



# 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**

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**Appeal Ref: APP/B4215/C/21/3285772**

**14 Lees Hall Crescent, Manchester, M14 6YA**

- 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 house in multiple occupation (Use Class C4).
  - The requirements of the notice are to: Cease the use of the property as a house in multiple occupation (Use Class C4).
  - The period for compliance with the requirement is: 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 in writing that 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. Since the Council has responded to these matters, neither party would be prejudiced by my consideration of this hidden ground of appeal.

## Ground (b) and (c)

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. Although the appellant has not appealed under ground (b), part of its case is that the property was not a dwellinghouse in C3 use.
7. The enforcement notice alleges the material change of use of dwellinghouse (Use Class C3) to a house in multiple occupation (Use Class C4). However, the appellant disputes that the short-term letting was a C3 use and states that the accommodation has been largely 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.
8. 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).
9. The appellant suggests that the use during this period was more akin to a guest house use under class C1<sup>1</sup> or a *sui generis*<sup>2</sup> use, than a dwellinghouse and has drawn my attention to appeal decisions for 45 William Street, Oxford<sup>3</sup>, 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.
10. 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.
11. 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.
12. 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. If I find that the short term letting use did not fall within Class C3, it would be possible to correct the notice by deleting 'of a dwellinghouse (Use Class C3)' from section 3 of the notice. 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.
13. 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

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

<sup>2</sup> Latin expression, meaning 'of its own kind'.

<sup>3</sup> APP/G3110/C/19/3239740, APP/G3110/C/19/3239738 and APP/G3110/C/19/3239862

- 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.
14. 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.
  15. The appellant states that, prior to their purchase of the property, it was let to students as an HMO. The Council has confirmed that Council Tax records for the property suggest it was in use as an HMO within the C4 use class prior to the Article 4 Direction coming into effect on 8 October 2011 and does not dispute that the property was in use as a C4 HMO.
  16. The appellant has drawn my attention to *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226; [2002] JPL 1278 CoA. However, contrary to the appellant's interpretation, in that case it was held that an unlawful use could only become lawful if it continued throughout the ten year period<sup>4</sup>, to the extent that the local planning authority could have taken enforcement action at any time.
  17. From my reading of the evidence, it seems likely that the appellant is confusing the principles set out in *Thurrock*, with the principles set out in *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461, which is that a lawful use can only be lost by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use. A use which is merely dormant or inactive could still be considered as 'existing', so long as it has already become lawful and has not been extinguished in one of those three ways.
  18. The main thrust of the Council's case is that there was a material change of use of the property from 4 November 2018 to 21 August 2020, when it was not in use as a C4 HMO. The appellant confirms that the property was let out during this period<sup>5</sup> as a corporate let and as a leisure let, for up to 6 people, hereon in referred to as 'the short term letting'. Since it is not disputed that the C4 HMO use was established prior to the Article 4 Direction coming into effect and was the lawful use of the property, this appeal will turn on whether the short term letting constituted a material change of use and if so, superseded the lawful C4 HMO use.
  19. The Town and Country Planning (Use Classes) Order (UCO) 1987 (as amended) sets out that for the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.
  20. Even if the layout of the building did not change, the property would not have been classed as an HMO, as it would not have met the 'standard test' contained within the Housing Act 2004, which requires that the living accommodation is occupied by those persons as their only or main residence, or they are to be

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<sup>4</sup> The relevant immunity period in that case.

<sup>5</sup> 4 November 2018 to 21 August 2020

treated as so occupying it. Nevertheless, this is not of itself an indication that a material change of use has occurred.

21. The appellant states the property was set up and run in exactly the same manner as a student letting, benefited from a HMO license and was advertised as an HMO throughout. While there may have been little difference in terms of managing the property, for the purposes of considering whether a material change of use has occurred, it is necessary to consider whether there is a significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree.
22. The appellant suggests the period of short-term letting was very similar in character to the HMO use. However, the appellant has provided very limited information of the nature of the short-term letting occupation. 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 for as little as a day, up to a maximum of around 16 days, although typically they appear to be for between 3 to 5 days. Use of the property also appears to have been more frequent during the summer months.
23. 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.
24. 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 an HMO 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.
25. 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 the HMO use, where occupants are likely to stay for around for at least a year. Occupants using the property on a short term basis are unlikely to have interacted with the local community, whereas occupants of the HMO use are far more likely to have taken an active part in community life.
26. The appellant suggests that the 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.
27. Indeed, details provided by the Council show that the property was provided with Egyptian Cotton bed linen, and requests that prospective guests book the correct number of guests as rooms will only be 'set up for booked guests'. Towels and linen are identified as being provided for all guests. 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 the HMO use.

28. Consequently, for the reasons given above, I consider that there was, on the balance of probabilities, a material change of use of the property from a C4 HMO to a *sui generis* short term letting use, not a C3 use. It is not disputed that the property has since been changed back to a C4 HMO use.
29. Section 57(4) of the Act states 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. However, section 57(4) does not provide for resumption of a past lawful use when there has been one or more intervening unlawful uses between that and the current unlawful use.
30. The short term letting was an intervening unlawful use and so there is no right of reversion to a C4 use. The appeal under ground (c) therefore fails.

### **Other Matters**

31. 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, the enforcement notice simply requires the use of the property as a house in multiple occupation (Use Class C4) to cease. There is no requirement for the property to be used as a C3 dwellinghouse.
32. The time period for compliance is identified as 31 August 2022. The notice would have taken effect on 29 October 2021, so this 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**

33. 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