
Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2021

Appeal Ref: APP/D1780/C/20/3259807

Land at 14 Burton Road, Southampton SO15 2HZ

- 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 Bradley Goggin against an enforcement notice issued by Southampton City Council.
 - The enforcement notice, numbered 19/00628/ENCOU, was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from a single dwellinghouse (Use Class C3) to a house in multiple occupation for up to 6 persons (Use Class C4).
 - The requirement of the notice is cease occupation of the dwellinghouse situated on the land by unrelated persons not forming a single household within the meaning of section 258 of the Housing Act 2004.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matter

2. Given the ground of appeal and the Covid restrictions in place at that time, it appeared to me that a site visit would not be required. I wrote to the parties on 19 November 2020 to ask their opinions on this. The Council confirmed that it had no objections to this, by email on the same date. No response was received from the appellant, but he had already stated in his appeal form that he felt that there was no need for a site visit. Taking these matters into account, and as no injustice would be caused, I did not undertake a site visit.

Reasons

3. The ground of appeal is that at the date the notice was issued no enforcement action could be taken in respect of the breach of planning control.
4. Prior to April 6 2010, the use of a property as a single dwellinghouse (Use Class C3) included its use by up to six unrelated people living together as a single household. From that date forward an amendment to the Town and Country Planning (Use Classes) Order 1987, as amended, (the UCO), introduced Use Class C4, defined as the 'Use of a dwellinghouse by not more than six residents as a house in multiple occupation' (HMO).
5. The Town and Country Planning (General Permitted Development) (England) Order 1995, (the 1995 GPDO) was also amended on this date. Amongst its

terms, it referred to Use Class C4 and set out that the use of a dwellinghouse for purposes within Use Class C4 was to be classed as permitted development.

6. The evidence shows that the Council introduced an Article 4 Direction ('the Direction') that removed the permitted development right to use a single dwellinghouse as a HMO. I have not been provided with a copy of this, but as both parties refer to the Direction I take it to be the case. The Council's 'Houses in Multiple Occupation' Supplementary Planning Document, Adopted May 2016, states that the Direction was dated 23rd March 2012. As the appellant has not countered this, and his statement refers to the Direction dating from 2012, so I take the Council's date for the Direction as being correct. Hereafter, I refer to this as the relevant date. Prior to the relevant date, the use of the property for the purpose alleged in the notice would not have required planning permission.
7. Given the above, it is for the appellant to demonstrate, on the balance of probability, that the use was being carried out on the relevant date and was undertaken continuously from then to the date the notice was issued.
8. Amongst the evidence that he has provided are four statutory declarations. Three of these are in the names of the owners of No 14 during the period from 7 July 1993 to the date of issue of the notice and the other is from an occupant of the property between 1993 and 1996.
9. The appellant's father and mother state that they bought the property in July 1993 for the purpose of providing their daughter with accommodation whilst she was a student in the city. The declaration from their daughter, the appellant's sister, confirms that she lived in the property until 1996, during which time it was used as a HMO.
10. The appellant's father and mother go on to state that after their daughter left the property they let it continuously to three unrelated adults for the remainder of the period of their ownership. This ran until 7 May 2015, when they sold No 14 to the appellant.
11. The appellant then states that he has let the property to three unrelated adults, students at local universities, and that it has been in continuous use as a HMO since he bought it.
12. Whilst the declarations are made by members of the appellant's family, the evidence before me shows that only the appellant – who made one of the declarations – had an interest in the property at the time of the application. That this was the case does not diminish the weight that I attribute to his declaration.
13. All the declarations state that their signatories were "aware" of the use of the property when they either did not own it or live in it. As family members, it is quite possible that they might have been aware of the use of No 14 at those times. However, as they do not set out clearly how this was the case, I give less weight to these assertions than I do the information they give when they had direct knowledge of the use of No 14. Thus, the information they provide when they had ownership of the property or lived in it is afforded significant weight.
14. Further evidence in support of the appellant's case came in the form of information from the Electoral Role (ER), Tenancy Agreements (TAs) for the

property, HMO Licences (HMOLs) and Tenancy Deposit Protection Certificates (TDPCs).

15. An email from the City Council, relating to the Electoral Role, provides evidence that points to the use of the property as a HMO in years prior to the relevant date. As such, it provides useful background information. In the main, the TDPCs provide similar evidence. However, that which relates to the period from 1 July 2011 to 30 June 2012 provides evidence to corroborate the claim that No 14 was in use as a HMO at the relevant date.
16. There is a gap in the evidence provided by the ER, TAs, HMOLs and TDPCs from the 30 June 2012 until the TA covering the 12-month period from 22 September 2014. The reason given for the lack of records for this period is that the previous letting agent was taken over by another firm, and the paperwork relating to the property was "mishandled" during this process.
17. I do not find that this gap is fatal to the appellant's case. Given the reference to the continuous renting of the property throughout their period of ownership, in the declarations of the appellant's mother and father, I find on the balance of probability that the property was in use as a HMO during this period. Furthermore, I have not been provided with evidence to give me sufficient reason to doubt this.
18. TAs have been submitted that corroborate, on the balance of probability, the appellant's claim that the property was used as a HMO for the period from 22 September 2014 to the date that the notice was issued. The HMOLs that were submitted provide similar support for the use of the property as a HMO from 3 June 2016 to 30 June 2018, and from 16 March 2020 to the relevant date.
19. The evidence, read as a whole, shows that on the balance of probability No 14 was in use as a HMO on the relevant date and that this use was continuous to the date the notice was issued.
20. Although there are other gaps in the evidence, between 1996 and 2003 and during 2005 and 2006, as these are prior to the relevant date they have no bearing on my decision. Although I have not been given evidence of a HMOL for the property until June 2016, this may have been for many reasons. In any event, the lack of a HMOL cannot be read as its use as a HMO not being carried out. I have taken the Council's efforts to elicit information regarding the use of No 14 as a HMO and those to avoid serving a notice unnecessarily into account. However, that these were fruitless do not detract from the evidence that has been submitted with the appeal. As there was no appeal lodged under ground (a), 'the planning merits' of the development, the condition suggested by the Council cannot be used in my decision.

Conclusion

21. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.

Roy Curnow

Inspector