



Appeal Decision

Site visit made on 18 April 2024

by C J Leigh BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th May 2024

Appeal Ref: APP/C5690/C/23/3318291

126 New Cross Road, London, SE14 5BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Joseph Adler against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice, numbered ENF/22/00042 was issued on 31 January 2023.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use to a large HMO (sui generis).
- The requirements of the notice are:
 - (1). Cease the unauthorised use of the property as a large HMO (sui generis) AND
 - (2). Reinstate the ground floor frontage to its previous appearance prior to the unauthorised works being carried out AND
 - (3). Make good all damage resulting from the compliance with the requirements of steps (1) and (2); AND
 - (4). Remove all materials, debris, waste and equipment resulting from compliance with Steps (1), (2) and (3) of this Notice from the land.
- The period for compliance with the requirements is six months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in sections 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Formal decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (f)

2. The Council's first reason for issuing the enforcement notice is that there is substandard residential accommodation due to the poor outlook provided to a number of the habitable rooms. The appellant's submissions explain that there is an HMO license for the property for occupation by 15 households consisting of not more than 15 persons, granted 7 October 2022, and that the licensing department found only one room substandard. The appellant accordingly considers that lesser steps should be set out in the notice to require only a number of rooms to cease HMO use, though does not state which rooms should be excluded, or indeed included, in the requirements of the notice.
3. I saw at my site visit that the HMO use extends throughout the property from the ground floor to the upper floors. There is shared space within the property, including communal rooms on the ground floor, namely a large living room and kitchen. Thus, it is evident to me that the HMO use is interdependent across all floors and covers the property as a single building. Hence it would not be possible to a variation to the terms of the enforcement notice to refer to only some rooms ceasing to be used: those rooms remain within the single HMO building.

4. Furthermore, the information provided to me regarding planning records indicate there is no lawful use for any large HMO use of the property. I understand there has been past use within the whole property as variously commercial, residential and hotel use, but no permission or Certificate of Lawfulness exists for a large HMO. The HMO licensing regime is different to the need for planning permission for the change of use.
5. The steps requiring cessation of the use of the property as a large HMO are therefore appropriate since there is no planning permission to use the property for that use. With cessation in the occupation of some rooms, they would remain within a single building that does not have a lawful use as a large HMO. Nor is there any ground (a) appeal (the deemed planning application) before me to otherwise consider the planning merits of any use.
6. The submissions from the Council and a third party explain to me that there have been alterations to what was a previous shopfront at the property. This work was evidently integral to the purpose of partly facilitating the change of use the subject of the enforcement notice, and hence it is reasonable for the enforcement notice to require reinstatement. The appellant has not disputed this matter.
7. It is therefore my conclusion that the steps required to comply with the requirements of the notice are not excessive, and lesser steps would not overcome the objections to the use that has been undertaken. The appeal on ground (f) fails.

The appeal on ground (g)

8. The appellant seeks a period of compliance of 12-18 months on the basis that it would take longer than 6 months to evict tenants under the terms of tenancies. The Council state that further information is required on this matter to justify such a period of time.
9. I am mindful that the property is occupied by tenants and that there is a need to be aware that upholding the enforcement notice may mean they lose their home. But I also must consider that any harm resulting from a breach of planning control should be remedied as soon as possible, and this is a balance between considering whether the enforcement action is proportionate.
10. The appellant will be aware of the potential consequences and penalties arising from failure to comply with a legal obligation to comply with the steps of the notice within a specified time limit. Thus, the notice requirements ought to be regarded by the appellant as an overarching priority and, in the absence of any overriding delay, I consider 6 months to be a sufficient and reasonable period of time to comply. I have no convincing evidence to indicate tenants would not leave voluntarily, with or without notice being given. Moreover, should eviction proceedings become necessary, a landowner would be able to rely on the provisions of s179(3) of the Act which provides a statutory defence against prosecution where the owner has done everything they could be expected to do to secure compliance with the notice. This would include imposed delay due to eviction. The appeal on ground (g) therefore fails.

Conclusion

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

Formal decision

12. The appeal is dismissed and the enforcement notice is upheld.

C J Leigh

INSPECTOR