



Appeal Decision

Site visit made on 18 March 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/Z4310/C/21/3289450

65 Alderson Road, Liverpool L15 2HL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Thomas McConnan of Wavertree Student Homes against an enforcement notice issued by Liverpool City Council.
 - The enforcement notice was issued on 23 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, change of use of premises to a House of Multiple Occupation (HMO).
 - The requirements of the notice are to cease the use of the premises as a House in Multiple Occupation (HMO).
 - The period for compliance with the requirements is 8 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) of the 1990 Act as amended.
-

Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. The appeal property is an extended mid-terrace house, which is in use as an HMO with seven letting rooms. An application for a lawful development certificate (LDC), under Section 192 of the 1990 Act, for a proposed change of use to a six bedroom HMO (Use Class C4)¹ was approved in February 2021. The appellant explains that the property was in C4 use pursuant to the LDC and six letting rooms were occupied from June 2021. However, it is acknowledged that the property has been used as a large HMO with seven letting rooms, which would be 'sui generis' or outside of any use class, since September 2021. Tenancy agreements have been provided in support of this claim and the Council has not sought to challenge the evidence.
3. Section 57(4) of the 1990 Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. A use is lawful for the purposes of s57(4) if there is an LDC in force, in which case lawfulness is to be conclusively presumed. Moreover, the requirements of an enforcement notice must not purport to stop a developer from doing something they are entitled to do without planning permission by relying on existing lawful use rights, including right of reversion under s57(4). This is the 'Mansi' principle or doctrine, so-called from the High Court decision in *Mansi v Elstree RDC*².

¹ This refers to Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended.

² *Mansi v Elstree RDC* [1964] 16 P&CR 153385 .

4. In view of the above, I consider that the enforcement notice has several defects. It does specify the alleged breach with sufficient clarity. The generic description of change of use to an HMO is vague and introduces uncertainty. It is not apparent whether the Council is seeking to enforce against a C4 use or a sui generis use. Also, the requirement to cease the use of the premises as an HMO fails to have regard to the 'Mansi' principle. Further, the notice specifies that the change of use has occurred within the last four years. The relevant timescale would be 10 years for the alleged material change of use under Section 171(B)(3) of the 1990 Act.
5. I have considered whether I could use my powers of correction under Section 176 of the 1990 Act. Assuming the Council is seeking to enforce against an HMO with seven rooms, I would correct the allegation to "material change of use to a large HMO with seven letting rooms". The requirement would be to cease the use of the property as a large HMO. However, this would be likely to cause injustice. The appellant's grounds of appeal may be different. For example, they may wish to appeal under ground (a), that planning permission should be granted for the matters alleged, rather than ground (b) as is currently pleaded that the matters alleged have not occurred.
6. I would also be making assumptions about the Council's intentions. The Council may consider that the lawful use is not C4, as claimed. Section 192(4) provides that the lawfulness of any use or operation for which an LDC is in force under s192 'shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness'. A material change may include a change in the law or other circumstances affecting the status of the land. If I were to correct the allegation but leave the requirement unaltered this would be making assumptions about the Council's purposes and the status of the land. Moreover, it would deny the appellant the opportunity to submit more evidence or appeal on ground (f), that the steps required by the notice exceed what is necessary to remedy the breach of planning control.

Conclusion

7. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(b) of the 1990 Act as amended does not fall to be considered.
8. The Council may use its powers under Section 171B(4)(b) of the 1990 Act to attend to the matters above and re-issue the notice should it consider it expedient to do so.

Debbie Moore

Inspector