



Appeal Decision

Site visit made on 1 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/B4215/C/21/3285776

48 Ladybarn Crescent, Manchester M14 6UU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr James Henry against an enforcement notice issued by Manchester City Council.
 - The notice was issued on 21 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a dwellinghouse (Use Class C3) to a large house in multiple occupation (Sui Generis).
 - The requirements of the notice are to: Cease the use of the property as a large house in multiple occupation (Sui Generis).
 - The period for compliance with the requirement is: by 31 August 2022.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - The deletion of 'of a dwellinghouse (Use Class C3) from section 3 of the notice; and
 - The deletion of '31 August 2022' from section 6 of the notice and the substitution of 10 months 3 days as the time for compliance.
2. Subject to this correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Applications for costs

3. An application for costs has been made by Manchester City Council against Mr James Henry. This is the subject of a separate decision.

Preliminary Matters

4. The Council advise that it considers the appellant for the appeal should be Mr James Henry on the basis of ownership and as reflected in the list of persons served that accompany the enforcement notice. The appellant has identified their details on the appeal form as Mr James Henry, with the company name 'Studentshack Limited'. The appellant has confirmed the owner of the property is James Henry and I shall deal with the appeal on this basis.
5. Although the appellant has appealed on ground (c) only, the appellant also raises matters which in my view, should be dealt with under ground (b), which is that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact and ground (f), which is that the steps required by the notice to be taken, or the activities required by the notice

to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Since the Council has responded to these matters, neither party would be prejudiced by my consideration of these hidden grounds of appeal.

Ground (b)

6. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact. The enforcement notice alleges the material change of use of dwellinghouse (Use Class C3) to a large house in multiple occupation (*sui generis*). The appellant suggests that this is incorrect and that there has been a change from a small HMO to a large HMO without planning permission. Although the appellant has not appealed under ground (b), this is a matter which should be considered under ground (b).
7. The Town and Country Planning (Use Classes) Order 1987 (as amended) ('the UCO') defines Class C3 as use as a dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than use within class C4).
8. The appellant confirms that the property was occupied intermittently between 16 October 2018 and 16 February 2020 on 21 separate occasions for short-term lettings, comprising of groups of between 6 and 8 people. This is a significant period of time. The appellant disputes that the short-term letting was a C3 use and states that the accommodation has been used by groups of unrelated people, such as company contractors staying in the area working at university buildings and local hospitals, as well as theatre production cast and crew.
9. The appellant suggests that the use during this period was more akin to a guest house use under class C1¹ or a *sui generis*² use, than a class C3 dwellinghouse and has drawn my attention to appeal decisions for 45 William Street, Oxford³, which considered short term let accommodation and found that the level and character of activities that occurred at the site were materially different from those associated with a dwellinghouse. As held in *Moore v SSCLG* [2012] EWCA Civ 1202, whether the use of a family home for holiday lettings constitutes a C3 use will be a matter of fact and degree, depending on the characteristics of the use as holiday accommodation.
10. The appellant has provided very limited information regarding the nature of the letting during this period. From the information provided, it appears that the property was let out as a whole and comprised a mix of 'corporate lets' and 'leisure lets'. Bookings are shown to be between 3 days, up to a maximum of around 9 days, although typically they appear to have been between 3 to 5 days.

¹ Use as a hotel or as a boarding or guest house where, in each case, no significant element of care is provided.

² Latin expression, meaning 'of its own kind'.

³ APP/G3110/C/19/3239740, APP/G3110/C/19/3239738 and APP/G3110/C/19/3239862

11. The appellant has drawn my attention to appeal decision APP/Q0505/C/19/3226489, where the Inspector found the cessation of Assured Shorthold Tenancy Agreements (ASTAs) in themselves was not an issue, it was the effect the cessation had on the characteristics of the accommodation which were of relevance. I don't disagree with this approach.
12. The frequency of turnover of arrivals and departures at different times, including early hours of the morning, late at night or at weekends, would generate noise and disturbance which is uncharacteristic of a residential C3 use. Comings and goings are likely to be materially different with a short term let, with visitors to the property more likely to access the property by private vehicle or taxi.
13. Occupants who utilised the property as a leisure let are likely to have used the property as a base for visiting the area. The transient nature of the short term letting use is in my view, significantly different to a C3 use. Occupants using the property on a short term basis are unlikely to have interacted with the local community, whereas with a C3 use, occupants are far more likely to have taken an active part in community life.
14. The appellant suggests that occupants would have attended to their own cleaning, laundry and cooking. Whilst occupants may well have cooked for themselves and carried out some cleaning activities, given the limited period of occupation and the nature of their occupation, I find it highly unlikely that occupants would have carried out their own laundry. Indeed, details provided by the Council show that the property was provided with Egyptian Cotton bed linen.
15. An Airbnb reviewer mentions that 'Extra bedding and duvet were provided' and another comments 'price included quite an expensive cleaning fee, so would have expected it to be cleaner'. While the cleaning may not have been up to the reviewer's standards, it is clear that the expectation of visitors to the premises was that it would be cleaned prior to each visit. The cleaning of the property and changeover of the towels and linen would generate movements to and from the property which are unlikely to be generated by a C3 use.
16. Consequently, I agree it is unlikely the premises was in use as a C3 dwellinghouse during this intervening period. Whilst it is good practice for an enforcement notice alleging a material change of use to identify the previous use, it does not render the notice invalid or a nullity if it does not. It is the breach, i.e., what is alleged to have occurred, which must be identified.
17. As set out in S176 of the Act, I have wide powers of correction, so long as I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority. Deleting 'of a dwellinghouse (Use Class C3)' from the allegation would address the appellant's concerns. The Council confirms it would have no objection to such an amendment and given the above, I consider there would be no injustice to either party in correcting the notice in this way.
18. It is not disputed that the property is currently occupied by 8 individuals as a large HMO. I shall correct the notice and go on to consider the remaining grounds of appeal.

Ground (c)

19. An appeal under ground (c) is made on the basis that those matters (the matters stated in the notice, if they occurred) do not constitute a breach of planning control. It is for the appellant to make their case on the balance of probabilities. As set out in Planning Practice Guidance (PPG), the appellant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
20. Manchester City Council made an Article 4(1) Direction, relating to development comprising change of use from a use falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that Order, which came into force on 8 October 2011.
21. Prior to the appellant's acquisition of the property, it is stated to have been occupied as a small student HMO for many years. The Council does not dispute that the appeal property was in use as a house in multiple occupation (HMO) prior to the Direction coming into force. From 1 September 2020, the property is shown as being occupied by 8 students. The appellant does not dispute that the property is now in use as a large house in multiple occupation (Sui Generis) and accepts that this is unauthorised.
22. Whilst the main thrust of the appellant's case is that the short term letting of the property did not constitute a material change of use of the premises, since it is accepted that a material change of use of the premises to a large house in multiple occupation (Sui Generis) has occurred without planning permission, the appeal under ground (c) cannot succeed.

Ground (f)

23. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
24. The notice requires the use of the property as a large house in multiple occupation (Sui Generis) to cease, which is clearly intended to remedy the breach of planning control. The appellant proposes to reduce the number of occupiers once the tenancy agreement ends in June 2022 so that the property is let as a six bed HMO.
25. However, since the requirement of the notice is to cease the use of the property as a large house in multiple occupation (Sui Generis), there are no lesser steps which would enable the appellant to revert to a C4 use. The only way to establish whether the appellant can revert to a C4 use is to apply for a lawful development certificate.
26. The appellant states that even if the short term letting period constituted a material change of use, it did not constitute use as a dwellinghouse and the Council cannot require that the property must now be used for this purpose. However, there is no requirement for the property to be used as a C3 dwellinghouse.

27. The requirement to cease the use of the property as a large house in multiple occupation (Sui Generis) would remedy the breach of planning control. There are no lesser steps which would achieve this purpose and so the appeal under ground (f) must fail.

Other Matters

28. The time period for compliance is identified as 31 August 2022. The notice would have taken effect on 29 October 2021, which is a period of 10 months and 3 days. The enforcement notice should be varied to give a period that is expressed as a time period rather than a date, since upholding the notice would without varying it would give a period which is shorter than the original period. I shall vary the enforcement notice prior to upholding it.

Conclusion

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation.

M Savage

INSPECTOR