



Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 19th March 2021

Appeal Ref: APP/D1780/C/20/3258608

Land at 113 Northumberland Road, Southampton SO14 0ES

- 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 Abdul Majeed against an enforcement notice issued by Southampton City Council.
 - The enforcement notice, numbered 20/00040/APENF, 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 dwelling house (Use Class C3) to a house in multiple occupation for up to 6 persons (Use Class C4).
 - The requirements of the notice are cease occupation of the dwelling house 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)(c) 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.

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. In his Questionnaire, he had stated that a site visit was necessary "to assess the development". I took this into account, but was of the view that there was no need for the site visit as, given the issues, visiting the site would not inform my decision. As neither party would be prejudiced, I have determined that a site visit would not be necessary.

Main Issue(s)

Reasons

3. The evidence shows that the appeal site is a two-storey residential property that is set in a terrace.
4. This ground of appeal is that those matters (if they occurred) do not constitute a breach of planning control. The onus is on the appellant to make their case. The standard of proof is the civil standard, which is the 'balance of probabilities'.

5. 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).
6. 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 C3 dwellinghouse for purposes within Use Class C4 was to be classed as permitted development. It similarly allowed a change in the use of a property from Class C4 to Class C3.
7. 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 HMO¹. I have not been provided with a copy of this, but the Council's 'Houses in Multiple Occupation' Supplementary Planning Document, Adopted May 2016, states that the Direction was dated 23rd March 2012. I am told that the Direction did not remove the right to change the use of a property from Class C4 to Class C3. As the appellant has not countered the above, so I take the Council's submissions relating to the Direction as being correct. Hereafter, I refer to 23rd March 2012 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.
8. Under this ground of appeal, given this context, it is incumbent upon the appellant to prove, on the balance of probability, that: the property was in use as a Class C4 HMO on the relevant date; and that, if that was the case, this use did not cease and subsequently resume between the relevant date and the date that the notice was issued.
9. The Council's position, in paragraph 5.12 of its statement, is that a property will be typically be considered a Class C4 HMO when it is occupied by between 3 and 6 people. In this regard, attention is drawn to paragraph 2 of Appendix 2 to its 'Houses in Multiple Occupation Supplementary Planning Document ('SPD') (Adopted version May 2016). Amongst other things, the SPD sets out that a HMO shall be defined as a building, (or part of one), that is occupied by "at least 3 persons not forming a single household". I find the Council's position, here, to be reasonable and it has not been challenged by the appellant.
10. The evidence initially submitted by the appellant largely comprised of the first and last pages of a number of Assured Shorthold Tenancy Agreements ('ASTAs'). These all show, on page 1, the appellant's name as the landlord or agent, various persons as the tenants, the term of the tenancy and rental charge. All refer to 113 Northumberland Road. Each page 4 includes the parties' signatures and the dates they were signed. The Council challenged the incomplete nature of the ASTAs, remarking on the lack of pages 2 and 3. In his final comments, the appellant has explained that these pages only contained the terms of the tenancy and submitted a representative copy of each of these pages. On the balance of probability, I find that these are the missing pages to the ASTAs and I afford these documents full weight in my assessment.

¹ Schedule 2, Part 3, Class L of the GPDO

11. Whilst I accept these to be actual ASTAs relating to the letting of No 113, I cannot find that they demonstrate that the property was actually used as a HMO for the full period of the agreements. Given that the date of the lessees' signatures lies close to the start date of each lease, I accept that they demonstrate that the lessees probably took up the lease on the start dates. However, they do not prove that the lessees actually lived in the property for the entirety of their leases, and, thus, whether the property was actually used in the manner claimed. I have been given no evidence to corroborate their periods of use, for example in the form of letters, statements or statutory declarations from the lessees themselves or others that might have been able to verify this. This is of fundamental importance to my assessment.
12. Given the permitted development right in the GPDO to change the use of a property from Class C4 to Class C3, the use of the property by less than three people would have the effect of the C4 use being replaced by a C3 use. Even were I wrong not to accept the ASTAs as reflecting the use of the property, it would still be necessary for the appellant to show that the C4 use did not cease and subsequently recommence.
13. The ASTAs show several periods between the relevant date and the date of the issuing of the notice when there were only one or two people in the property. At other times the indication is that there was no-one living there. It is claimed that during the shorter periods "most" of the tenants stayed on in the property under the basis of a 'rolling monthly contract'. The word 'most' shows that this was not the case with all of the tenants. I have been given no evidence to show who did, and for how long this was the case. This could have been demonstrated, for example, in the form of the monthly contracts or the form of evidence I have referred to, above. Therefore, it has not been proven on the balance of probability that the permitted change from Class C4 to Class C3 did not occur during these periods when only one or two tenants are shown.
14. The ASTAs indicate that three people let the property from 1 April 2016. Of these, two of the ASTAs were scheduled to run until the end of September 2016 with the others due to run until the end of March 2017. Again, were I to take them as 'face value' evidence of the use of the property, they only show that for a substantive period there were two lessees. This is below the threshold of a Class C4 use and would represent a Class C3 use.
15. Again, the appellant states that the three lessees have stayed on the basis of rolling monthly contracts, but, again, no substantive evidence to back this up has been submitted.
16. There was a substantial gap with no occupants, between August 2015 and March 2016, which was attributed to major repairs and an extension to the property. The evidence before me is inconclusive with regards to this gap. However, given my findings, above, this is not a matter that is determinative in the appeal.
17. The application form relating to the planning application for the use of No 113 as a HMO set out that the use had already commenced. It gave a date for this as 1 October 2016. The appellant has provided no reason why this date was given. Although my decision does not turn on this, it does cast further doubt on the appellant's case.

18. Overall, I do not say categorically that the property has not been used continuously for the purposes alleged in the notice in the period between the relevant date and the date of issue of the notice. Rather, it is for the appellant to prove his case on the balance of probability and, from the evidence before me, he has not done this.

Conclusion

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

Roy Curnow

Inspector