



Appeal Decisions

Site visit made on 24 October 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 January 2024

Appeal A Ref: APP/Z0116/C/23/3325332

Appeal B Ref: APP/Z0116/C/23/3325333

89 High Kingsdown, Bristol BS2 8ER

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Narendra Patel (Appeal A) and Mrs Chandrika Patel (Appeal B) against an enforcement notice issued by Bristol City Council.
 - The notice was issued on 8 June 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use from a single dwelling (Use Class C3) to 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 (Use Class C4) and return to use as a single dwelling (Use Class C3).
 - The period for compliance with the requirement is 10 months after the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), and (d) of the Town and Country Planning Act 1990 as amended.
-

Summary Decision: The appeals are allowed and the enforcement notice is quashed

Preliminary Matters

1. There is reference in the allegation to certain use classes, these are Class C3 and Class C4 of Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). The allegation is of a change of use of the property from a use falling within Class C3 to a use falling within Class C4. Although not referred to in the evidence, development consisting of a change of use of a building from a use falling within Class C3¹ to a use falling within Class C4² would ordinarily be permitted by Class L of Part 3, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order).
2. Notwithstanding this, the appellants refer to 'the removal of permitted development rights in the area'. Having noted this, I asked for a copy of any direction made under Article 4 of the 2015 Order³ that directs that the permission granted under article 3, as referred to above, is not to apply in relation to development in the area within which the appeal site is located. I

¹ Use as a dwellinghouse.

² Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

³ Or made under any superseded version of the Order.

received a copy of the relevant Article 4 Direction and have had regard to this in reaching my decision.

3. On a separate matter, I note the representations of interested parties, some of which raise matters that go to the planning merits of the development alleged in the enforcement notice. As a ground (a) appeal has not been made in this case, the planning merits of the development are not relevant and I am, therefore, unable to take account of such representations. I have, however, had regard to the representations that relate to the grounds of appeal that have been made.

The Notice

4. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. Powers transferred to me to correct any defect can only be exercised where the correction would not cause any injustice to either party.
5. The notice alleges a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any **material** change in the use of any building or other land' (my emphasis). As the notice only alleged 'a change of use', it therefore follows that the allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.
6. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
7. However, having regard to the appellants' case and the grounds of appeal made, they have clearly understood that the allegation was intended to refer to a **material** change of use. As such, I am satisfied that a correction of the notice to include reference to a material change of use would not cause injustice in this case.

Ground (b)

8. An appeal on ground (b) is that the matters alleged in the enforcement notice, as I intend to correct it, which appears to the Council to constitute the breach of planning control, have not occurred. The onus of proof is on the appellant.
9. In making their ground (b) appeal, the appellants do not suggest that the appeal property is not used as a house in multiple occupation (HMO). Indeed, they say that the property has been 'let to students at the University continually' since 1 August 2010. Furthermore, the appellants do not dispute that, prior to August 2010, the property was used as a dwellinghouse, a use falling within Class C3 of the 1987 Order.
10. The appeal property is laid out with a hallway, w.c., kitchen, living room and a bedroom at ground floor and 3 bedrooms and a bathroom at first floor. The occupation of the property, as I observed it, is consistent with a small HMO⁴,

⁴ Reference to 'small HMO' is taken from the description of development under Class L of Part 3, Article 3, Schedule 2 of the 2015 Order.

with its occupiers having sole use of their own individual bedrooms, but sharing the facilities within the building.

11. In view of the above, I have been given no reason to conclude that the matters alleged in the enforcement notice, as I intend to correct it, have not occurred. For this reason, the appeals on ground (b) should fail.

Ground (c)

12. To succeed on ground (c), the appellants must demonstrate that, on the balance of probability, the matters alleged in the notice, as corrected as I intend, do not constitute a breach of planning control. Again, the burden of proof is on the appellants. The test of the evidence is on the balance of probability.
13. As I note above, the appellants suggest that the property has been let to students since August 2010. This indicates that the material change of use of the property from a dwellinghouse to a small HMO took place at this time. Whilst I have noted above the provisions of Class L of the 2015 Order, this Order would not have been in effect in 2010. Instead, The Town and Country Planning (General Permitted Development) (England) Order 1995 as amended (the 1995 Order), would have been extant. In 2010 Class I of Part 3, Article 3, Schedule 2 of the 1995 Order would have permitted development consisting of a change of use of a building from a use falling within Class C3 to a use falling within Class C4.
14. Notwithstanding the above, the Council have provided a copy of the Article 4 Direction relating to the area of Bristol City within which the appeal site is located. This informs that the permission granted by Article 3 of the 1995 Order shall not apply to development consisting of the change of use ordinarily permitted by Class I. However, I note that the Article 4 Direction is dated 10 December 2010, which is, of course, some 4 months after the date the appellants say that the property was first let to students.
15. As with the 2015 Order, the permission granted by the 1995 Order would have been crystalised when the development began, which in this case would have been when the use of the building as a small HMO commenced. Accordingly, if the evidence demonstrates that, on the balance of probability, the use of the appeal property for a use falling within Class C4 of Schedule 1 of the 1987 Order commenced in August 2010, the material change of use of the appeal site to a small HMO would have been permitted at that time by the 1995 Order.
16. In that regard, in addition to the claim of when the property was first let to students, the appellants have provided a copy of a letter dated 15 October 2022 from Bristol City Council's local taxation officer in its revenues department. In this letter the officer confirms that the property has been occupied by students from 1 August 2010. This is consistent with the appellants' claims.
17. The Council has referred to this letter in their evidence and, other than suggesting that this does not demonstrate that there has not been a breach of planning control, it does not dispute its contents.
18. In view of the above, it is more likely than not that the material change of use of the appeal property from a dwellinghouse to a small HMO took place in August 2010. Accordingly, this material change of use of the property would

have been lawful as it would have had the benefit of the planning permission granted by Class I of Article 3, Schedule 2 of the 1995 Order.

19. Whilst the Article 4 Direction came into effect some 4 months after the use of the property as a small HMO commenced, this had no effect on the lawfulness of the use. Indeed, settled caselaw has confirmed that, once established, the lawful use of land or buildings might only be lost if, for example, it has been abandoned or there has been a material change of use to some other use. Once lawful, a use need not continue without interruption for it to remain lawful.
20. In this regard, there is no suggestion that there has been a further material change of use of the property since it was first let to students in August 2010 or that the use of the property as a small HMO has been abandoned. The appellants' evidence is that, save for short periods when the property has been cleaned in between tenants, the property has always been let to students from August 2010 to present. In view of this, I have been given no reason to conclude that the lawful use of the appeal property as a small HMO falling within Class C4 has been lost.
21. For the reasons given above, I conclude that, on the balance of probability, the material change of use of the appeal property from a single dwelling (Use Class C3) to a House in Multiple Occupation (Use Class C4) would have been permitted by Class I of Schedule 2 of the 1995 Order when it occurred. As such, the development alleged does not constitute a breach of planning control. For this reason, the ground (c) appeals should succeed and the notice will be quashed. The ground (d) appeals do not, therefore, fall to be considered.

Conclusions

22. I have concluded that the appeals on ground (b) should not succeed.
23. However, on the balance of probabilities, the appeals on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
24. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on ground (d) do not need to be considered.

Formal Decision

25. It is directed that the enforcement notice is corrected by the insertion in part 3 of the word "material" before the words "change of use".
26. Subject to the correction, the appeals are allowed and the enforcement notice is quashed.

J Moss

INSPECTOR