



Appeal Decisions

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 29th June 2022

Appeal A Ref: APP/T5150/C/21/3282327

Appeal B Ref: APP/T5150/C/21/3282328

54 Nettleden Avenue, Wembley, HA9 6DR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Bhupendra Rambhai Patel and Appeal B is made by Mrs Premilaben Bhupendra Patel against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 25 August 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to a House in Multiple Occupation (Sui Generis HMO) ("the unauthorised change of use")
 - The requirements of the notice are to
 - STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO).
 - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en suite bathrooms/shower rooms and toilets except those shown in the attached Floor Plans.
 - STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use took place, as shown in the attached Floor Plans. For the avoidance of doubt they should include a kitchen, dining room and lounge on the ground floor, bedrooms on the upper floors, a bathroom and WC on the 1st floor, and a bathroom on the second floor.
 - The period for compliance with the requirements is 6 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decisions

Appeals A and B

1. It is directed that the enforcement notice is varied by
 - i) Inserting the words '(Sui Generis)' after 'Multiple Occupation' within STEP 1 in the requirements of Schedule 4 so that the requirement in full reads 'Cease the use of the premises as a House in Multiple Occupation (Sui Generis) (HMO).'
2. Subject to that variation, the appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

3. Whilst the appellants originally lodged an appeal under ground (a), that ground of appeal was subsequently withdrawn. As both appeals are now proceeding on the limited grounds of (f) and (g), any matters relating to the planning merits

of the development are not relevant. In view of the limited grounds of appeal, a site visit was not considered necessary and neither party objected to the appeal proceeding without a site visit.

The appeal on ground (f)

4. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of a notice are set out in Section 173 of the Act and are to remedy the breach of planning control or to remedy any injury to amenity. As the requirements include ceasing the use of the premises as an HMO, the purpose of the notice is to remedy the breach of planning control.
5. Under this ground, the appellants simply state "the Premises could be converted back to a PD HMO (Use Class 4)." The reference to "PD" appears to relate to permitted development rights but no further information is provided. Whilst, the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) allows a change from Class C3 (dwelling house) to Class 4 (small HMO), the current use of the appeal property is as an unauthorised Sui Generis HMO not as a Class C3 (dwelling house). The requirements cannot therefore be amended to rely upon permitted development rights that do not currently apply to the appeal property.
6. However, there is an issue with the wording of the first requirement which states "Cease the use of the premises as a House in Multiple Occupation (HMO)." The Council considers that by not stating "Permanently (*my emphasis*) ceasing..." that allows for permitted development rights to be exercised in the future including Class 4 (small HMO) use. Nevertheless, the requirement to cease any HMO use runs with the land and the current wording does not match the allegation which is use as a Sui Generis HMO and the requirement needs amending. Whilst a notice cannot require resumption of the lawful use which is Class 3 (dwelling house), it remains the case that the appellants need to cease the current Sui Generis HMO use and comply with all of the requirements in the notice including restoring the premises back to its condition before the breach took place. However, I will amend the first requirement to match the allegation so that it reads "Cease the use of the premises as a House in Multiple Occupation (Sui Generis)(HMO)." To that limited extent, the appeal under ground (f) succeeds.

The appeal on ground (g)

7. An appeal under ground (g) is that the time for compliance with the notice is too short. The time for compliance is 6 months. The appellant states that a number of Assured Shorthold Tenancy Agreements have been granted with a period of 12 months with no break clauses. However, in the absence of any details of any agreements particularly commencement dates, I have no information as to when agreements end or when notices can be served. Statutory restrictions upon the service of eviction notices due to the Coronavirus pandemic referred to by the appellants are no longer in place.
8. Whilst it is never possible to guarantee that occupants can find alternative accommodation, on the evidence before me, I do consider that 6 months is a reasonable period for the appellants to liaise with the occupants to help them make alternative arrangements and to achieve compliance. The Council has also referred to its powers under Section 173A(1)(b) of the Act which gives the

Council discretion to extend the period for compliance, should the Council consider that there are justifiable reasons to do so. The appeal under ground (g) therefore fails.

Conclusion

9. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice prior to varying it.

E Griffin

INSPECTOR