



Appeal Decision

Site visit made on 24 April 2023

by **Alexander Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal Ref: APP/N5090/C/22/3290718

47 Netherlands Road, Barnet EN5 1BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tagbo Umenyilora against an enforcement notice issued by London Borough of Barnet.
- The notice was issued on 3 December 2021.
- The breach of planning control as alleged in the notice is the change of use of the property to a House in Multiple Occupation (Use Class C4).
- The requirements of the notice are to cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirement is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (e) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

The ground (e) appeal

1. An appeal on ground (e) is whether copies of the Enforcement Notice (the Notice) were served as required by section 172 of the Town and Country Planning Act 1990 Act (the Act). Section 172(2) states '*A copy of an enforcement notice shall be served— (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice*'.
2. The appellant argues that a copy of the Notice was served on him at 47 Netherlands Road, where they do not live. The Council confirm that 47 Netherlands Road was the last known place of abode for the appellant and therefore complied with the requirements of section 329 of the Act, which states '*Any notice or other document required or authorised to be served or given under this Act may be served or given either... (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address*'. This was the address used by the appellant in recent planning appeals. Nevertheless, the Council could have made further enquiries prior to the service of the Notice to ascertain the appellant's correct address.
3. In any event, S176(5) of the Act states that '*Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.*'

4. The appellant clearly received a copy of the Notice to have made this appeal. Consequently, he has not been prejudiced by a copy of the Notice not being served at his correct home address.
5. The ground (e) appeal therefore fails.

The ground (c) appeal

6. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.
7. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area in which the appeal property is located. The Direction came into effect on the 29 May 2016 and removes the permitted development rights allowing the change of use of a building from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation).
8. The appellant argues the property was in use as an HMO prior to March 2016 and therefore it does not need planning permission. The onus is upon the appellant to provide evidence that is sufficiently unambiguous and precise to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. No evidence has been submitted to support this argument.
9. In the absence of any evidence such as tenancy agreements, council tax bills and utility bills, the evidence in support of the ground (c) appeal is ambiguous and imprecise and fails to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
10. The ground (c) appeal therefore fails.

The ground (d) appeal

11. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the Notice was served on 3 December 2021, it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (i.e. that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
12. The appellant's argument is that the alleged use has taken place for more than four years. Despite the lack of any evidence supporting how long the use has taken place, such as tenancy agreements, council tax bills and utility bills, the correct period of immunity from enforcement action for the change of use to an HMO is in fact 10 years.
13. Section 171B (2) of the Act provides that '*where there has been a breach of planning control consisting in the change of use of any building to a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*' However, this section does not apply in this case as there has not in fact been a 'change of use...to a single dwellinghouse'. The Council considers that the property was previously

used as a class C3 dwellinghouse, and this has not been disputed by the appellant. As it was already being used as a single dwellinghouse, there has not, therefore, been a change of use to a single dwellinghouse.

14. Section 171B (3) of the Act therefore applies in this case, and provides that no enforcement action may be taken after the period of 10 years beginning with the date of the breach. There is no evidence before me that the property has been in continuous use for a period of 10 years prior to the Notice being served.

15. The ground (d) appeal therefore fails.

Formal Decision

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

Alexander Walker

INSPECTOR