



Appeal Decision

Site visit made on 8 September 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/R5510/C/20/3263110

15A Station Road, Hayes UB3 4BD

- 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 Tarsem Singh Dhillon against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 8 October 2020.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of a residential flat to a House in Multiple Occupation (Sui Generis).
- The requirements of the notice are to cease the use as a House in Multiple Occupation and revert the use back to a single family dwelling.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Ground (d) appeal

1. The ground of appeal is that it was too late to take enforcement action against the breach of planning control alleged in the notice. Where the allegation is, as in this appeal, a material change of use to a House in Multiple Occupation (HMO), the residential accommodation is not self-contained and the ten-year time limit at s171B(3) applies. Consequently, to succeed on this ground the appellant would have to show that the alleged breach occurred more than ten years before the date the notice was issued, the relevant test of the evidence being on the balance of probability.
2. The building in this appeal is in the middle of a row of properties with town centre uses at ground floor level and residential uses above. The dwelling (No 15A) is on the upper floors of the building. During my visit, I observed that the residential accommodation is arranged over two floors. On the first floor there are three bedrooms, a communal kitchen and two communal WC/shower facilities, with a further four bedrooms and a WC on the second floor.
3. To support their claim the appellant supplied copies of two HMO licences for No 15A issued to them by the Council under the Housing Act 2004. The first licence is dated 7 March 2005, it endured for five years and applied to a maximum of six persons and six households. The second licence started on

22 March 2019, expiring on 21 March 2024 and also applies to a maximum of six persons and six households. The latter licence documentation supplied lists six rooms at No 15A, each being capable of occupation by a maximum of one person. The undated HMO floor plan also supplied by the appellant showed a total of six bedrooms and WC shower facilities together with a shared kitchen and shared living room on the first floor.

4. Although no additional evidence was forthcoming, I was given no sound reason to doubt the appellant's claim that similar HMO licences were also issued to them in respect of No 15A in the period between the expiry of the 2005 licence and the issuing of the 2019 licence. The Council did not seek to argue otherwise. Consequently, it is in my view highly likely that No 15A has been occupied by up to six persons as a small HMO for a continuous period of more than ten years prior to the notice being issued.
5. The use by up to six persons as a small HMO falls squarely within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The use attacked by the notice however is as a *sui generis* or large HMO. Such a use falls outside of Class C4 and is materially different in character to use as a small HMO. The appellant did not seek to argue that the use as a large HMO had not occurred; there was no dispute that No 15A had been occupied by considerably more than six persons at times. During my visit, I saw that what was shown on the HMO plan as a shared living room is currently used as a seventh bedroom. Although one of the other bedrooms was not currently occupied, at least one bedroom was in occupation by more than one person. Use of No 15A as a large HMO is consistent with my own observations, as well as the Council's evidence. Therefore, it is apparent that a material change in the use of No 15A to a large HMO has occurred at some stage.
6. The existence of continuous licences for the use of No 15A as a small HMO from March 2005 onwards casts doubt on whether the material change of use of No 15A to a large HMO occurred more than ten years prior to the issue of the notice and was continuous thereafter. For example, it is unclear why the appellant would go to the trouble of obtaining an HMO licence which did not accurately reflect the maximum number of persons residing at No 15A. There is little by way of other evidence to support the use as a large HMO occurring at any time prior to the Council's inspection in June 2020. The appellant did not advance any witness account or further contemporaneous documentation which might have shown otherwise. It is not unreasonable to expect that such evidence might exist, had No 15A in fact been used as a large HMO for a period greater than ten years. Therefore, the available evidence does not show that the use of No 15A as a large HMO is immune from enforcement action.
7. As the appellant has failed to show to the required standard that it was too late to take enforcement action in relation to the use of No 15A as a large HMO, the ground (d) appeal does not succeed.

Ground (f) appeal

8. The ground of appeal is that the requirements of the notice are excessive.
9. At s173(4), the Act provides that the purpose of an enforcement notice can be to remedy the breach of planning control, including by discontinuing any use or restoring the land to its condition before the breach took place, or to remedy any injury to amenity that has been caused by the breach. The notice does not

require anything short of ceasing the unauthorised use. Therefore, although the notice does not state as such, its purpose must be to remedy the breach.

10. Nevertheless, by simply referring to ceasing the use as an HMO the requirement in the notice fails to reflect what the Council did not contest was the lawful use of No 15A as a small HMO within Class C4. In addition, the requirement purports to prevent the appellant from relying on the planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 3, Class L for the change of use of a Class C3 dwelling to a Class C4 small HMO. Moreover, a positive requirement to revert to use as a dwelling is excessive for the purpose of remedying the breach and also creates uncertainty as to what the appellant must do to comply with the notice. A requirement simply to cease the unauthorised use is sufficient in this regard. As a result, the requirement exceeds what is reasonable and necessary, having regard to the purpose of the notice.
11. Given the above, I shall vary the notice to delete the existing requirement and substitute it with a requirement to cease the use as a large HMO. That is sufficiently clear and precise; the appellant would be able to tell exactly what they had to do to comply with the notice. There would be no injustice.
12. Therefore, the ground (f) appeal succeeds to the extent set out above.

Ground (g) appeal

13. The ground of appeal is that the time specified for complying with the requirements of the notice falls short of what should reasonably be allowed.
14. Extending the compliance period to twelve months would unduly perpetuate the breach and the planning harm identified in the notice. However, three months provides the tenants of No 15A with limited time in which to search for and secure suitable alternative living accommodation, particularly when the continuing effects of the COVID-19 pandemic are taken into consideration. The general pressures on the availability and affordability of housing in London, exacerbated by the pandemic, are also relevant in this regard. The time between the beginning of the Council's investigation and my decision has little relevance to the reasonableness of the period for compliance, as the appellant is entitled to assume that they would succeed on the other grounds of appeal.
15. In my view, extending the compliance period to six months would take sufficient account of the factors identified above and would strike an appropriate balance between remedying the planning harm identified as soon as is practicable, whilst also affording the tenants a more reasonable amount of time to find suitable alternative accommodation. As so extended, the compliance period would not impose a disproportionate burden on the appellant and their tenants. Furthermore, extending the period for compliance as set out above would provide some scope for absorbing any hitherto unforeseen delays or disruption caused by the continuing effects of the pandemic.
16. For the reasons given above I conclude that a reasonable period for compliance would be six months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Conclusion

17. For the reasons given above I conclude that the ground (d) appeal should not succeed. I shall uphold the enforcement notice with variations.

Formal Decision

18. It is directed that the enforcement notice be varied by:

- In the second paragraph numbered 4 ("*What you are required to do*") deleting the requirement and substituting it with the following requirement: "*Cease the use of the building shown hatched purple on the plan attached to the enforcement notice as a large House in Multiple Occupation (Sui Generis).*"
- The deletion of "*three months*" in the paragraph numbered 5 ("*Time for compliance*") and the substitution of "*six months*" as the period for compliance.

Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR