



Appeal Decisions

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal A and Appeal B, Ref: APP/Y5420/C/23/3316264 and APP/Y5420/C/23/3316265

152 The Avenue, Tottenham, London N17 6JL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mrs Alkaben Patel (Appeal A) and Mr Rupin Patel (Appeal B) against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 1 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to a small 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 (HMO).
 - The period for compliance with the requirement is stated as 15 December 2023.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).
-

Decisions

1. It is directed that the enforcement notice is corrected by the deletion of the date "15 December 2023" in the Time for Compliance and that it is replaced with "nine months". Subject to this correction, the appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

2. No site visit has been carried out as the appeal can be decided purely on the basis of the technical and/or legal interpretation of the facts. All the information needed is included with the appeal documents and so a decision can be reached on the papers¹. There are no objections from the parties to proceeding in this way.
3. The appellants are under the impression that if they continue with the appeal, that there is a chance the HMO status could be reinstated and they could obtain planning permission for the use. An appeal under ground (a) was not made when the appeal was submitted and no fees have been paid for the deemed planning application. As such, this matter will not be considered as part of my decision.

The enforcement notice

4. The enforcement notice does not specify a period for compliance, as required by section 173(9) of the Town and Country Planning Act 1990. Such a compliance 'period' must be specified and any notice which does not contain

¹ Procedural Guide: Enforcement notice appeals – England, updated September 2024, paragraph 9.2.11.5 "A site visit won't be needed for every appeal. It is for the Inspector, or their representative, to decide whether to conduct one."

any period or does not set out a time which could amount to a period is likely to be invalid or a nullity depending on the circumstances. The notice as drafted merely states the Time for Compliance as being a set date, namely 15 December 2023.

5. The Officer's report seeking authority to issue the notice refers to a compliance period of nine months. However, *Miller-Mead v MHL* [1963] 2 WLR 225 makes it clear that it is the job of the notice to tell the person upon whom it is served what he has done wrong, what he must do to remedy it and how long he has to do that.
6. This matter was raised with the parties in writing prior to my determination of the appeal. The Council accepted there was an error in the notice, which was issued at a time when the Council had switched over to a new planning system that specified a date rather than a period within their notices. The response from the appellants explained what happened before the notice was issued and what they did to comply with the notice. I find the notice is invalid but capable of correction.
7. Section 176 of the Act enables the Inspector to correct any defect in the notice provided no injustice is caused to the parties. I believe this is the case here. Having regard to the date of the notice, 1 February 2023, the date it takes effect, 15 March 2023 and the Time for Compliance, 15 December 2023, it can be concluded from the four corners of the notice that the compliance period is 9 months. When the appeal was originally submitted, there was no appeal on ground (g) and none has been submitted in response to my letter. Furthermore, it appears the appellants took steps to comply with the notice before the December 2023 deadline. I shall therefore correct the notice to show the Time for Compliance as 9 months and proceed with my decision on the basis of the corrected notice.

The ground (b) appeal

8. In appealing on ground (b) the burden of proof is firmly on the appellants to demonstrate that the matters stated in the notice relating to the material change of use of the property to a small HMO in use class C4 has not occurred as a matter of fact.
9. The appellants confirmed in various emails to the Council dated 3 March and 29 June 2022 that the property was let as an HMO in late 2020. Subsequently on 10 February 2022 the appellants were given a Property Licence to certify that the HMO use at the appeal site was licenced for a maximum of six people living as six households. The matter alleged has therefore occurred as a matter of fact and the appeal on ground (b) fails.

The ground (c) appeal

10. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Under a ground (c) appeal, the onus of proof is on the appellants to show that there has not been a breach of planning control.
11. In this case the appellants rely on an exchange of emails between various Council officers in the Planning Enforcement team and the Private Sector Housing Enforcement team. The appellants do not appear to have understood

that they were dealing with two distinct legal regimes, namely the Town and Country Planning Act 1990 (the 1990 Act) , which controls the development of land, and the Housing Act 2004, which controls housing conditions.

12. The meaning of development is set out in section 55(1) of the 1990 Act and includes the carrying out of building operations as well as the making of a material change of use of land. Planning permission is required for the carrying out of any development of land (section 57(1)). Sometimes, it is not necessary to apply for planning permission from the local planning authority as development is classed as "permitted development".
13. The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) permits some changes of use without the need to obtain planning permission. Schedule 2, Part 3, Class L of the GPDO permits the change of use from use class C3 (Dwelling houses) to use class C4 (small HMOs).
14. However, this permitted development was cancelled, in effect, by the Council when an Article 4 Direction came into force in November 2013. The effect of the Direction covers the area of the appeal site and since 2013 it means anyone wishing to change the use of a property from a dwelling to an HMO requires planning permission.
15. Although the appellants obtained a Property Licence under the Housing Act 2004 on 10 February 2022, they did not apply for or obtain planning permission for the change of use. This is despite the fact that the Property Licence, a legal document, clearly states in paragraph 7.6:

"The Council's Planning Department made an Article 4 Direction to remove the permitted development rights for smaller HMOs (3-6 occupants) for change of use from dwelling house (use class C3) to HMOs (use class C4). The Direction came into force on 30 November 2013, which means that planning permission will be required for this type of development in the following wards:..."
16. In addition, the appellants were advised by email on 29 June 2022 by a Senior Planning Enforcement Officer that "Planning permission is required to use a property as an HMO in this location". I find that the appellants could not have been in any doubt that planning permission was required for the change of use to a small HMO. This is the case even though a Private Sector Housing Enforcement officer advised in a letter dated 23 November 2021 that an HMO with 7 people requires planning permission.
17. A breach of planning control has therefore occurred and the appeal on ground (c) fails.

Other matters

18. No application for costs has been made by the Council. Instead, the Planning Inspectorate was invited by the Council to make an award of costs against the appellants. This was on the basis that despite being advised planning permission was required, the appellants continued with the development and the appeal. As the appeals on grounds (b) and (c) had no prospect of success, it is claimed that this amounts to unreasonable behaviour.
19. Whilst I recognise the Council's concerns, I consider there is no need to deliberate over an award of costs in the circumstances of this case. The

Planning Practice Guidance is clear that there is a right of appeal and this is expressly reiterated in respect of enforcement notices. In the situation that the appellants found themselves, it is unsurprising that they exercised that right given the costs they incurred as they began to comply with the notice. They are also entitled to choose their grounds of appeal which they did without an agent to represent them. They may not have engaged an agent due to the costs they had already incurred.

20. The case they made in respect of both appeals was brief and to the point. Whilst I have disagreed with it, as set out in my decision, that does not make it unreasonable for the appellants to hold a different but confused view of the legislative regimes. Although I was not satisfied that the appellants had discharged the burden of proof on both grounds, it does not follow that the appeals on grounds (b) and (c) had no prospect of success.

Conclusion

21. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

D Fleming

INSPECTOR