
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

Appeal Ref: APP/N5090/C/20/3249933

54 Colchester Road, Edgware, London HA8 0RA

- 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 Bo Huang against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 20 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of the property to a House in Multiple Occupation (Use Class C4).
 - The requirements of the notice are to cease the use of the property.
 - The period for compliance with the requirements is five 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 dismissed and the enforcement notice is upheld.

Preliminary and Procedural Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
3. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England November 2020 states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit'. As there are no other grounds of appeal other than a legal ground, the appeal has therefore been decided without a site visit.
4. Section 55(1) of the 1990 Act, as amended, defines the making of a material change of use of land as development and section 57(1) requires that planning permission is necessary for development, subject to some specific exclusions. Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) sets out that development consisting of a change of use of a building from a use falling within Class C3 Dwellinghouses of the Schedule to the Use Classes Order¹ to a use falling within Class C4 Houses in Multiple Occupation (HMO) of that Schedule is permitted development (PD).

¹ Town and Country Planning (Use Classes) Order 1987 as amended

5. However, in the London Borough of Barnet the Council made an Article 4 Direction on 29 May 2016 which removes this PD right. As such, express planning permission is now required before carrying out this type of development.
6. The appellant has appealed on ground (d), that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control, which may be constituted by those matters. Whilst not raised as a ground of appeal, the appellant has made submissions that the material change of use took place in 2015 before the making of the Article 4 Direction and was therefore PD. These fall within ground (c)², which has not been pleaded but I will deal with them as though raised by that ground. As the Council has responded to all the issues in their Statement of Case, including this point, there would be no injustice or prejudice to them by my course of action.

Grounds (c) and (d)

7. Under both grounds of appeal, the burden of proof is firmly on the appellant. He needs to show, on the balance of probabilities, that there has not been a breach of planning control because the C4 use began before the making of the Article 4 Direction in May 2016. He also needs to show that the C4 use began more than four years before the notice was issued and continued, without material interruption, for a period of four years thereafter. The notice was issued on 20 February 2020 so the appellant needs to show that the material change of use began not later than 20 February 2016 and continued without material interruption.
8. The appellant states he bought the "buy-to-let property" on 28 May 2015, which was a year before the Article 4 Direction was made. He submits a copy of an extract from the Land Registry as a supporting document, with which the Council do not take issue. I find the document only shows that the appellant bought the appeal site on that date, not that the property was put to any particular use.
9. Thereafter, the appellant submits he began letting the property as an HMO on 16 July 2015. The evidence to support this submission comprises a series of bank statements from two institutions dated from 13 July 2015 to 5 October 2015 and July 2015 to April 2016.
10. These bank statements are not addressed to the appellant but to someone else who has the same address as the appellant. In all likelihood this is probably the appellant's partner but he does not state that this is the case. These bank statements show regular rent payments from various individuals but there is nothing in the statements to show that the rent is being paid specifically in respect of the appeal site.
11. On the assumption that the rent paid was in respect of the appeal site, Tenant 1 paid rent on 16 July 2015 but after this date there are no further payments. This would suggest that this person moved out after one month. Tenant 2 paid rent regularly at the beginning of the month starting on 2 September 2015 through to 2 April 2016. Tenant 3 paid rent regularly in the middle of each month starting on 17 September 2015 through to 15 April 2016.

² An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.

12. In my view, if it had been shown by way of, for example, signed tenancy agreements, that both Tenant 2 and Tenant 3 resided at the appeal site in September 2015, then it is at this point that I may have found that the material change of use from Class C3 to Class C4 took place. This is because at this point there were two unrelated individuals sharing one or more basic facilities.³ As it is, the appellant has neither demonstrated that this was the case nor that the HMO use continued without material interruption after the payment of the last rent receipt on 19 April 2016.
13. The Council's evidence appears to indicate that the material change of use occurred around July 2018, when the appellant applied for an HMO licence. Section 8 of the licence form states that there are four households occupying the property. The Council's file note on the investigation records that in a telephone conversation with the appellant to organise a site visit, the appellant confirmed the change of use took place in 2018. Following the site visit in November 2019, the Council found that the property was being used as a Class C4 HMO, without planning permission.
14. In conclusion, I find that the alleged development has occurred. However, the appellant has failed to show that the material change of use took place before the making of the Article 4 Direction, such that it benefited from the PD set out in the GPDO. The onus of proof is firmly on the appellant to provide sufficiently precise and unambiguous information to support his case. The Council's evidence contradicts the appellant's case and overall, on the balance of probabilities, the appellant has failed to demonstrate that there has not been a breach of planning control. The appeal on ground (c) fails.
15. In respect of the ground (d) appeal, the appellant has also failed to show, on the balance of probabilities, with evidence that is sufficiently precise and unambiguous, that the use is lawful. Furthermore, that the use has continued, without material interruption, for a period of four years before the date of the notice. As such, the appeal on ground (d) fails.

Conclusion

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

D Fleming

INSPECTOR

³ For the purposes of Class C4, an HMO has the same meaning as in section 254 of the Housing Act 2004. A building is used as an HMO under section 254(1) if it meets the "standard test" under section 254(2). This test requires that two or more households share one or more basic amenities or that the living accommodation lacks one or more basic facilities.