
Appeal Decisions

Site visit made on 31 August 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal A: APP/Y5420/C/21/3288541

Appeal B: APP/Y5420/C/21/3288542

65 Ladysmith Road N17 9AP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Mario Matassini and Mr Leandro Corcoy against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 1 November 2021.
- The breach of planning control as alleged in the notice is the material change of use to a small House in Multiple Occupation (C4).
- The requirements of the notice are:
 1. Cease the use of the property as a House in Multiple Occupation.
 2. Remove from the property all internal door locks into habitable rooms facilitating the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

The appeal site

1. The appeal site is situated in a mainly residential area of Haringey. An Article 4 Direction has removed permitted development rights for a change of use from C3 dwelling houses to C4 houses in multiple occupation (HMOs). The appeal site is also within the Housing Family Protection Zone.

The appeal on ground (b)

2. The ground of appeal is that the breach of control alleged in the enforcement notice had not occurred. The appellant contends that the current use is not as a C4 HMO, but rather it falls within Class C3(c) of the Town and Country Planning (Use Class) Order 1987 as amended (the UCO). Class C3(c) allows for groups of people of up to six living together as a single household.
3. The Notice requires the cessation of the use and removal of internal door locks into habitable rooms facilitating the alleged use. It is argued that the current occupiers met and became friends at University, there is a single Assured Shorthold Tenancy Agreement (AST), the group is responsible for finding a replacement tenant should one move out, monthly rent is paid by the lead tenant and room allocation is the responsibility of the household, rather than

by the landlord. The appellant also relies on the tests derived from case law¹ which identified 9 factors which are indicators of the use of a property.

4. Given the arguments presented by both sides I am entitled to draw reasonable inferences on the balance of probabilities from the evidence provided. Use Class C3(c) allows for groups of people (up to six) living together as a single household which allows for those groupings that do not fall within C4 HMO definition to be provided for within a residential class. Class C4 covers shared houses that are occupied by between three and six unrelated individuals as their only or main residence, who share basic amenities such as a kitchen or bathroom. Consequently, in this case the appellant must demonstrate on the balance of probabilities that the property is being occupied by a group of up to six people living together as a single household rather than them merely sharing basic amenities.
5. There is no single criterion to decide if a single household is present, the *Barnes* case found a number of relevant matters such as whether the persons living in the house came to it as a single group or whether they were independently recruited; what facilities are shared; whether the occupants were responsible for the whole house or just their particular rooms, whether individual occupants were able to lock other occupiers out of their rooms; whose responsibility it was to recruit new occupiers when individuals left; who allocated rooms; the size of the establishment; how stable the group composition is; and whether the mode of living is communal.
6. Witness Statements indicate that the tenants moved to the property as a single group, share all facilities, are responsible for the whole house rather than just their own rooms, that the tenants are responsible for filling vacancies, they allocate the rooms themselves and that the group is stable. However, in a case such as this where the burden of proof is on the appellants, I would normally expect additional evidence to support the statements submitted. Detailed utility bills showing the person responsible for payments, Council tax records, bank statements showing outgoings associated with the property and postal correspondence or telephone call records between the tenants and with the letting agents with respect to the specific tenancy would have provided more detailed evidence of the responsibilities of the tenants, type of occupancy and their relationship with one another.
7. In addition, at the time the Council submitted their Appeal Statement there is evidence that a fifth bedroom was being advertised for let. This brings into doubt some of the evidence provided by the appellants with respect to matters such as who is responsible for filling vacancies, room allocation, the extent to which facilities in the property would be shared, responsibility for paying bills and whether or not the group would occupy the property as a single household. It may be the case that the residents originally arrived as a single group and occupied the property as a single household but that situation may have changed over time.
8. The appellants contend that the size of the property is indicative of a single household living together and that the level of occupancy is commensurate with the size of the house and its amenities. It is further argued that in terms of layout and configuration, the rooms and occupancy are not maximised in the manner of a C4 HMO. The evidence before me is inconclusive with respect to

¹ Barnes v Sheffield City Council [1995] 27 HLR 719

the size and configuration of the property and how it is used. In my judgement, the size is commensurate with either C4 or C3(c) use.

9. Other than general written evidence of how the group of residents met and moved to London there is little evidence regarding the stability of the group and relationships between them. I understand that this may be a little difficult to prove, but there is a lack of detailed evidence in this regard.
10. The appellants' evidence is that there is communal living in terms of the layout of the accommodation, house cleaning arrangements and the residents regularly shop, cook and eat together. Other than general statements there is little clear evidence such as copies of rotas to support this contention.
11. There is photographic evidence that on 22 September 2020 one of the bedroom doors was lockable which directly conflicts with the appellants' own statements. This gives rise to concerns with respect to the manner in which the property is occupied.
12. I can see that there is a fine line between the two uses at contention in this case, but the burden of proof is on the appellants to show on the balance of probabilities that at the time the enforcement notice was issued the property was not occupied as a C4 HMO occupied by between three and six unrelated individuals as their only or main residence, who share basic amenities such as a kitchen or bathroom.
13. Although the appellants' evidence demonstrates that there is an element of communal living, in my judgement it does not go far enough to prove C4 occupancy. Therefore, I conclude that the appellant has not discharged the burden of proof that rests upon them to show on the balance of probabilities that a Class C4 Use has not occurred as a matter of fact. The appeal under ground (b) therefore fails.

Formal decision

14. The appeal is dismissed and the enforcement notice is upheld.

A A Phillips

INSPECTOR