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## Appeal Decision

Site visit made on 11 December 2024

**by Mr James Blackwell LLB (Hons) PGDip, Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 January 2025**

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**Appeal Ref: APP/Y5420/C/23/3316426**

**57 Handsworth Road, Tottenham, London N17 6DB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Muhammad Huq of Enam Kulsum Properties Limited against an enforcement notice issued by the Council of the London Borough of Haringey.
- The notice was issued on 12 January 2023.
- The breach of planning control as alleged in the notice is "unauthorised use of property as a HMO".
- The requirement of the notice is to cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirements specified as 12 August 2023, which is 6 months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).

**Summary decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. I carried out the site visit on an unaccompanied basis, as no representative from the Council turned up. I am satisfied this did not prejudice either party, as whilst the appellant was there, this was solely to provide access to the property.
2. The breach of planning control alleged in the notice refers to use of the property as a House in Multiple Occupation (HMO). Whilst the allegation does not specify the size of HMO, the reasons for the notice refer to a *Sui Generis* HMO, which is an HMO comprising seven or more residents. Reflecting these reasons, the Council has since confirmed the allegation was intended to capture a large HMO, and the appellant's ground (b) appeal seems to be made on this same basis.
3. To ensure sufficient clarity with regards to the alleged breach of planning control and the corresponding requirements of the notice, I have therefore amended the notice to reflect this position. Given the Council has confirmed the notice was intended to capture a large HMO, I am satisfied these changes do not cause them prejudice. The amendments also narrow the scope notice, and are therefore beneficial to the appellant. Both parties were given the opportunity to comment on these changes, and neither responded with any objection.
4. Notwithstanding the appellant's arguments regarding permitted development rights which allow for the conversion of a dwelling to a small HMO, the last known lawful use of the property is understood to have been a residential

dwelling. This does not appear to be disputed by the appellant, and I have proceeded on this basis.

## **Reasons**

5. Pursuant to ground (b), the appellant says the breach of planning control alleged in the notice has not occurred. Specifically, the appellant says the appeal property is used as a small HMO (comprising no more than six residents), and not a large HMO. The appellant therefore says a material change of use of the appeal property, as alleged in the notice, has not occurred. As a legal ground of appeal, the burden is on the appellant to demonstrate their case, on the balance of probability. Planning merits are not relevant.
6. The appeal site, which is a terraced property along a residential street, comprises five bedrooms: two on the ground floor; and three on the first floor (although on my site visit, one of these was being used for storage purposes). There are shared kitchen and dining facilities on the ground floor. The house therefore appears capable of accommodating up to five different households. This reflects the response to the Planning Contravention Notice (PCN) received by the Council on 22 March 2019, which said the property was occupied by five households at that time.
7. The response to the PCN said the property was occupied by seven persons within these five households. If this response was accurate, this means the property has been used as a large HMO in sui generis use, as alleged in the notice. The appellant says the PCN response was given in error, and contends there were only ever six people living within the property. However, little evidence has been provided to substantiate this. Notably, whilst the leases do appear to limit the occupancy to six, there is little to demonstrate that the relevant provisions have always been complied with. In turn, they do not prove the property has only ever been occupied by a maximum of six people.
8. There is a warning in the PCN which makes it clear that information provided in response should be accurate. It highlights that it is an offence to knowingly or recklessly provide false or misleading information. In this instance, the response confirming the property was occupied by seven people was clear and unequivocal, and was given by the controlling shareholder of the company which owns the property. In the absence of more substantive evidence to suggest otherwise, there is little reason to doubt its accuracy.
9. Overall, the evidence before me therefore suggests the property was occupied by seven people at some point prior to the issue of the notice. In turn, the material change of use, as alleged in the notice, had occurred. The appeal on ground (b) therefore fails.

## **Other Matters**

10. Whilst no appeal has been brought on grounds (c) or (d), the appellant says the property has been used as a small HMO (for up to six people) since they acquired the property. This is said to pre-date the Article 4 Direction implemented by the Council on 30 November 2013, which removed permitted developments for the conversion of dwellings to HMOs (for up to six people). The appellant's position therefore appears to be that use of the property as a

small HMO has always been lawful, or else has become lawful through the effluxion of time.

11. However, as discussed, the enforcement notice alleges a change of use to an HMO in sui generis use, which is a different use to a small HMO, for up to six people. Any arguments relating to the lawfulness of a small HMO (in Class C4 use) therefore fall outside the scope of this appeal, and have not been considered further.
12. The time for compliance specified in the enforcement notice is 12 August 2023. However, time for compliance should be expressed as a period of time, and not as a specific date. I have therefore varied the notice, so that the time for compliance is expressed as 6 months from the date notice takes effect. Given this period reflects the timeframe prescribed by the notice, I am satisfied this variation will not prejudice the parties.

### **Conclusion**

13. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations.

### **Formal Decision**

14. It is directed that the enforcement notice is corrected by:

- (a) the deletion of paragraph 3 and the substitution with the following new paragraph:

#### **3. THE BREACH OF PLANNING CONTROL ALLEGED**

Unauthorised use of property as large HMO (sui generis use).

and varied by:

- (b) the deletion of paragraph 5 and the substitution with the following new paragraph:

#### **5. WHAT YOU ARE REQUIRED TO DO**

1. Cease the use of the property as a large House in Multiple Occupation (sui generis use).

- (c) the deletion of paragraph 6 and the substitution with the following new paragraph:

#### **6. TIME FOR COMPLIANCE**

Within 6 months of the date the notice takes effect.

- (d) Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

*James Blackwell*

INSPECTOR