
Appeal Decisions

Site visit made on 24 October 2022

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal A Ref: APP/Z5060/C/21/3272705

Appeal B Ref: APP/Z5060/C/21/3272706

Appeal C Ref: APP/Z5060/C/21/3272606

Land and premises at 253 Salisbury Avenue, Barking IG11 9XX

- The appeals are made under section 174 of the Town and Country Planning Act 1990, as amended.
 - The appeals are made by Mr Adam Bhad (Appeal A), Mr Naeem Bhad (Appeal B), and Mr Daniel Chowdhury of All Seasons Lettings & Management Ltd (Appeal C) against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 11 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a single-family dwelling house to a House of Multiple Occupation.
 - The requirements of the notice are to:
 - Cease the use as a house of multiple occupation
 - Remove all alterations and fixtures enabling the conversion to a house of multiple occupation
 - Remove all consequent waste material from the premises
 - The period for compliance with the requirements is 6 months.
 - The appeals are 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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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued earlier on 1 December 2022.

Decision

1. It is directed that the enforcement notice be varied by:
 - Deletion of "6 months" in Section 6 of the notice and substitution with "9 months" as the time for compliance.
2. Subject to the variation, the appeals are dismissed and the enforcement notice is upheld.

The appeals on ground (b)

3. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting a breach of planning control, have not occurred as a matter of fact. This is a legal ground of appeal, and the onus of proof is firmly on the appellant to demonstrate that some or all of the alleged matters had not in fact occurred at the time the notice was issued. Therefore, to succeed on this ground the appellants are required to demonstrate, on the balance of

probability, that the property was not in fact in use as a house of multiple occupation at the time the notice was served.

4. The Town and Country Planning (Use Classes) Order 1987, as amended, sets out, amongst other things, to distinguish between dwellinghouses and houses of multiple occupation as follows:

Class C3. Dwellinghouses: use as a dwellinghouse (whether or not as a sole or main residence) by – (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Class C4. Houses in multiple occupation: Use of a dwellinghouse by not more than six residents as a “house in multiple occupation” (HMO).

5. Section 254(2) of the Housing Act 2004 (the Act) sets out the criteria to be met if a building or a part of a building is a HMO. It must (a) consist of one or more units of living accommodation not consisting of a self-contained flat or flats; (b) the living accommodation is occupied by persons who do not form a single household; (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it; (d) their occupation of the living accommodation constitutes the only use of that accommodation; (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. “Basic amenities” is defined as a toilet, personal washing facilities or cooking facilities.
6. Furthermore, Section 258 of the Act defines a single household to be persons who are all members of the same family, as defined under subsection (3). This includes persons living as a couple, regardless of marital status, or persons who are a relative of each other. “Relative” means a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin.
7. The appeal property is a two storey, mid-terrace house located in a residential area. The internal accommodation at first floor consists of two double bedrooms, a single bedroom, and a shared bathroom with a sink and toilet. The ground floor includes a fully equipped communal kitchen and a separate communal dining/living area furnished with a dining table and chairs, and an armchair and sofa. At the time of my visit, the front ground floor room did not contain a bed or any seating. It was furnished with a wardrobe and chest of drawers containing clothing and other personal items. Therefore, despite the lack of a bed, the room appeared to be in use as a bedroom. Indeed, somewhat bizarrely, during my visit, I observed several divan beds and double mattresses, including bedding, neatly stacked up in the centre of the rear garden.
8. Accordingly, the property contains at least three units of living accommodation where occupants share basic amenities, in this case a bathroom and kitchen facilities. It appears to me that the internal arrangements of the accommodation would be in accordance with the statutory definition of a HMO as set out above.

9. The appellants claim that the property is let to a single family of six people and therefore it is in use as a single dwellinghouse falling within Use Class C3. However, the Council considers that a material change of use has occurred from a dwelling to a HMO (Use Class C4). To support its assertion the Council has provided a copy of a Short Term Let Agreement for the property, which identifies three named individuals as renting the property. This agreement covers the period from 10 October 2020 to 9 January 2021. Therefore, as the notice was served on 11 February 2021, this alone does not support the Council's case. However, nor does this support the appellants' claim that a family of six was occupying the property.
10. To support their case, the appellants have submitted an Assured Shorthold Tenancy Agreement (the ASTA) for the property, a Tenancy Information Pack, and tenant IDs. The ASTA covers the period from 10 October 2020 and ended on 9 April 2021, but continues by virtue of statute until notice is given. The agreement includes a single named individual as the tenant. Nevertheless, the accompanying Tenancy Information Pack, which is signed by that named individual, includes an Occupier Information Form (the OIF), set out on page 4. This identifies three named tenants, including the head tenant named in the ASTA. I have no evidence that these tenants have served notice of their intention to vacate the property.
11. All HMOs are required to be licensed by the local authority. The OIF states "as part of the Borough's licensing criteria we need to know who is living in your home", it goes on to require a breakdown of who will occupy each room within the property. To my mind, if the property was being let to a single family, this appears to be an unusual requirement. Moreover, if the property was not operating as a HMO then it is unclear what licensing regime is being referred to.
12. It is claimed on the OIF that the tenants occupying bedrooms 2 and 3 are cousins of the head tenant, and copies of photographic identification for each tenant have been provided. Nevertheless, I have no evidence to substantiate the claim that the named tenants are in fact related and therefore could meet the definition of a single household as set out by the Act.
13. The appellants have also provided an Inventory/Inspection Report for the property and a Section 21 Notice (Form 6A) along with a completed Certificate of Service. However, it is unclear how this evidence supports the ground (b) appeal.
14. Consequently, drawing all these points together, the appellants have not provided sufficient evidence to demonstrate, on the balance of probability, that the HMO use had not occurred, as a matter of fact, at the time the notice was served. Therefore, the ground (b) appeals must fail.

The appeals on ground (g)

15. The ground of appeal is that the time specified for complying with the requirements of the notice falls short of what should reasonably be allowed.
16. The appellants claim that the six month compliance period is too short to secure the eviction of the tenants. They suggest that due to current backlogs in the courts, it could take a minimum of 18 months to follow all the necessary legal steps to secure the eviction of the current tenants. However, the

appellants' evidence demonstrates that a Section 21 Notice to seek possession of the property, and therefore the first step in an eviction process, was served on 16 February 2021. Therefore, this process is well underway.

17. Extending the compliance period to 18 months, as suggested, would unduly perpetuate the breach of planning control and the harm identified in the notice. In my view, extending the compliance period to nine months would strike an appropriate balance between remedying the planning harm identified as soon as is practicable, whilst also affording the tenants a more reasonable amount of time to search for suitable alternative accommodation. As so extended, the compliance period would not impose a disproportionate burden on the appellants or their tenants. Furthermore, extending the period for compliance as set out above would provide some scope for absorbing any unforeseen delays or disruption caused by the continuing effects of the Covid-19 pandemic.
18. For these reasons, I conclude that a reasonable period for compliance would be nine months and I will vary the enforcement notice accordingly. To this extent, the ground (g) appeals succeed.

Conclusion

19. Upholding the enforcement notice will interfere with the tenants' rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. However, this is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. I conclude, having regard to the harm set out in the notice, that the requirements of the notice and the time available for tenants to seek alternative accommodation would be reasonable and would not result in a disproportionate burden.
20. For the reasons given, I conclude that the appeals should not succeed. I shall, therefore, uphold the enforcement notice with a variation.

J M Tweddle

INSPECTOR