



Appeal Decisions

Site visit made on 27 January 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal A: Ref APP/T5150/C/23/3320639

Appeal B: Ref APP/T5150/C/23/3320640

Appeal C: Ref APP/T5150/C/23/3320641

12 Chapman Crescent, Harrow HA3 0TE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Dinesh Vekaria, Appeal B is made by Mr Dhanji Bhimji Patel and Appeal C is made by Mrs Sunderbai Dhanji Patel against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 20 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO).
- The requirements of the notice are to:
STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO).
STEP 2 Remove all additional beds/mattresses, fixtures, fittings and other associated items, which facilitate the unauthorised change of use from the premises, so that the internal layout is returned back to a single family dwellinghouse.
- The period for compliance with the requirements is 3 months.
- The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decisions

1. Appeals A, B and C are dismissed and the enforcement notice is upheld.

Ground (c)

2. For success on this legal ground of appeal, the burden of proof is upon the appellants to demonstrate on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
3. The appellants' case, in essence, is that the property is in use as a lawful HMO for not more than 6 residents¹ (and was at the date the notice was issued). It is said that a lawful change of use from single dwellinghouse to small HMO took place through general permission afforded by Article 3(1), Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) on 30 May 2022 before the Council brought in a Direction under Article 4(1) of that Order on 1 November 2022 restricting the exercise of those permitted development rights within its area (including the appeal site).
4. The Council disputes the above account of the property's use by reason of a site visit carried out by one of its officers, as part of an enforcement investigation, on 7 October 2022.

¹ A 'small HMO' in Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

5. The Council's investigating officer says that the property was occupied as an HMO by 12 people sharing facilities, thereby being used as a large *sui generis* HMO rather than a small HMO of no more than 6 residents. The officer took a number of photographs on that visit, said to support the assessment of occupancy levels, which have been submitted into the appeal.
6. The appellants say that it is not true that the Council's investigating officer found 12 persons occupying the property on the above date. They say that only a single occupant was present on the site visit and that the property was in use by no more than 6 residents occupying a bedroom each. They say that 2 further rooms with belongings were connected with a previous tenant (who would be returning to collect them) and storage for the property owners who reside abroad for much of the year.
7. There is clearly a key dispute here between the parties on a matter of fact. However, the burden of proof legally rests with the appellants. Other than what they asserted in the response to the planning contravention notice (PCN) issued on 15 November 2022, they have provided very little or no substantive evidence to support their account. For instance, while the appellants' submissions say that tenancy documentation and sworn statutory declarations from the tenants are 'available', they have not been submitted as evidence for me to consider.
8. Conversely, the photographs submitted by the Council appear to show 8 different 'made-up' beds (many of them double) and a mattress stood upright against a wall. Even mindful of the appellants' statement that many single occupants prefer double beds (and notwithstanding the Council's explicit evidence that the investigating officer witnessed 2 people in one of the beds at the time of the visit), I find it more likely than not that the photographs show that more than 6 residents were residing in the property on 7 October 2022. I also find it unlikely that rooms simply used for storage for non-occupants would feature made-up beds.
9. Taking all the evidence into account – that from the appellants and that from the Council – and mindful of the burden of proof upon the appellants, I find on the balance of probabilities that the property had as matter of fact and degree materially changed from a single dwellinghouse to a large *sui generis* HMO without planning permission, rather than to a small HMO which would have benefitted from permitted development rights under the GPDO before the Article 4 Direction came into effect.
10. Therefore, I am not satisfied on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control. Ground (c) does not succeed.

Conclusions

11. For the reasons given above I consider that the appeals (A, B and C) should not succeed, and I uphold the enforcement notice.

Andrew Walker

INSPECTOR