



Appeal Decision

Site visit made on 15 September 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/Y5420/C/21/3275894

4 Malvern Road, London N17 9HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Andrea Navarro against an enforcement notice issued by London Borough of Haringey.
 - The notice was issued on 26 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a small House in Multiple Occupation.
 - The requirements of the notice are to: 1. Cease the use of the property as a House in Multiple Occupation; 2. Remove from the property any 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: 5 (five) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
-

Decision

1. It is directed that the enforcement notice is varied by:
the deletion of 5 months and the substitution of 6 months as the time for compliance.
2. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The site visit was arranged as an accompanied visit. The council did not attend. The visit was changed to 'access required' and access to the property and each room was provided by the appellant. During my visit I noted that on the ground floor there was a large kitchen/diner at the rear; 2 bedrooms, one with an en-suite and a separate shower room. On the first floor there were 3 bedrooms and a shower room; and on the second floor in the loft there was one bedroom with an attached shower room. Each bedroom had a lockable door.
4. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) provides for the use of a dwellinghouse as a "house in multiple occupation" (HMO) by not more than 6 residents; that is up to 6 unrelated individuals who share basic amenities such as a bathroom and kitchen (a small HMO). The use of a dwellinghouse by more than 6 residents not living together

as a household is “sui generis” or in a use of its own. The notice alleges the property is in a C4 use (up to 6 residents).

5. The appeal building lies within an area that is subject to an ‘Article 4 Direction’ which came into force on 30 November 2013. The Article 4 Direction withdraws permitted development rights for a change of use from C3¹ to C4, meaning that express planning permission will be required for this type of development.

The appeal on ground (b)

6. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control *have not occurred* as a matter of fact. It concerns the circumstances leading up to, and at the time of the issuing of the notice. The appellant must demonstrate with sufficiently precise and unambiguous evidence that the appeal property was not in use as a small HMO. The test of the evidence is on the balance of probability. The planning merits of the matter alleged do not fall to be considered.
7. A certificate of lawful use or development (LDC) for the use of 4 Malvern Road, was previously dismissed at appeal². Under s191(1)(a) of the Act, the use sought was as a small HMO. The Inspector considered that the appellant had demonstrated, on the balance of probabilities, that the change of use to a small HMO falling within use Class C4 had occurred prior to the Article 4 Direction coming into force in November 2013 and therefore express planning permission would not have been required for a change of use from a single dwellinghouse to a C4 use.
8. However, they considered that at some point between 1 August 2013 and the date of the LDC application, 6 December 2018, the number of residents increased to eight. This level of occupation is beyond the definition of a Class C4 HMO use, which is limited to use by no more than six residents. The Inspector concluded that the appellant had therefore failed to demonstrate that *on the date of the application* the property was in use as a Class C4 HMO with no more than six residents.
9. The appellant’s case on ground (b) is that the property is not in use as a small HMO but is currently in use as a large HMO. This is because it is occupied by more than 6 tenants. In their submissions, they state that the property has been used in this way for ‘several years’. I note the appellant’s HMO licence application and the licence issued by the Council indicate that the property was used to house 7 or more persons and at the time the application was prepared in May 2017, there were 8 tenants listed occupying the 6 rooms in the property. A copy of the licence under s64 of the Housing Act 2004 granted by the council in respect of the HMO at 4 Malvern Road, London N17 9HH describes the occupation of the property by not more than 7 persons occupying as 6 households. The licence is dated 13 March 2018 and remains in effect for 5 years unless revoked.

¹ Use as a dwellinghouse by a single person or by not more than six residents living together to be regarded as forming a single household

(b) not more than six residents living together as a single household

² Appeal Ref: APP/Y5420/X/20/3253017 dated 9 February 2021

10. On 25 March 2021, following the issue of the LDC appeal decision, the council served a planning contravention notice (PCN) on the appellant. A completed copy of the PCN signed and dated³ by the appellant declares that there were 6 tenants occupying the property and names were provided. Being as it is a criminal offence, open to prosecution, to give false or misleading information knowingly or recklessly in response to a PCN, the council issued the enforcement notice based on this information.
11. Responding to this in their appeal submissions, the appellant considered that the information had not been properly answered as it had not been fully appreciated. However, I am not persuaded by this argument considering the warning of prosecution that accompanies a PCN. The appellant's final comments inform me that the attic room was occupied by a husband and wife and that the wife's name had been erroneously omitted on the PCN. To support this information, an incomplete 6 month tenancy agreement for between 28 July 2019 to 27 January 2020 has been provided which names two individuals and indicates that they would occupy the loft ensuite double room. This and the HMO application in May 2017 which lists 2 tenants as occupying the attic room/room 6 in the HMO, indicates that more than 6 people were living at the property during these times. This is consistent with the Inspector's finding that the property was in use as a large HMO on the date of the LDC application, 6 December 2018.
12. Notwithstanding this, the appellant also provided a statutory declaration (the SD) dated 15 May 2020 and signed by the appellant and her husband. This document formed part of the application for the LDC to establish the lawful use of the property as a small HMO. The SD confirms the appellant applied for an HMO licence for 8 people and that the total number of bedrooms is 6. Furthermore, it is stated that they 'had only 6 person living in the house at any time, therefore it is small HMO C4'.
13. From the evidence before me, the property was occupied as a small HMO by no more than six residents prior to it being enlarged in 2015 when building work took place to extend the property from 3 to 6 bedrooms. Since then, the appellant says that it has been occupied as a large HMO, which is in a use class of its own (sui generis). However, I have not been provided with any convincing evidence such as tenancy agreements or rental payments to show that, at the time of the enforcement notice, the property was in use as a large HMO rather than a small HMO, and there is substantial evidence to the contrary.
14. Overall, I find the evidence from the appellant is inconsistent and contradictory. The PCN and the SD state that the property was occupied by no more than 6 residents. Yet the argument on this ground falls firmly on the property being used to house more than 6 tenants. The burden is on the appellant to provide cogent evidence to support their case. It is not unreasonable to expect that such evidence might exist, had the appeal property been used as a large HMO from 2015.
15. Therefore, while it appears that the property was used as a large HMO at some time after July 2015, I am not persuaded that the property was being used as a large HMO on the date of the enforcement notice or the immediate period running up to that date. This is because I find that the limited evidence in the

³ 7 April 2021

form of the PCN and SD suggest that the property was occupied by no more than 6 residents as a small HMO.

16. Accordingly, the appeal on ground (b) must fail.

The appeal on ground (c)

17. In an appeal on this ground the appellant must demonstrate on the balance of probability that the matters alleged, if they occurred, do not constitute a breach of planning control. The burden of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probability.

18. The basis of the appellant's appeal on this ground is that the use of the property as a small HMO (Use Class C4) is lawful, by reference to the findings of the Inspector in the LDC appeal.

19. As set out under ground (b), the previous Inspector found that there had been a lawful change of use of the property from a C3 use to a C4 use. This was because the change occurred prior to the Article 4 Direction when a change between C3 and C4 would have been permitted development. However, the Inspector considered that what was occurring at the time of the LDC application was a sui generis use as there were more than 6 residents. Accordingly, an LDC which would have confirmed the lawful use of the property on the date of the application, could not be issued.

20. I have concluded under the appeal on ground (b) that when the enforcement notice was issued, the property was in use as a small HMO. The evidence indicates that, notwithstanding that the building had a lawful use as a small HMO in 2015, immediately before the C4 use enforced against, it was in use as a large HMO, a sui generis use. There is no permitted development right to change from a small HMO C4 use to a large HMO sui generis use, or vice versa. Unless it is not a material change of use, planning permission is required.

21. The onus is on the appellant on this ground to show that the changes of use from small HMO C4 to large sui generis HMO and then to small HMO C4 were not material, but no evidence has been provided to demonstrate this.

22. In the circumstances of this case, where the use (a large sui generis HMO) from which the material change of use to the present use was made was itself unlawful, there is no right to revert to the last lawful use, that being the previous small HMO C4 use that subsisted in about 2015 prior to the change of use to a large sui generis HMO.

23. In the absence of evidence that these changes of use were not material, the last 2 changes of use were development that required planning permission, in the absence of which the current use cannot be considered as lawful. The appeal on ground (c) cannot therefore succeed.

The appeal on ground (g)

24. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant requests 6 months to ensure that tenancy agreements that may have recently commenced can be terminated. The council consider 5 months to be sufficient.

25. In absence of the agreement which sets out the details of termination, 6 months appears acceptable and would allow the appellant to serve the appropriate notice to their tenants.

26. The appeal on ground (g) succeeds and I will vary the notice accordingly.

S A Hanson

INSPECTOR