



Appeal Decisions

No Site visit was carried out.

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH APRIL 2024

Appeal A Ref: APP/V1260/C/23/3316868

Appeal B Ref: APP/V1260/C/23/3316869

The land and premises at 104 Markham Road, Bournemouth BH9 1JE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr William Bazzani and Appeal B is made by Mr Jose Orlando Bazzani against an enforcement notice issued by Bournemouth Christchurch and Poole Council.
 - The notice was issued on 12 January 2023.
 - The breach of planning control as alleged in the notice is the material change of use of the property from a single-dwellinghouse (Class C3) to a 7-bedroom House in Multiple Occupation (Sui Generis).
 - The requirement of the notice is to cease the use of the premises as a Sui Generis large HMO.
 - The period for compliance with the requirement is: Three (3) months.
 - Appeals A and B are proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).
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Formal Decisions

1. Appeals A and B are allowed, and the Enforcement Notice is quashed.

Preliminary Matters

2. Due to the nature of this case, it was not necessary for me to conduct a site visit. I have based my decision on the evidence submitted with the appeal as part of the written representations. The main parties were made aware of this fact, and no further comments or objections were received.
3. As no ground (a) has been plead, issues such as noise and disturbance, living conditions of neighbours and the impact on the character of the area are not matters before me for consideration. Since the Notice has been served the appellants may have made changes on site, as well as curtailed or changed their activity. However, S174(2)(b) of the Town and Country Planning Act 1990 (1990 Act) is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice. I will consider the appeal on this basis.
4. As a point of clarification, a Class C4 use, as indicated in The Town and Country Planning (Use Classes) Order 1987 (as amended)¹ can be with respect to 6 occupants sharing a property as a House of Multiple Occupation (C4 HMO). A C4 HMO is interpreted as the same meaning as section 257 of the Housing Act 2004 but does not include a converted block of flats. Section 258 of the Housing Act 2004 indicates that a Class C3-Dwellinghouse use relates to a single person or by people regarded as forming a single household. This mainly relates to having a

¹ Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"

family link but does also include a couple living together as if they were a married couple or civil partners.

5. An HMO with more than 6 occupants sharing a property is classed as a Sui Generis use (large HMO). A large HMO would normally require planning permission from a C3 Dwellinghouse or a C4 HMO. However, this can be dependent on whether the change of use to a large HMO is materially different to the previous use and constitutes development for the purposes of section 55(1) of the Town and Country Planning Act 1990 (1990 Act).

The Appeals on Ground (b)

6. An appeal on ground (b) is that the matters alleged in the notice, which appears to the Council to constitute the breach of planning control, have not occurred. To succeed on this ground, the appellants must demonstrate that, on the balance of probability, the matters stated in the notice have not occurred. There is contention over the lawful use of the property prior to the notice being served, however, the critical matter is whether 104 Markham Road had been in use as a large HMO, with 7 occupants, at the time the notice was served.
7. Mr William Bazzani, has submitted a Statutory Declaration (SD) with the appeal submissions. The SD is dated 7 February 2023, and signed by Mr Bazzani as well as witnessed by a solicitor, ensuring that the SD complies with the Statutory Declaration Act 1835. A SD is a formal statement to affirm that something is true to the best knowledge of the person making the declaration. A SD should be treated as sworn first-hand evidence provided it is precise and unambiguous.
8. The SD sets out that Mr William Bazzani is the joint owner of No 104 with his brother. Paragraph 6 of the SD states that on 1 July 2022 the property subject of the notice was re-let to five individuals on an Assured Shorthold Tenancy Agreement ending on 30 June 2023. It is indicated that the tenants are unrelated and were occupying the property with shared kitchen and living facilities. The Assured Shorthold Tenancy Agreement was provided as evidence and sets out an agreement to let No 104 to 5 tenants for 12 months.
9. I accept that the planning application and subsequently dismissed appeal², as well as the approved HMO licence, shows a clear intention to use the property as a large HMO, occupied by 7 persons. However, intending to use a property as a large HMO and it actually being used as such are not the same.
10. I have had regard to the inconsistencies in the information available to the Council and the information set out in the SD. However, the appellants' agent has confirmed that it was an administrative error to indicate that the works had already taken place on the planning application form for the refused application. Although the Inspector for the subsequent appeal indicates that the property was in use as an HMO, she does not confirm the number of occupants. The noise complaint suggests the property was in use as an HMO with 7 occupants, but the estate agent confirms to the Environmental Health Officer that there were 5 occupants, which only goes to support the appellant's claim. Lastly, the Rightmove advertisement indicates 6 not 7 bedrooms. Individually or collectively, I do not consider these matters make the appellants' version of events less than probable.
11. The appellants are the most relevant persons to provide detailed information on the use of their property, provided it is precise and unambiguous. I consider the

² Council reference 7-2021-9995-A, dismissed at Appeal Ref: APP/V1260/W/22/3303418

SD a precise and unambiguous statement with supporting evidence that corroborates the appellants' claim. Namely, at the time the Notice was served (12 January 2023), the property was in use as a C4 HMO, occupied by 5 persons. I attach significant weight to the SD, especially since it appears to have been properly declared and witnessed, with serious consequences if it was subsequently shown to be false. Accordingly, although the property may have the capacity to be used as an HMO with 7 occupants, based on the evidence submitted, the property had been in use as a C4 HMO with 5 occupants at the time the notice was served.

12. I have considered whether the notice could be corrected to allege a C4 HMO, as suggested by the Council. However, this is a different use to a large HMO with different impacts. The appellant also has a pending Lawful Development Certificate application³, which is seeking a determination on the use of No 104 as a C4 HMO, prior to an Article 4 Direction⁴ being served in the locality. In view of this, I cannot discount the possibility that the appellants could have appealed on other grounds, particularly grounds (a) and (d), if the allegation was corrected in this manner. For these reasons, I consider that correcting the notice to allege a C4 HMO would cause injustice to the appellant.

Conclusion

13. For the reasons given above, I conclude that the breach of planning control alleged in the Enforcement Notice has not occurred. In accordance with my powers under section 176(1)(a) of the 1990 Act I cannot correct the allegation as I cannot be certain that injustice would not be caused were I to do so.
14. Accordingly, Appeals A and B succeed on ground (b) and the Notice should be quashed.

M. P. Howell

INSPECTOR

³ Council reference 7-2023-9995-B- Application for a Lawful Development Certificate for existing use of the premises as a House in Multiple Occupation (Class C4).

⁴ Article 4 Direction came into force in December 2011, removing permitted rights set out in Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015.