The Planning Inspectorate

Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2022

Appeal Ref: APP/G5750/C/22/3297831
Land at 14 Second Avenue, Manor Park, London, E12 6EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the 1990 Act"). The appeal is made by Mr Bilkis Patel, Saji Property Services against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 13 April 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use to a Use Class C4 house in multiple occupation (HMO).
- The requirements of the notice are: (1) Cease the use as a Use Class C4 HMO; (2) Remove all fixtures and fittings that solely facilitate the use as an HMO, including but not limited to all internal locks on bedroom doors and any additional mattresses and beds; and (3) Remove from the site all debris arising from compliance with (1) and (2).
- The period for compliance with the requirements is: 6 months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the 1990 Act.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. With the agreement of the parties, a site visit was not held.

The Notice

2. Step 2 of the requirements of the notice is imprecise, and therefore may prove excessive, in 2 respects. Apart from all locks on bedroom doors and any additional mattresses and beds it is not clear what fixtures and fittings it requires to be removed. Neither is it clear how many mattresses and beds a person seeking to comply with the notice would need to remove. Step 2 would also be clearer if it were to specify that the items it is concerned with should be removed from the land.

3. Having sought the views of the parties on these matters, I consider step 2 should be varied to only require the removal of items that it identifies. It should also be varied to limit the removal of mattresses and beds to any that are on the ground floor of the premises, to achieve consistency with the reported former use as a 3-bedroom dwellinghouse. I am satisfied that the notice can be varied to address these matters without causing injustice.

Reasons

4. For the appeal to succeed, the appellant needs to demonstrate that the change of use to an HMO does not constitute a breach of planning control because planning permission is not required or is already granted. Such permission may have been granted in response to a planning application or at appeal or may be conferred by Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order").

5. Use as an HMO is materially different from use as a dwellinghouse, the previous use of the property, but the Order permits the change of use of a dwellinghouse to an HMO occupied by not more than six residents. However, since 31 July 2013, that change of use has required express planning permission within the London Borough of Newham by reason of a Direction[1] made by the Council. There is no evidence that the change of use was instituted before the Direction came into effect, so permission has not been conferred by the Order.

6. There is no evidence that planning permission has been granted for use of the premises as an HMO in response to a planning application or at appeal. However, the premises are licenced under section 64 of the Housing Act 2004 as an HMO for a maximum of 7 people living as 6 households[2]. While this means the premises are deemed suitable for occupation as an HMO, that is in terms of the quality of the accommodation provided. The licence states that it does not grant planning permission and I am not aware of any circumstances in which the grant of such a licence could alter the separate provisions of the 1990 Act or the Direction.

7. Accordingly, it has not been demonstrated that the use of the premises as an HMO does not require planning permission. It therefore constitutes a breach of planning control, and the appeal must fail.

Conclusion

8. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decision

9. It is directed that the enforcement notice is varied in section 5, step 2 by:

    - The deletion of the words "Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds"; and

    - The substitution of the words "Remove all internal locks on bedroom doors from the land and remove any mattresses and beds at ground floor level from the land".

10. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

Mark Harbottle

INSPECTOR

[1] Under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995
[2] Licence number 21/00796/HOHMOL, issued 22 July 2021