



Appeal Decisions

Site visit made on 8 August 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2023

Appeal Ref: APP/N5090/C/22/3313914 (Appeal A) & 3313915 (Appeal B) 83 Holders Hill Drive, London NW4 1NN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr Walter Moritz (Appeal A) and Mr Derrick Rose (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/0847/22, was issued on 14 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the property into a C4 House of Multiple Occupation (HMO).
 - The requirements of the notice are to: Cease the use of the main dwellinghouse as a House in Multiple Occupation.
 - The period for compliance with the requirement is: 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
-

Decisions

1. It is directed that the enforcement notice is corrected by:
 - At section 3, the insertion of the word 'material' and the deletion of 'in' so that the allegation says 'Without planning permission, the material change of use of the property to a C4 House of Multiple Occupation (HMO)'
2. Subject to the corrections above, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The enforcement notice alleges without planning permission, the change of use of the property into a C4 House of Multiple Occupation (HMO). Section 55(1) of the Act sets out the meaning of development, which includes the making of any material change in the use of any buildings or other land. The word 'material' should therefore be inserted into the allegation. I shall also delete 'in', so that it says 'material change of use of the property to'. Since both parties are clear what is being alleged, I consider that these changes would not cause injustice to either party.
4. An email, sent on behalf of the appellant for Appeal B, raises concern regarding the implications that upholding the notice will have on the occupants of the property. However, the appellants have not appealed under ground (a) and I am therefore unable to consider planning merits.

Grounds (c) and (d)

5. The appellants have appealed under ground (d) only. However, the Council suggests that their case is actually a hidden ground (c) appeal. I recognise that

the appellants are unrepresented and have read the file benevolently. I consider the appeal should be considered under both grounds (c) and (d) and shall set out below why. The Council has addressed matters concerning ground (c) in their Statement of Case and so it would not be prejudiced by this approach. Since both grounds will turn on matters of fact, namely how the building was occupied and when, I shall deal with them together.

6. Use Class C4 is the use of a dwellinghouse by not more than six residents as a "house in multiple occupation". For the purposes of Class C4, an HMO does not include a converted block of flats to which section 257 of the Housing Act 2004 (the HA2004) applies but otherwise has the same meaning as in section 254 of the HA2004. For the purposes of section 254 of the HA2004, a building or part of a building is a HMO if it meets certain tests. These tests require, amongst other things, that the living accommodation is occupied by persons as their only or main residence.
7. The Town and Country Planning (General Permitted Development)(England) Order 1995 (the GPDO) was amended by the Town and Country Planning (General Permitted Development)(Amendment)(England)(No.2) Order 2010 to give permitted development rights for buildings used as dwellinghouses, to use as small scale houses in multiple occupation shared by three to six people without the need for a specific planning application.
8. This means that a material change of use from a Class C3 use to a Class C4 use would have been permitted development had it occurred after the GPDO amendment came into force on 1 October 2010, except where such permitted development rights are removed by virtue of an Article 4 Direction. Prior to 1 October 2010 it is likely that the material change of use of the property to an HMO would have required an express grant of planning permission.
9. The Council made a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995, as amended, which came into force on 29 May 2016, which removed permitted development rights for the change of use of Use Class C3 dwellinghouse to Use Class C4 small HMO. The planning permission granted by the GPDO is crystallised when the development begins. Therefore, where the material change of use of a property to a C4 HMO occurred before 29 May 2016 but after the GPDO amendment came into force, it would have been development which was granted by the GPDO (as amended).

Ground (c): Main issue

10. An appeal under ground (c) is made on the basis that the matters stated in the notice as constituting a breach of planning control, if they occurred, do not constitute a breach of planning control. To succeed on ground (c), given the above, the appellants would need to show, on the balance of probability, that the C4 HMO use commenced on or after 1 October 2010 but before 29 May 2016 and was therefore granted planning permission by the GPDO and that there has been no subsequent material change of use prior to the service of the notice.

Ground (d): Main issue

11. Since no express planning permission has been obtained for the use of the property as a C4 HMO, if the material change of use of the property to a C4 use

occurred before 1 October 2010, it is likely that the use of the site would have been unlawful. The GPDO does not grant retrospective planning permission, and so it would have remained unlawful after the GPDO amendment came into force.

12. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. Section 171B(3) of the Act sets out that (in the case of any other breach), no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
13. Given the above, to succeed on ground (d), the appellants would need to show, on the balance of probability, that the C4 HMO use commenced before 1 October 2010 and continued for at least ten years thereafter without significant interruption and that there has been no subsequent material change of use prior to the service of the notice.

Evidence relating to the use of the appeal property

14. The appellant for Appeal A, advises that they have been a landlord since the 1990s and that it is simply a case of a house being lived in and shared as a home by 3, 4 or 5 unrelated people at all times, for considerably longer than a decade. The appellant describes occasional shorter stays by professionals working in the area, which suggests that the property was not occupied by those persons as their only or main residence. It is not clear when these shorter stays occurred, or how often and whether their occupation of the property would have meant that the property was not an HMO for the purposes of the HA2004.
15. The appellant for Appeal B, who I shall refer to as DR, has provided a letter which states that they have resided at the appeal site from early 2012 until today (the letter is dated 27 December 2022). DR has provided a travel document, dated 14 December 2012, which identifies their address as the appeal site, and which supports their assertion that they resided at the property in 2012. An email from DR's sister also states that they (DR) have lived at the appeal site for over 10 years.
16. DR states that when they moved in, an individual, who I shall refer to as BT, lived upstairs, and left some time in 2016. A tenancy agreement, dated 1 August 2012, has been provided for BT, which commenced on 1 August 2012 and is stated to continue on a month-to-month basis until the landlord or tenant terminates the tenancy. This supports the DR's assertion that BT resided at the property in 2012.
17. An unsigned letter provided by an individual, who I shall refer to as 'ED', states that they resided at the appeal site from June 2013 until the end of 2018. I have been provided an extract of a letter from the Council, dated 15 July 2014 and extracts of a bank statement dated 29 March 2016 addressed to ED, which supports their contention that they resided at the property.
18. ED states that the property has 'always been a shared house living arrangement with occupants sharing space of the kitchen, bathrooms and living areas.' Although ED advises there were various parties sharing the residence going back to 2012, the nature of the occupation of those 'various parties' is not explained. ED has provided limited detail of other occupants who lived at

the site during their occupation of it, simply confirming in an email that DR resided at the address during their occupation of the property.

19. To summarise, the evidence provided does not show the relationship between the occupants of the property or the extent to which facilities were shared. It is not enough to show that the premises was occupied by at least 3 individuals to demonstrate that the property was an HMO.
20. It is also not clear whether more than two individuals occupied the property in 2016 and therefore whether the property was an HMO. This is critical in terms of the ground (c) appeal because the Article 4 Direction came into force in May 2016 and in terms of the ground (d) appeal, because it could have constituted a significant interruption or a subsequent material change of use.
21. The burden of proof¹ is firmly on the appellant in a legal ground of appeal. While I appreciate the potential difficulties which can be posed by record keeping over a number of years, the appellant for Appeal A states they have been a landlord since the 1990s. I would expect an experienced landlord to retain, or at least be able to obtain, paperwork regarding their letting of a property.
22. The appellants have not shown, on the balance of probabilities, that the material change of use occurred on or after 1 October 2010 but before 29 May 2016 such that it was development which was granted planning permission by the GPDO and that there has been no subsequent material change of use. Thus, the appeals under ground (c) must fail.
23. The appellants have also not shown, on the balance of probabilities, that the use of the property as a C4 HMO use commenced before 1 October 2010 and continued for at least ten years without significant interruption. Thus, the appeals under ground (d) must fail.

Conclusion

24. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

M Savage

INSPECTOR

¹ The standard of proof is the civil standard, which is 'the balance of probabilities'.