



Appeal Decision

Site visit made on 7 February 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/G5750/C/21/3285777

10 Idmiston Road, Stratford, London, E15 1RG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Ms Gema Martinez-Garcia against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice, numbered 21/00405/ENFC, was issued on 29 September 2021.
- 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 to:
 - 1) Cease the use as a Use Class C4 house in multiple occupation;
 - 2) 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;
 - 3) Remove from the site all debris arising from compliance with steps 1 and 2.
- The period for compliance with the requirements is: six months from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) 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.

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. A Direction made under Article 4 of the Town and Country Planning (General Permitted Development)(England) Order 2015 applies to the appeal site and removes permitted development rights for a change of use of a dwellinghouse (Use Class C3) to a HMO (Use Class C4). Express planning permission is therefore required for a change of use from Use Class C3 to Use Class C4.
3. The Council have cited a conflict with the 2019 version of the National Planning Policy Framework (the Framework) within the notice. However, since a revised Framework was published on the 20 July 2021, the notice cited a superseded version of the Framework. Whilst the validity of the enforcement notice has been questioned by the appellant due to this error, no particular change or difference between the earlier and later versions of national policy has been highlighted. Since the enforcement notice was issued, a further version of the Framework has been published in September 2023, however, it has not been necessary to revert to the parties as the revised Framework does not materially alter the planning policy position as it relates to the appeal scheme.

The appeal on ground (b)

4. To succeed under ground (b) the appellant must demonstrate, on the balance of probabilities, that the use of the premises identified in the notice had not changed to a use of the property as a house in multiple occupation on or before the date when the notice was issued. The appellant claims that the occupants are occupying the property as a single household and are comprised from a pair of siblings and two unrelated individuals of which all occupants are 'lifelong friends'.
5. For the purposes of the Use Classes Order¹ (UCO), Class C3 is defined as use 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)*. For the purposes of Class C3(a) the definition of single household is found in Section 258 of the Housing Act 2004 and it includes members of the same family or their circumstances match a description specified for these purposes in regulations.
6. Whilst two of the occupants are related to each other, the occupants are not all members of the same family and evidence that each tenant without a family connection has a 'prescribed relationship' with any other tenant has not been provided. Accordingly, it has not been demonstrated that, as a group, they meet the definition of a 'single household' for the purposes of Class C3(a). Therefore, Class C3(a) does not apply in this instance. As there is no reference to care being provided to the occupants, Class C3(b) is not relevant. Therefore, in order to demonstrate that the use of the property is a use within Class C3, it would need to be shown that the occupants were living together as a single household under Class C3(c).
7. Under the UCO, a HMO comes under Class C4 which covers the use of a dwellinghouse by not more than six residents as a 'house in multiple occupation'. In broad terms, a HMO use occurs when living accommodation is occupied by persons who do not form a single household and they share one or more basic amenities (such as a toilet, cooking or personal washing facilities) or the living accommodation is lacking in one or more basic amenities.
8. In terms of differing between a use under Class C3(c) and Class C4, a key consideration is the relationship between the occupants which provides a reason for them living in the same house and the manner in which they live together. For a Class C3(c) use to exist, it must be demonstrated that the occupants live together as a single household. There is no single criterion that determines whether a single household is present and each case must be determined on its own circumstances as a matter of fact and degree.
9. However, caselaw has identified several factors that are helpful in identifying whether a property was being occupied as a single household or not². These matters include, whether the persons living in the premises came to it as a single group or whether they were independently recruited; what facilities are shared; whether the occupiers are responsible for the whole house or just their particular rooms; whether individual tenants were able to, or did, lock other

¹ The Town and Country Planning (Use Classes) Order 1987, as amended.

² Barnes v Sheffield City Council (1995) 27 HLR 719.

occupiers out of their rooms; whose responsibility it was to recruit new occupiers when individuals left; who allocated rooms; the size of the property; how stable the group composition was; and whether the mode of living is communal.

10. The appellant states that the occupants include a pair of siblings and they comprise a friendship group that have known each other since childhood. The appellant's evidence is not independently corroborated, however, it does not need to be in order to be relied upon, provided that the evidence is sufficiently precise and unambiguous.
11. The property is let under a single tenancy agreement, which has been provided in full as part of the appeal. It is dated the 2 August 2021 and shows that all four occupiers are jointly and severally liable for the obligations contained therein. The appellant's evidence sets out that after an unsuccessful period of marketing the property for rent as a family dwelling, it was let to the group of four. In the absence of the property being let out before, it leads me to conclude that the occupants came to the premises as a single group. There is nothing within the tenancy agreement which dictates which room shall be occupied by any particular tenant and the monthly rental sum is defined as a whole overall cost. A further letter from the appellant's mortgage company provides detail that specifically precludes the property being let or occupied by more than 4 individuals and prohibits the grant of separate tenancies over separate rooms or parts of the property.
12. The appellant asserts that no physical alteration of the property has been undertaken to accommodate the occupants. Whilst the property has been enlarged by the addition of a ground floor rear extension and a conversion of the loft space³, these works are stated to have been substantially completed in 2018, a considerable period of time before the property was let to tenants in August 2021. It is not put to me that these works were undertaken to facilitate an unauthorised use of the dwelling as a HMO.
13. There are four individual rooms set out as bedrooms within the property. My observations showed each bedroom contained a double bed, chest of drawers, wardrobe or clothing rail and small bedside table. A number also contained a dressing table or desk. The bedrooms are not locked. Although an ensuite shower room is accessible from the bedroom within the roof space, the occupiers have shared use of the main bathroom, located on the first floor which contains a bath with overhead shower, toilet, wash basin and a vanity unit.
14. There is no suggestion that kitchen facilities are not shared or that the rooms are self-contained. The kitchen is positioned on the ground floor where it is open to a dining area and a lounge. A communal w/c, understairs storage cupboard, boiler room and rear garden are also accessible from the open plan eating/living area. The kitchen contains all the expected items concerned with food preparation and cooking, such as hob, oven, fridge freezer and sink, together with a washing machine and a number of storage cupboards. The appellant states that there are no separate cupboards in the kitchen for each occupant and this accorded with my observations at the site visit. The open-plan room also contained a large dining table with four chairs, L-shaped sofa

³ Planning Reference: 17/02010/HH

- and TV. I observed the open plan kitchen/diner/lounge area to be spacious, well laid out and a pleasant environment with a 'lived in' domestic feel.
15. Ironing and washing supplies and facilities together with the storage of outdoor footwear are contained within the under stairs storage cupboard. Further provision for the communal storage of footwear and outdoor clothing is contained within the hallway. Whilst these observations are based on my site visit, there is no evidence put to me by the Council to suggest that the position had been changed since the time of the notice being issued. Based on the evidence before me, I take the view that the layout and circumstances of the property indicates that, at the time of the issue of the notice, the mode of living was communal.
 16. Evidence from an interested party living in close proximity to the appeal dwelling provides a positive account of the actions and demeanour of the occupiers. Importantly, having regard to the indicators of a HMO set within the *Barnes case*, it seems to me that in land use terms, given that the main purpose of a HMO premises is materially different from a Class C3 use, there is no evidence of incidents of noise or nuisance being reported to the Council which supports that a change in the character of the use of the property, which would be likely to be expected with multiple households living within the same property, has taken place.
 17. The Council have referred to the appellant submitting an application for an 'additional HMO licence' and there is reference by the Council to information being submitted in response by the 'owner and the acting agent' which confirmed the property is arranged with a '*total of 5 double bedrooms currently providing sleeping spaces for four occupants of which two tenants are related*'. However, it is unclear to me who is responsible for making those comments, in what context they were made and in answer to what specific question(s). No written evidence of this point has been adduced by the Council and as such I cannot be certain whether those comments are written, verbatim or based upon the recollection of an officer following a conversation.
 18. Furthermore, I expect it would be likely that an application for a HMO licence would need to be made in writing. No written application form purporting to make the HMO licence application by the appellant, nor any licence that may have been granted, has been submitted by the Council. The appellant explains that the licensing application was made on the basis of advice received from the Council and being unaware of the implication of doing so. Given the lack of detailed evidence on this matter by the Council, it is unclear to me what the appellant stated had been the situation with the property and whether it contradicts and provides ambiguity to the evidence that has been advanced within the appeal case.
 19. Overall, I take the view that, based on the submitted evidence given the manner in which the occupants live together and their long-term friendship, which provides a reason for them living in the same house as a single household, I therefore conclude on the evidence before me that the appellant has discharged the burden of proof that rests upon her to demonstrate on the balance of probabilities that a Class C4 use had not occurred as a matter of fact. Therefore, the appeal on ground (b) succeeds.

Conclusion

20. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
21. In these circumstances, the appeal on ground (c) and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

E Brownless

INSPECTOR