



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/21/3285775

26A Derby Road, Manchester M14 6UW

- 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, numbered ENF/14945/20, 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: 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. Since the Council has responded

to these matters, neither party would be prejudiced by my consideration of this hidden ground 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. 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 used by groups of unrelated people visiting the area for leisure purposes. The occupancy in August is stated to have been a one-off event of limited duration.
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 C1¹ or a *sui generis*² use, than a 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.
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. The appellant has provided very limited information regarding the nature of the letting during this period.
11. An interested party, who lives at the neighbouring property, states that the property was let out through Airbnb for 'several months' prior to the lockdown in March 2020, mostly to large groups of up to 14 people. The interested party states that the groups would change every few days, new groups often arriving noisily late at night or in the early hours and in some cases would immediately start playing music and having a party and that there was a particularly noisy group there for the first few weeks of lockdown. The appellant has not disputed the information provided by the interested party and I have no reason to doubt its authenticity.
12. I agree, from the evidence provided, 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

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

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.

13. 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.
14. It is not disputed that the property is currently occupied by 6 individuals as a HMO. Whilst I note the appellant's argument that this represents under occupation of a large HMO, since it falls within the definition of a C4 HMO, the breach, as corrected, has occurred as a matter of fact. I shall correct the notice and go on to consider the remaining grounds of appeal.

Ground (c)

15. 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.
16. 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.
17. 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. What is in dispute is whether the premises comprised a C4 HMO⁴, or a large, sui generis⁵, HMO and whether there has been a subsequent intervening material change of use of the property.
18. 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, it was held that an unlawful use could only become lawful if it continued throughout the ten year period, to the extent that the local planning authority could have taken enforcement action at any time.
19. In *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461 it was held that lawful use rights could 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 was merely dormant or inactive could still be considered as 'existing', so long as it had already become lawful and not been extinguished in one of those three ways.

⁴ Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

⁵ A Latin phrase that means 'of its own kind'.

20. The appellant states that, prior to their purchase of the property, it was let to students as a 'large student HMO'. The appellant has provided a document which states that the property was let to 'international students' between 1 May 2011 and 31 August 2011, however, the appellant does not provide the names of occupants or documentary evidence to show how the building was occupied. Furthermore, no substantive details are provided of the occupancy prior to the appellant's purchase of the property in 2011.
21. The Council states that an inspection of the Council Tax records show that the first occupation of the property was by six students between 7 October 2011 and 1 July 2012. A screen shot from the Council's Council Tax records system summarises information stated to be 'direct email rcd from owner' and shows that 6 students were occupying the property. This contradicts the appellant's assertion that the property was a large student HMO prior to 1 July 2013.
22. Between 1 September 2011 and 30 June 2012 the appellant confirms that the house was empty for renovations, with the intention of continuing the HMO use. While the appellant has not provided any substantive details of the renovations carried out, the occupant of the neighbouring property advises that following the sale of the property to the current owner, the garage was converted into an extra bedroom. This points towards the building having been adapted to provide accommodation for a greater number of people.
23. The appellant has provided the names of occupants between 1 July 2013 and 30 June 2019, which show that the property was then consistently occupied by 7 individuals. The Town and Country Planning Act 1990 (as amended) defines development as... the making of any material change in the use of any buildings or other land. Whether the change of use from a C4 HMO to a large *sui generis* HMO was material is a matter of fact and degree.
24. Increasing the number of occupants within the building is likely to increased parking pressure in the area, particularly since the garage appears to have been converted to facilitate the change. Increasing the number of occupants is also likely to increase levels of noise and disturbance. The neighbouring occupant also raises concern regarding the adequacy of toilet facilities within the property, citing examples of individuals urinating the back garden, which is likely to generate odour which neighbouring occupants find unpleasant. Consequently, in the absence of evidence to the contrary, I consider such a change would have constituted a material change of use.
25. It is not disputed that the property was used as a 7 person HMO between 1 July 2013 and 30 June 2019, however, this is significantly less than the 10 years which would required to gain immunity under section 171B(3) of the Act. In my view, the appellant has not demonstrated that the lawful use of the property was a *sui generis* HMO or that a material change of use of the property from a C4 HMO to a large *sui generis* HMO has not occurred.
26. Following renovation work to the property in 2019, the appellant states that the building was let for leisure purposes to 7 people between 31 December 2019 and 2 January 2020 and 28 February 2020 to 2 March 2020. It is stated the property was also let out between 5 August 2020 and 21 August 2020 for 'Covid isolation'. While such limited use of the property could, in my view, be considered *de minimis*, the evidence provided by the interested party points towards there being a greater number of bookings than the three suggested by the appellant.

27. 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. While I don't disagree with this approach, the appellant has provided very limited information regarding the nature of the short term rentals.
28. The arrival and departure of occupants at different times, including early hours of the morning, late at night or at weekends, is likely to have generated noise and disturbance which is uncharacteristic of an HMO use. Comings and goings are likely to have been materially different with the short term let, with visitors to the property more likely to have accessed the property by private vehicle or taxi.
29. Indeed, the neighbouring occupant states 'When it was let to groups through Airbnb, the risk of significant noise and other nuisance was continuous. These groups would change every few days, new groups often arriving noisily late at night or in the early hours...'. This points towards the character of the use being materially different to the HMO use.
30. 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.
31. 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.
32. From the evidence before me, I consider it likely, on the balance of probabilities, that the property went from a C4 HMO to a *sui generis* HMO, to a *sui generis* short term let, back to a C4 HMO. While a C4 HMO may have previously been the lawful use of the property, since there have been intervening unlawful uses, there is no right of reversion under section 57(4) of the Act. Consequently, the appeal under ground (c) must fail.

Other Matters

33. 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.
34. 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

35. 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