



Appeal Decisions

Site visit made on 9 February 2021

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021

Appeal A: APP/A4520/C/19/3236273

Land known as 6 Seafield Terrace, South Shields NE33 2NP

- 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 Steve McKinlay of Tyne Housing Association Limited against an enforcement notice issued by South Tyneside Metropolitan Borough Council.
 - The enforcement notice, numbered ENF/19/0008, was issued on 31 July 2019.
 - The breach of planning control as alleged in the notice is the change of use of the Premises to the provision of living accommodation for up to six persons not forming a single household who occupy the living accommodation as their only or main residence and who share communal cooking, toilet and/or personal washing facilities (hereinafter described as the "multiple occupancy use").
 - The requirement of the notice is to cease the use of the premises for the multiple occupancy use.
 - The period for compliance with the requirements is 6 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Act.
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Appeal B: APP/A4520/C/19/3236274

Land known as 6a Seafield Terrace, South Shields NE33 2NP

- 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 Steve McKinlay of Tyne Housing Association Limited against an enforcement notice issued by South Tyneside Metropolitan Borough Council.
 - The enforcement notice, numbered ENF/19/0011, was issued on 31 July 2019.
 - The breach of planning control as alleged in the notice is the change in the use of the Premises to the provision of living accommodation for two persons not forming a single household who occupy the living accommodation as their only or main residence and who share communal living, cooking, toilet and/or personal washing facilities (hereinafter described as the "multiple occupancy use").
 - The requirement of the notice is to cease the use of the premises for the multiple occupancy use.
 - The period for compliance with the requirement is 6 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision – Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of the words "*change of use of the Premises to the provision of living accommodation for up to six persons not forming a single household who occupy the living*

accommodation as their only or main residence and who share communal cooking, toilet and/or personal washing facilities (hereinafter described as the "multiple occupancy use")" and the substitution of the words "material change of use to a house in multiple occupation" in paragraph 3: The Breach of Planning Control.

2. Subject to the correction, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of a guesthouse to a house in multiple occupation as shown on the plan attached to the notice and subject to the following conditions:
 - i) The occupation of the dwelling shall be limited to no more than 6 persons.
 - ii) The occupation of the dwelling shall be carried out in accordance with the terms set out in the Management Plan contained in Appendix 9 of the appellant's Statement of Case, unless otherwise agreed in writing by the local planning authority.

Decision – Appeal B

3. It is directed that the enforcement notice is corrected by the deletion of the words *"change in the use of the Premises to the provision of living accommodation for two persons not forming a single household who occupy the living accommodation as their only or main residence and who share communal living, cooking, toilet and/or personal washing facilities (hereinafter described as the "multiple occupancy use")"* and the substitution of the words *"material change of use to a house in multiple occupation"* in paragraph 3: The Breach of Planning Control.
4. Subject to the correction, Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of a guesthouse to a house in multiple occupation as shown on the plan attached to the notice and subject to the following conditions:
 - i) The occupation of the dwelling shall be limited to no more than 2 persons.
 - ii) The occupation of the dwelling shall be carried out in accordance with the terms set out in the Management Plan contained in Appendix 9 of the appellant's Statement of Case, unless otherwise agreed in writing by the local planning authority.

Preliminary matters

5. Planning permission was granted for the change of use from residential property to guest house (application reference: ST/0766/86/DM) ("the 1986 PP"). Conditions imposed on the 1986 PP restrict the number of boarders to 5 at any one time and the occupancy of the basement flat to the operator of the boarding house. On 18 November 1993 planning permission was granted to vary the number of boarders from 5 to 10 at any one time (application reference: ST/0877/93/DM) ("the 1993 PP").

6. The appellant claims that the 1993 PP represents a 'new chapter' in the building's planning history. As the previously imposed occupancy condition was not reiterated, the appellant argues that this condition is no longer imposed. However, it was held in *Lambeth*¹ that: *'the obvious, and ... only natural, interpretation ... is that the Council was approving what was applied for: that is, the variation of one condition from the original wording to the proposed wording, in effect substituting one for the other'*. The 1993 PP sought only to vary the number of boarders from 5 to 10. As such, the 1993 PP sits along side the 1986 PP, and the condition tying the occupation of the basement flat to an operator of the guesthouse, remains.
7. Notwithstanding the occupancy condition, the building was divided into 2 distinct parts, the guesthouse occupied by boarders and the flat occupied by the operator. The building was therefore split into 2 planning units and that situation has not changed.

The notices

8. No 6 is occupied by 6 unrelated residents that share the ground floor kitchen, dining and lounge facilities. On the upper 2 floors are 3 bedrooms with en-suite shower rooms, 3 bedrooms and separate bathroom and toilet facilities. No 6a is occupied by 2 unrelated residents that share the kitchen, lounge and bathroom but have their own bedrooms.
9. While there is no definition of dwellinghouse within the 1990 Act², *Gravesham*³ cites that a dwelling is a building (or part of a building) that ordinarily affords the facilities required for day to day private domestic existence. There is no dispute that No 6 and No 6a afford facilities required for day to day domestic existence, independently of one another. As such, both are dwellinghouses.
10. The Town and Country Planning (Use Classes) Order 1987 (as amended) ("the UCO") confirms that dwellinghouses fall within Class C3, providing the residents are living together as a single household. As the residents in respect of No 6 and No 6a are not living together as single households, the use would fall within Class C4, which provides for the "use of a dwellinghouse by not more than 6 residents as a "house in multiple occupation".
11. For the purposes of Class C4, the definition of a house in multiple occupation ("HMO") is set out in s254 of the Housing Act 2004 (as amended). S254(2)(f) confirms that a dwellinghouse is a HMO if *"two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation lacks one or more basic amenities"*. Basic amenities are defined as a toilet, personal washing facilities and cooking facilities. In respect of No 6, the residents all share cooking facilities and 3 residents also share toilet and personal washing facilities. In respect of No 6a, both residents share cooking, toilet and personal washing facilities. The use of both dwellinghouses therefore fall within Class C4: Houses in multiple occupation.
12. The Council contends however that the alleged uses are sui generis as Schedule 14(2)(1)(aa) of the Housing Act 2004 (as amended) confirms that a building is not a HMO if it is managed or controlled by a body, such as the THA.

¹ *Lambeth LBC v SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL LTD* [2017] EWHC 2412 (Admin), [2018] EWCA Civ 844, [2019] UKSC 33 [2020] JPL 31

² The Town and Country Planning Act 1990 as amended

³ *Gravesham BC v Secretary of State for the Environment* (1982) 47 P & CR 142

Schedule 14 however relates specifically to 'Buildings which are not HMOs for the **purposes of this Act**⁴' [my emphasis]. Schedule 14 is not relevant to determining the use of No 6 and No 6a in planning terms.

13. Given my findings on the use of No 6 and No 6a, the allegations would more succinctly be described as "without planning permission, the material change of use to a house in multiple occupation". Correcting the allegations in this manner would not cause injustice to the appellant or Council.

Ground (b) – Appeal B

14. To succeed on this ground the appellant should show, on the balance of probability, that the matter alleged in the corrected notice has not occurred.
15. While the appellant claims that the use is not a "multiple occupancy use" as it is analogous to a dwellinghouse with a lodger, this would not be the case as a lodger forms part of the single household. I have already found that occupation of No 6a is by 2 households. The matter alleged in the notice has occurred as a matter of fact.
16. For the reasons set out above, the appeal on Ground (b) fails.

Ground (c) – Appeals A and B

17. For this ground to succeed the appellant must show that, if the matters alleged have occurred, they do not constitute a breach of planning control. The burden of proof lies with the appellant, and the test of the evidence is on the balance of probability.
18. The lawful use of the building is as a guesthouse and operator's flat, which encompasses a mixed use of Class C1 and C3, and it has been established that the matter alleged is a change of use to 2 HMOs. While the meaning of 'use' is provided in s336(1) of the 1990 Act, the concept of 'material change of use' ("MCU") is not defined. Establishing whether a MCU has occurred is achieved by identifying if there has been a significant difference in the character of the activities taking place, as a matter of fact and degree. The matter to consider is whether the change of use of the building, from Class C1 and C3 to 2 HMOs was material.
19. While the number of residents would be lower, their period of occupation would be longer and not subject to seasonal or other fluctuations. Also, rather than being made up of a variety of household sizes likely to be associated with a guesthouse use, the residents would be single person households only. Furthermore, in respect of off-site impacts, residents of the guesthouse would be unlikely to receive deliveries and visitors, whereas occupiers of the HMOs would. These differences in the type and scale of occupation, while not necessarily negative, are significant. For this reason, I find that a material change of use has occurred.
20. The appeals on ground (c) fail.

Ground (a) – Appeals A and B

21. The **main issue** is the effect of the development on the living conditions of neighbouring residents due to fear of crime.

⁴ Housing Act 2004 as amended

22. Within the building, the appellant provides accommodation for vulnerable adults requiring support that have been referred to them by the Council. There is no dispute that the MCU to 2 HMOs is acceptable in principle as there is a need for this type of accommodation in the area. The number of recorded police incidents and crimes is claimed by the Council to demonstrate a justified fear of crime for neighbouring residents.
23. The Police data, and in particular their correspondence dated 17 August 2020, does confirm a significant number of incidents and crimes have occurred. From the data provided most incidents appear to have been generated by residents or staff associated with the occupation of the building, albeit that neighbouring residents have raised concerns in terms of noise, antisocial behaviour and damage to property. The Police correspondence advises that the likelihood of crime is 'Likely' and the consequences would be 'Moderate', which leads them to find that the overall risk of crime associated with this building is 'High'. They confirm, however, that they *'do not automatically object to the [development] ... merely that [the on-going use] would require careful mitigation and might well have an impact on residential amenity'*.
24. The Police data also provides an assessment of the incidents and crimes associated with the lawful use of the building. The number of incidents and crimes may be lower for the lawful use, but they are still significant. The unauthorised use has not therefore introduced criminal activity to the property and the wider area. Based on this evidence, it is more than likely that any fear of crime would have existed before the unauthorised use occurred.
25. From the evidence before me, it is the activities of some residents and some visitors that generate the incidents and crimes that are responsible for generating any fear of crime, not the unauthorised use. While the type of residents or visitors cannot be controlled, the number of residents can.
26. The appellant has also provided a management plan⁵, which sets out how the occupation of the building will be managed, in terms of reducing risk for residents, the property and the wider area. It also provides staffing details, including confirmation that 'out of hours' assistance is provided. Provision is also made for on-going liaison with the Council to review and update the management plan as necessary. The implementation of this management plan would make a positive contribution to addressing and mitigating the fear of crime.

Conditions

27. Conditions restricting the number of residents of No 6 to no more than 6 and of No 6a to no more than 2, along with requiring the occupation of each property to conform to the management plan provided by the appellant are necessary to address the fear of crime arising from the occupation of the property and to accord with policy ST2(F).

Conclusion

28. For the reasons given above, there would be no significant harm to the living conditions of neighbouring residents due to fear of crime, and there is no conflict with policy ST2(F) of the South Tyneside Local Development Framework Core Strategy (June 2007), which seeks to deliver high quality design by

⁵ Appendix 9 of both the appellant's Statements of Case

making sure that designing out crime and eliminating the fear of crime has been addressed and policies DM1(B) and DM4(A) of the South Tyneside Local Development Framework Development Management Policies (December 2011), which seek amongst other things, to ensure development does not adversely affect residential amenity and the character and appearance of the local area.

Overall conclusions

29. For the reasons given above, I conclude that the appeals succeed on Ground (a). I shall grant planning permission for the use as described in the notice as corrected. The appeals on ground (f) do not fall to be considered

M Madge

INSPECTOR