously for a period of more than four years as required by Sections 171B and 191 of the Town and Country Planning Act 1990 (as amended). Furthermore, the application form states that the use to which the application relates, commenced in May 2018. The development is therefore found to be UNLAWFUL.”

5. It is therefore clear that the Informative, and the reasons given for the refusal to grant the certificate of lawful use, does not match the description of the use on the application. The Informative was plainly incorrect. However, the certificate is clear that the decision relates to the same use as that for which was applied, i.e. the change of use from Class C3(a) to Class C3(c) of the Town and Country Planning (Use Classes Order) 1987 as amended (“the UCO”). I have therefore determined the appeal based on whether the refusal itself was well-founded (and not the reasons for the refusal) when considered in light of the evidence submitted to support the application.

Appeals A and B

Ground (c) and the LDC

6. The evidence and the arguments submitted in both appeals are the same.
7. To succeed in Appeal A on ground (c), the appellant must show that the matters stated in the notice do not constitute a breach of planning control. The notice alleges a material change of use of the property to house in multiple occupation under class C4 of the Town and Country Planning (Uses Classes Order) 1987 as amended (“the UCO”). An Article 4 Direction¹ removing the permitted development rights for a class C3 use dwellinghouse to change use to a class C4 HMO use came into effect in the Borough on 29 May 2016.

¹ Made under Article 4 of the to the Town and Country Planning (General Permitted Development Order) 1995.

8. Class C4 use is defined as: *"Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".*² A house in multiple occupation in this context has the same meaning as in section 254 of the Housing Act 2004 i.e. a group of people not living together as single household and sharing some basic amenities.
9. The main issue in Appeal B is whether, on a balance of probabilities, the Council's refusal to grant the certificate of lawful development was well-founded. That turns on whether there has been, as argued by the appellant, a change of use to Class C3(c) which was not development and did not therefore require planning permission. Section 55(2)(f) of the 1990 Act provides that changes within a use class are not development.
10. The appellant's case in both appeals is that the property is not a house in multiple occupation as it is occupied by four (apparently unrelated) friends living together as a single household as proven by the lack of locks on the bedroom doors and a single tenancy agreement with four tenants. The Council, on its evidence from immediately prior to the issue of the notice, does not dispute that the property was occupied by four tenants but does not agree that the use falls within class C3(c) as a dwellinghouse for *"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)"*³.
11. The definition of use class C3(c) applies when the use does not fall within class C4, and in this instance, on the evidence submitted during the course of these appeals, the use does appear to fall within class C4. Clear justification would be required in support of the appeals to show that the occupants at the relevant time were living as a single household, otherwise the use must fall into Class C4. The evidence submitted by the Council from the time prior to the service of the notice accords with the arrangements observed during the site visit in that the house had 4 bedrooms with a single shared living and kitchen area and two shared bathrooms. The evidence provided by the appellant (a single tenancy agreement and the fact that there were no locks on the bedroom doors) is insufficient to prove, on the necessary balance of probabilities, that the residents were living together as a single household.
12. On the evidence provided, the use falls squarely within the definition of class C4 and there has been a material change of use. The ground (c) appeal cannot therefore succeed. Similarly, the appellant had not provided sufficiently precise and unambiguous evidence on a balance of probabilities that the use had changed to Class C3(c) and that it did not fall within Class C4. The Council's refusal to grant a certificate of lawful use or development in respect of a change of use from C3(a) to C3(c) was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Zoë Franks

INSPECTOR

² Part C, Class C4 of the Schedule to the UCO.

³ Part C, Class C3(c) of the Schedule to the UCO.