



Appeal Decision

Site visit made on 27 September 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2023

Appeal Ref: APP/G5180/C/21/3284529

The White Hart, 106 High Street, Orpington, BR6 0JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mr Richard Ortiz against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 6 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the two bedroom residential flat above the public house known as White Hart to a large HMO¹ (Class Sui Generis) comprising of 14 rooms.
 - The requirements of the notice are to Cease the unauthorised use of the premises as a large HMO and remove fixtures and fittings (including locks on doors) that have been installed to achieve the use of the property as a House in Multiple Occupation.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) (d), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the notice be corrected in Section 4 by deleting "four years" and substituting instead "ten years".
2. It is directed that the notice be varied in Section 5 by deleting the words "fixtures and fittings (including locks on doors)" and substituting instead the words "locks on doors".
3. Subject to the correction and variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural Matters

4. With regard to the appeal under ground (d) the relevant time limit after which the alleged breach of planning control would gain immunity from enforcement action falls within section 171B(3) of the Act, being 10 years, and not 4 years as stated in the notice as drafted. I can correct a notice using powers available to me under s176(1) of the Act provided there would be no injustice to any party.
5. As such, I wrote to the appellant giving him the opportunity to submit any evidence he had of the breach continuing over the requisite 10 year period so

¹ House in Multiple Occupation

that it could be taken into account in reaching my decision. However, no evidence has been submitted. I have corrected the notice accordingly.

6. For reasons set out later the appeal has been dismissed. In this regard, notwithstanding that the upper floors of the premises have been severely fire damaged, the enforcement notice is still in effect.
7. Consequently, although use as a HMO ceased while rooms were vacated, and extensive refurbishment was underway at the time of my visit to the appeal site, the requirements of the notice remain capable of being re-breached and subject to further action by the Council should they consider it expedient.

The appeals on grounds (b) and (c)

8. An appeal on ground (b) is a claim that the alleged matters (i.e. those matters stated in the notice which may give rise to the breach of planning control) have not occurred as a matter of fact.
9. An appeal on ground (c) is a claim that if those matters have occurred they do not constitute a breach of planning control.
10. The burden of proof in these grounds of appeal falls to the appellant and the test of the evidence is on the balance of probability.
11. In this case, in respect of ground (b), the appellant must demonstrate that a change of use to a large HMO has not occurred. However, the appellant's statement at paragraph 5.5(a) and submission of part of a 2018 HMO licence confirms that a change of use to a large HMO (more than 6 people) has in fact occurred; also confirmed by the Council's evidence. As such, the appeal on ground (b) must fail. His evidence that the use did not require planning permission falls within ground (c), and that it had already existed for 4 years falls within ground (d).
12. With regard to the appeal on ground (c) the appellant needs to show that a change of use from a 2 x bedroom single flat (or even from a small HMO as argued) to a large HMO is not a *material change of use* amounting to "development"² requiring planning permission.
13. In this regard no such change is permitted by the GPDO³ or UCO⁴, and no evidence has been submitted by the appellant to demonstrate the alleged change of use is not a material one. In my view the alleged use in scale and character is materially different to the former use and constitutes a material change of use. As such, it requires planning permission. Since no planning permission has been granted it constitutes a breach of planning control.
14. The appeal on ground (c) therefore fails.

The appeal on ground (d)

15. As set out in paragraph 4 earlier, in order for the use as a large HMO to be immune from enforcement action it must have been in such use continuously for a period of 10 or more years before the enforcement notice was issued, hence the relevant date is 6 September 2011. In this regard there is no

² "Development" – as defined at s55 of the Act

³ Town and Country Planning (General Permitted Development) (England) Order 2015

⁴ Town and Country Planning (Use Classes) Order 1987 (as amended)

convincing evidence before me to show that the use has been in continuous use for the requisite 10 year period.

16. The appeal on ground (d) therefore fails.

The appeal on ground (a)/deemed application for planning permission

17. This ground of appeal seeks planning permission for the alleged breach of planning control.

18. The appeal site is located in a busy urban area characterised in part by a mixture of commercial and residential properties. It comprises the upper floors of the White Hart public house located on the corner of Orpington High Street and White Hart Road. It is locally listed and sits within the Orpington Priory Conservation Area (OPCA).

19. Housing is a priority use in all London Boroughs. In this regard Policies 9 and 37 of the Bromley Local Plan (2019) support the principle of the change of use of the appeal site to a HMO, but subject to a satisfactory assessment against the detailed criteria set out within them. These policies are also reflective of the London Plan (2021) and the provisions of the National Planning Policy Framework (2021).

20. In light of the above policy background the Council does not object to the principle of HMO use of the upper floors at the appeal site and I have no reason to disagree with that view.

21. However, referring to a diagram layout of the floors submitted with the 2018 HMO licence application under the Housing Act, the Council object to the number of rooms and scale of occupation as being over-intensive, resulting in a layout of rooms which in some instances are inadequate in size to achieve a reasonably good standard of accommodation for users, including a lack of communal space. Based on what is shown in the above drawing I agree with the Council's view.

22. The above aside, the drawing is not accurately drawn to scale and does not properly show the detail of layout that is required to be submitted with a planning application. Also, as far I was able to tell during my inspection of the property, it does not accurately reflect the floor layout. These factors notwithstanding, the drawing was not submitted by the appellant for approval as part of his case, it was submitted by the Council in identifying the breach of planning control. For all these reasons I cannot take account of it in reaching my decision.

23. Consequently, while I find use as a large HMO to be acceptable in principle, there is insufficient detailed information before me to properly consider the ground (a) appeal against the detailed criteria of the Council's planning policies. Full detailed particulars of what is proposed including in the form of detailed scaled drawings will be necessary in order for such a scheme to be properly consulted upon and considered. This should be in the form of a full planning application to the Council in the first instance.

24. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

25. An appeal on ground (f) is a claim that the requirements of the notice⁵ exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach.
26. In this regard the notice requires the use as a large HMO to cease. It is clear therefore that the purpose of the notice is to fully *remedy the breach of planning control*. Consequently, the requirement to cease the use cannot be an excessive one since it does not go beyond remedying the breach of planning control. Any lesser requirement would not fully remedy the breach.
27. However, other than the specified "locks on doors", the requirement to "remove fixtures and fittings that have been installed to achieve the use of the property"... does not tell the appellant with any precision what is required to be removed. Alternatively, if interpreted as meaning *all* fixtures and fittings it would be excessive as some could be retained if the use reverted to the last lawful use under section 57(4) of the Act. Since this part of the requirement is either unclear or excessive I will vary the notice so that it refers only to removing locks on doors.
28. The appeal succeeds on ground (f) to the limited extent detailed above.

The appeal on ground (g)

29. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The notice requires compliance within 3 months. The appellant seeks a period of 12 months.
30. I am mindful that harm resulting from the breach of planning control should be remedied as soon as possible. Notwithstanding that the actual activity of HMO use ceased following the fire, I see no reason why a compliance period of 3 months would be unreasonable. The 12 months sought by the appellant is an excessively long period of time and would be the same in effect as the grant of temporary planning permission. I consider this to be unjustified.
31. In light of all the circumstances I consider on balance that 3 months does not fall short of what should reasonably be allowed.
32. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR

⁵ Section 5 of the enforcement notice