
Appeal Decision

Site visit made on 1 August 2022

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2022

Appeal Ref: APP/N5090/C/21/3278422

33 Heathfield Gardens, London, NW11 9HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Knight Enhanced Management against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 26 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the property into a C4 House of Multiple Occupation (HMO).
 - The requirements of the notice are: 1. Cease the use of the property as a House in Multiple Occupation; 2. Remove all but one kitchen, including kitchen units, sinks, cookers and food preparation areas, from the property.
 - The period for compliance with the requirements is 8 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) & (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary matter

2. An appeal on ground (g) was added to the original grounds of appeal in the appellant's representations.

The appeal on ground (b)

3. This ground is that the breach of planning control has not occurred as a matter of fact. However, the appellant's case on this ground addresses the question of whether planning permission was needed at the time the material change of use took place, a matter addressed under ground (c). The property is clearly in use as a House in Multiple Occupation (HMO), as alleged in the notice, and the appeal on ground (b) fails.

The appeal on ground (c)

4. The appellant's case on this ground is that the material change of use took place prior to the coming into force on 29 May 2016 of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015, which established a Borough-wide requirement to apply for planning permission for a change of use from Use Class C3 to Use Class C4. Prior to that date, the change from Class C3 to Class C4 was permitted development and therefore not a breach of planning control.

5. If it can be demonstrated that the change of use was lawful at the time, and there has been no subsequent change of use or abandonment of the use, the use as a HMO would remain lawful.
6. The appellant states that the property was purchased by him for his business in 2006 and was initially used to provide accommodation for up to five of its software engineers. This use continued until towards the end of 2017, when one room became permanently vacant and a letting agent was engaged to let out this room. In May 2018, the Council granted the first HMO licence to the appellant. From late 2018 to late 2019, extensive building work was carried out to renovate the property. In late 2019 the Council Building Regulations Department issued a Fit for HMO Building Regulation certificate. The HMO Department issued a varied HMO licence in December 2019.
7. Use Class C4 entails use of a dwellinghouse by not more than 6 residents who are unrelated and who share at least one basic amenity such as a kitchen or bathroom. A property does not have to be converted or adapted in any way to be classified as a HMO.
8. The appeal property was originally a 4 bedroom semi-detached dwellinghouse. However, the appellant indicates that the property was already in use as single room accommodation for up to five unrelated individuals long before the relevant date in May 2016. He has submitted five signed statutory declarations from individuals, all software engineers, who have provided additional supporting evidence of their residence at that address.
9. Mr Duvvuri states the property was a HMO when he lived there from 1999 to June 2006 in one of the rooms and shared the kitchen and other facilities with other engineers. Mr Ho states that the property has been in use as a HMO since 1999 and he has been living there, sharing kitchen and other facilities since that date. Mr Voo states that the property was a HMO and that he lived in one of the rooms, sharing kitchen and other facilities with other engineers from 1999 to 2017. Mr Reddy states that the property was a HMO and that he lived in one of the rooms there from February to June 2004 and from July to November 2005, sharing the kitchen and other facilities. Mr Liu states that the property was a HMO and that he lived in a room and shared kitchen and other facilities with other engineers from February 2016 to December 2018. A number of these individuals say that they continue to live at the property when working at the company's head office in London.
10. The Council has not disputed the veracity of the above declarations. In which the indication is that the property was in use as a HMO, occupied by employees of the appellant's company, prior to the relevant date in May 2016. Although it appears that the property has at times been made available to students, it does not appear that the use has changed in character. The fact that the property was unoccupied for a significant period in 2018/2019 whilst it was renovated and extended does not appear to me to indicate an intention to abandon the HMO use and neither does it indicate the intention to introduce a different use.
11. The Council has cast doubt on the type of use claimed by the appellant, suggesting a possibility that it may have been temporary sleeping accommodation for workers or some other (unspecified) form of accommodation. However, neither of those suggestions appear to be consistent with the above statutory declarations.

12. The Council further points to there being no reference in Council documentation to its being a HMO until 2018. In 2021, the owner applied for permission for a change of use from C3 to C4. In the application form, the date the 'work or change of use' started was given as 01/09/2018 and the date of completion as 29/10/2019. However, this appears consistent with the appellant's evidence regarding the refurbishment and appears to relate to the building works rather than the change of use. I note that, prior to that application, the Council had already issued a HMO licence for the property in May 2018.
13. I see that reference was made in a 2016 planning officer's report to its being a 'single family dwelling house'. However, this related to an application for a rear extension, which would not normally require an inspection of the interior of the premises. In 2017, further reference was made in applications relating to an outbuilding to 'C3 use' and to the need to house an elderly relative in the outbuilding. However, such applications are prospective and, as such, can reflect intended use, rather than actual use.
14. Taking the evidence in the round, I have come to the view that the appellant has demonstrated, on the balance of probability, that the property was in use as a HMO prior to the coming into force of the Article 4 Direction on 29 May 2016. The material change of use was lawful at that time and there has been no subsequent abandonment of the use or its replacement by another use. Therefore, there has been no breach of planning control and the appeal on ground (c) succeeds. The enforcement notice will be quashed.
15. Because of this conclusion, there is no need for me to go on to consider grounds (a), (d), (f) or (g).

B.S. Rogers

Inspector