
Appeal Decisions

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2020

Appeal A Ref: APP/G5750/C/20/3249390

Appeal B Ref: APP/G5750/C/20/3249391

Land at 74 Meeson Road, Stratford, London E15 4AP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Dr Fosso Taga and Appeal B is made by Mr Roman Shkarupa against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a Use Class C4 house in multiple occupation (HMO).
 - The requirements of the notice are:
 1. Cease the use as a Use Class C4 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 appeals are proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed, and the enforcement notice is upheld.

Preliminary Matter

2. In reviewing the file, 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 given the ground of appeal and points in dispute. Both the appellants and the Council were given an opportunity to comment on this approach and no responses were received.

The appeals on ground (b)

3. 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 appellants and the relevant test is the 'balance of probabilities.' Therefore, the onus is on the appellants to demonstrate that the property was not in use as a C4 HMO at the relevant date, being the date of issue of the notice 21 February 2020.
4. The definition of an HMO within Class C4 of the Town and Country Planning (Use Classes) Order 1987, as amended (UCO), is the use of a dwellinghouse by not more than six residents as a "house in multiple occupation". For the

purposes of Class C4, house in multiple occupation has the same meaning as in the Housing Act 2004.

5. The definition of an HMO contained in the Housing Act 2004 states that a building or a part of a building meets the standard test (and is therefore an HMO), subject to a number of criteria including - if the living accommodation is occupied by persons who do not form a single household.
6. The appellants' submissions are limited but they stated that a Selective Licensing of Other Residential Accommodation Property licence has been granted by the Council, which permits the occupation of the property by up to five people living as one household. Additionally, they stated that to the best of their knowledge, there were only four people living in the property as a household at the time the notice was served. However, they provided no details about the occupants, in particular their relationship with others residing at the property.
7. Although the Council have granted a license for the use of the property, the licence relates to the letting of the property as a single household. Such a license is granted under a separate legislative regime and does not demonstrate that the property was not in use as a C4 HMO when the enforcement notice was issued.
8. The Council visited the property on 29 January 2020 and stated that the property was laid out with five bedrooms over both the ground and first floors, occupied by four unrelated individuals. The layout of the property as illustrated by the Council, also shows that there were no common areas outside of the kitchen, a layout, which in my view, is more commonly associated with a property occupied by a collection of individuals.
9. Additionally, in correspondence between the Council and Dr Fosso Taga, dated 12 February 2020, Dr Fosso Taga stated that he intended to cease the use of the property as an HMO and this action would take place on his return to the UK on 2 April 2020 following medical treatment in France. Notwithstanding the initial correspondence between the parties which suggests that he may not have initially been aware of the breach of planning control, this indicates that Dr Fosso Taga acknowledged the property was being used as an HMO.
10. The Council's evidence points to the use of the property as a C4 HMO when the enforcement notice was issued. The appellants have not produced any substantive evidence to rebut the Council's submissions in this regard.
11. Consequently, the appellants have failed to demonstrate on the balance of probabilities that the property was not in use as a C4 HMO at the date of the notice. I conclude as a matter of fact that the breach, as alleged, has occurred. The ground (b) appeals therefore fail.

Other Matters

12. Dr Fosso Taga submitted evidence which shows that he was admitted to hospital in France after being diagnosed with COVID-19 and has since had two operations and remains in hospital in France. Although I have some sympathy with the appellant in this regard, this and the misgivings expressed about the Council's approach to a more recent investigation, are separate matters which have no bearing on this ground of appeal which concerns whether the breach of control has occurred.

13. Whilst there is no appeal on ground (g), I acknowledge that the aforementioned circumstances could potentially impact on the appellants' ability to carry out the requirements in the period given. However, should the appellants experience genuine difficulties in complying with the requirements, I note that the Council have powers under s173A(1)(b) to extend any period for compliance, a matter which is entirely at their discretion, without prejudicing their right to take further action.

Conclusion

14. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Felicity Thompson

INSPECTOR