
Appeal Decision

Site visit made on 4 August 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Appeal ref: APP/E5900/C/22/3292210
110 Whitechapel Road, London E1 1JE

- The appeal is made by Mr P Singh under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Tower Hamlets Council.
- The notice was issued on 20 January 2022; reference No. ENF/0804/21.
- The breach of planning control was: Without planning permission, the material change of use of the first, second, and third floor of the premises from storage to a 6-room House in Multiple Occupation.
- The requirements of the notice are:
 1. Cease the use of the premises, shown outlined in red on the plan attached to the notice as a 6-bedroom HMO.
 2. Remove all residential furnishings and fixings from the first, second and third floors of the property shown outlined in red on the plan attached to the notice.
- The period for compliance with the requirements is three (3) months.
- The appeal was made on ground (b) as set out in the amended Act.

Summary of decision: The enforcement notice is a nullity

Costs application

1. The Appellant, Mr P Singh, made an application for a full award of costs against the Council. That application is the subject of a separate decision.

Appeal property

2. The appeal property, 110 Whitechapel Road, is a narrow 4 story mid-terrace property, said by the Council to include a basement, currently authorised for storage purposes, (Use Class B8, Town and Country Planning (Use Classes) Order 1987 as amended).
3. The ground floor is occupied by the Makkah Grill restaurant. It is in separate ownership. The first, second and third floors of the building are the subject of this appeal. Except for one room on the first floor, which was furnished as an office, all the other rooms were vacant and empty of any furnishings at the time of my visit. Recent renovation works were said by the Council to have provided shower rooms with W.C.s to each room with a bedroom on either side of the property, and a bedroom with no windows in the middle of the first floor. At the time of the site visit, a sign in the top floor window advertised: "Brand new en-suite Office".

The ground (b) appeal

4. An appeal on ground (b) asserts that those matters set out in the enforcement notice have not in fact occurred.
5. The enforcement notice describes the alleged breach of planning control as: "*the material change of use of the first, second, and third floor of the premises from storage to a 6-room House in Multiple Occupation*", (HMO). The notice's allegation "*the material change of use ...*" and the first requirement "*Cease the use of the property as self-contained flats*" clearly shows it to be a change of use notice; stated to be from a lawful storage use to use as a 6 room HMO. The inference must be that an unlawful HMO use was considered to have started by the date of issue of the enforcement notice.
6. Section 172 (1) of the Act says: "The local planning authority may issue a notice (in this Act referred to as an "enforcement notice") where it appears to them - (a) that there has been a breach of planning control; ...". But it seems that the Council acted upon the apparent readiness of the property to use as an HMO, rather than upon such a use having begun. They referred to a retrospective application for planning permission refused by the Council on 8 November 2021, ref. PA/21/00965. That is subject to a separate current s.78 appeal, (APP/E5900/W/22/3291231). Together with the improvement works to the top 3 floors, the Council took that to show the Appellant's intentions, issuing this change of use enforcement notice. However, neither the Council or the Appellant suggested that any residential occupation of any of the 3 upper floors of No. 110 Whitechapel Road had begun.
7. The matters subject to enforcement action must have taken place; an enforcement notice cannot be issued in relation to a prospective breach. In the case of *R v Rochester-upon-Medway CC ex-parte Hobday* [1990] JPL 17; [1990] JPL 923 it was held that the enforcement notice subsequently issued on this basis was a nullity, because the 1990 Act requires consideration of past or present, but not prospective, breaches of planning control. That is the situation here. I take no further action.

FORMAL DECISION

8. The enforcement notice is a nullity.

John Whalley

INSPECTOR