



Appeal Decision

Site visit made on 30 April 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2024

Appeal Ref: APP/G5750/C/23/3326180

Land at 184 Portway, London E15 3QW

- 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 Paul Hegarty against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 15 June 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use to a Sui Generis house in multiple occupation (HMO).
 - The requirements of the notice are to:
 - (i) Cease the use as a Sui Generis house in multiple occupation;
 - (ii) 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.
 - (iii) Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance is six months from the date this notice takes effect.
 - The appeal is proceeding on ground (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
-

Formal decision

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

Preliminary Matters

2. The appeal has been lodged on ground (c) alone. An appeal under ground (c) is that those matters alleged, if they occurred, do not constitute a breach of planning control, and thereby no planning permission is required. This, however, given the appellant's representations against the enforcement notice is not the appropriate ground in the circumstances.
3. The essence of the appellant's case is that, due to the passage of time, the alleged breach of planning control, which is continuing, is immune from planning control. Therefore, the appeal should instead proceed on ground (d) which, if successful, would confirm that the use targeted by the notice is lawful in planning terms.

Background

4. The appellant says that he completed the purchase of the appeal property in February 2017. Previously, I understand it had been under the ownership of Crescent Investments (UK) Ltd which apparently is owned by some 13 persons who are religious Imams or religious teachers. The appellant says that at least ten of these people lived at the property from 2006 until he purchased it. It is

understood that Crescent Investments (UK) had also bought it for residential use.

5. Statutory declarations from Mohammed Ali, a local estate-agent and Cedrik Nosa, a local resident, would support this claim and, from this evidence alone, it would appear that up until the appellant taking ownership in February 2017, the property was in use as a sui generis House in Multiple Occupation (HMO). In this connection a Selective Licence had been issued in August 2013 by the Council's Housing and Licensing team to indicate as such.
6. However, notwithstanding the above, I note the appellant's reference to the property's auction pack, produced at the time of his purchase. He states:
"The auction pack (at Exhibit PH1) dated 19 December 2016 clearly states that prior to Mr Hegarty's ownership there were at least 9 bedrooms in the house..."
7. This statement is incorrect as the brochure actually says there were 4 "rooms" on the ground floor and 5 "rooms" on the first floor. No mention is made of bedrooms.
8. Tom Purcell, who took residence at the property in February 2017, stayed until June 2019. Mr Purcell has produced a statutory declaration whereby he claims that he lived alone at the property until, when in November 2017, at least 7 unrelated persons resided there. Indeed, the appellant has provided various tenancy agreements to support this claim.
9. A further Selective Licence was issued by the Council in November 2018, licensing the property for a maximum of 10 people as one household.

The appeal on ground (d)

10. On this ground the Appellant must successfully demonstrate, on the balance of probability, that the breach of control alleged in the notice commenced ten years before the date of the issue of the enforcement notice, ie prior to 15 June 2013 (hereinafter referred to as "*the material date*") and has continued since.
11. As a matter of law the appellant has to show not only that the material change to the HMO use had occurred ten years or more before 15 June 2023, but also that the HMO use had continued throughout that ten year period. Where there has been an interruption in occupation, it is a matter of fact and degree whether the use continued or had ceased.
12. The statutory test for such matters arose from the Court of Appeal judgements involving *Swale BC v SOS* [2005] EWCA Civ 1568 and *SSE v Thurrock BC* [2002] EWCA Civ 226 where the issue was whether the then four year immunity period for the material change of use to a residential unit had been reached. The principle equally applies to the current appeal.
13. In the *Swale* case the appropriate judicial interpretation was encapsulated by Keene LJ where he said:

"I am in no doubt that the legally correct question for the Inspector here to have asked was whether this building had been used as a single dwelling throughout the whole of the four years ..., so that the planning authority could at any time during that period have taken the enforcement action."

14. The concept of abandonment is one which has evolved in circumstances where a landowner has a right under planning law to use his land in a particular way but then either does not use it actively at all or starts to use it in a different way. The question then arises whether the use may resume thereafter without a further planning permission what might have been a lawful use on an earlier date. There is no presumption of continuance in respect of a change of use which had ceased to be an active use before any accrued planning rights had arisen.
15. As mentioned, where immunity is claimed the onus is on the appellant to demonstrate, by way of precise and unambiguous evidence that, on the balance of probabilities, the use targeted by the enforcement notice has effectively continued from the material date until the date the enforcement notice was issued. Here, the appellant has acknowledged that for nine months, between February and November 2017 – Mr Nova indicates that the property was vacated in January 2017 – the sole occupant was Tom Purcell, and he has provided a statutory declaration to this effect.
16. The appellant is of the view that the gap period is not significant and regards it as merely a pause before the HMO use resumed. As regards the said HMO licenses, issued by the Council's Housing dept, such licenses are not dependent on a property's planning status; instead the criteria relates to suitability, not least in terms of the available internal floorspace. Clearly, in this instance, the property is considerably spacious.
17. In applying the relevant legal tenets I find that given the significant period between the HMO use ceasing in January 2017 – Mr Ali has confirmed that the former occupiers vacated the premises when the property was put up for auction at that time – and resuming some nine/ten months later, the HMO use effectively ceased and any use rights which had accrued would have been lost when the use resumed in November 2017. Accordingly, the tenancy agreements produced to support the appeal are superfluous in the circumstances.
18. All in all, I consider that the number of months from which the property was vacated and the HMO use had ceased during Mr Purcell's tenure and up until its recommencement in November 2017, the Council would not have been able to take enforcement action against the HMO use as this length of time was significant and amounted to more than a mere pause in its continuity. It represented a material change in the character of the use of the property.
19. The appellant indicates that, as the use had first commenced in 2006, it was effectively immune when the Imams and religious teachers vacated the property. That might have been the case at that particular time but that was the planning position only as it then stood, and no application was made for a lawful development certificate at that point to confirm as such.
20. Importantly, by November 2017, I must conclude that any lawful use rights for a HMO, which may have previously existed, had been lost, and the clock had re-started.
21. Whether or not the break was due to negotiations with the Council as to the property's physical conversion is an irrelevance in this regard. Similarly, the matter of the enforcement notice issued against the use of the basement is not directly relevant to the current appeal.

22. For the reasons given above I conclude that the appeal should not succeed. Accordingly, the appeal is dismissed and the enforcement notice is upheld.

Timothy C King

INSPECTOR