



Appeal Decision

Site visit made on 2 November 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2022

Appeal Ref: APP/U5360/C/21/3288647

22 Grosvenor Way, LONDON, E5 9ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Simone Moscariello against an enforcement notice issued by the London Borough of Hackney.
 - The notice, numbered 2020/0179/ENF, was issued on 29 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the property from a mixed use as a storage and light industrial unit (Sui Generis) to a House in Multiple Occupation (HMO) (Sui Generis use).
 - The requirements of the notice are;
 - 1 Cease the residential use of the property.
 - 2 Remove all the internal partitions, doors, kitchen and bathroom fixtures and fittings which facilitate the use of the property as a residential property.
 - 3 Remove all materials, debris waste and equipment resulting from compliance with the other requirements from the property and its premises.
 - 4 Make good all damage to the property resulting from the removal of the unauthorised works and restore the relevant parts of the property to they were in before the unauthorised HMO use commenced.
 - The period for compliance with the requirement[s] is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. Applications for costs have been made by both parties against each other. These are the subject of separate decisions.
3. The inspector and the local authority representative attended the pre-arranged site inspection but there was no response from the appellant or other persons at the property. However, the Council has provided sufficient evidence for me to determine the appeal without the need to enter the premises.

The appeal site

4. The appeal property is in a large, commercial, terraced building located on Grosvenor Way within the Theydon Road Priority Industrial Area. Unit 22 is situated above unit 30 Theydon Road, which is accessed from a street running parallel to Grosvenor Way. The Council's investigations reveal that Unit 22 has been subdivided from one large warehouse area into around 25 rooms over three floors with six shared bathrooms, a communal kitchen and communal living area. The reasons for issuing the notice make reference to the

accommodation proving an unacceptable standard of accommodation for the occupiers that is cramped, poorly designed and lacking daylight, sunlight and outlook.

The appeal on ground (b)

5. An appeal on this ground is that the breach of control has not occurred as a matter of fact.
6. The appellant states that the premises have been used as an office and on the last visit of an officer it was clear that the place was not being used as residential. The appellant argues that the question is not if there was at any time sleeping accommodation but whether, whatever the day of enforcement, it was residential and clearly from all the evidence of the LPA, it was not. No photographs of bedrooms were provided to show it was used on the day of the enforcement as residential.
7. The Council was alerted to the use of the premises as a residential HMO following a visit to the premises by the London Fire Brigade in June 2020. A Planning Contravention Notice was served on 23 February 2020 but the PCN was returned with most questions unanswered and little information was provided on the residents who rented the unit, although a tenant's agreement appeared to be connected with unit 20 and not 22. A plan was provided which showed 25 rooms spread over three floors.
8. Council officers visited the premises on 13 November 2020 and 12 July 2021 where it was evident that the unit was been used as residential HMO accommodation with shared facilities for the occupants. Photographs taken in November 2020 and submitted with the Council's statement clearly show this to be the case.
9. The appellant has not provided any evidence that contradicts the Council's findings other than to imply that the unlawful use had ceased at some time following enforcement action. Whether this is the case does not mean that a breach had not occurred, even if the requirements of the notice had been met.
10. An appeal on a legal ground places the onus of proof on the appellant and the level of proof being on the balance of probabilities. This has not been achieved and I find as a matter of fact that the alleged breach has occurred.
11. The appeal on this ground fails.

The appeal on ground (g)

12. An appeal on this ground is that the time to comply with the notice is too short and that 12 months is required to locate the business rather than the six months specified.
13. The appellant has failed to provide any information to justify why the compliance period should be extended. However, in my view the notice should be complied with in the period specified in order to overcome the harm caused through accommodation that is of an unacceptable standard for the occupiers and which leads to a loss of employment space.
14. I consider that the compliance period is adequate to carry out the requirements of the notice.

15. The appeal on ground (g) fails.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

P N Jarratt

INSPECTOR