



Appeal Decision

Site visit made on 5 March 2025

by **C Rafferty LLB(Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2025

Appeal Ref: APP/Y5420/C/24/3349431

19 Roseberry Gardens, Tottenham, London N4 1JQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Angelos Phokas against an enforcement notice issued by the Council of the London Borough of Haringey.
- The notice was issued on 1 July 2024.
- The breach of planning control as alleged in the notice is the unauthorised use of the property as a House in Multiple Occupation (HMO).
- The requirements of the notice are to:
 1. Cease the use of the property as a C4 House in Multiple Occupation;
 2. Remove from the land all debris resulting from compliance with the above requirements.
- The period for compliance with the requirements is: 9 months.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected by the deletion of the word “premises” from part 2 and its substitution with the words “property”; and the deletion of the words “Unauthorised use of the property as a House in Multiple Occupation (HMO)” from part 3 and their substitution with the words “Without planning permission, the material change of use of the property to a House in Multiple Occupation (HMO)”.
2. Subject to the corrections, the appeal is allowed, and the enforcement notice is quashed.

The Enforcement Notice

3. Section 55(1) of the 1990 Act is clear that it is the making of any material change in the use of any buildings or other land that constitutes development. The allegation in the enforcement notice does not expressly refer to a material change of use without planning permission. Rather, it simply alleges ‘the unauthorised use of the property as a House in Multiple Occupation (HMO)’. Nevertheless, reference is made to s171A(1) of the 1990 Act, which relates to carrying out development without the required planning permission.
4. In accordance with section 176(1)(a) of the 1990 Act I can correct the breach of planning control alleged in the notice to read: ‘Without planning permission, the material change of use of the property to a House in Multiple Occupation (HMO)’. Given the reference to s171A(1), and as it is clear from the main parties’ evidence that they have understood the alleged breach, I can make this correction without injustice to the appellant or the local planning authority.
5. The description of the land affected within the enforcement notice defines the land and building as the “premises”. However, the remainder of the notice refers to the

land and building as the “property”. The notice can be corrected to replace the word “premises” in the description of the land affected with the word “property”, without injustice to the appellant or the local planning authority.

The appeal on ground (b)

6. An appeal on ground (b) is brought on the basis that the alleged breach of planning control stated in the notice has not occurred as a matter of fact. The onus lies with the appellant and the relevant test is the balance of probabilities.
7. The appeal site is a three storey, mid-terrace property with four bedrooms. Use Class C3 permits a dwelling to be occupied by (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4). Use Class C4 covers the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO). Section 254 of the Housing Act 2004 sets out that a HMO contains two or more households who occupy living accommodation and share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities.
8. The key difference between a C3 use and a C4 use is the relationship of the occupants and the manner in which they live together. Under Use Class C3 it must be demonstrated that the occupants live together as a single household. In determining if a single household is present, each case turns on its own circumstances as a matter of fact and degree.
9. Nevertheless, case law¹ has identified several factors to help in identifying if a property is occupied as a single household. These include: (i) whether the persons living in the premises came to it as a single group or whether they were independently recruited; (ii) what facilities are shared; (iii) whether the occupiers are responsible for the whole house or just their particular rooms; (iv) whether individual tenants were able to, or did, lock other occupiers out of their rooms; (v) whose responsibility it was to recruit new occupiers when individuals left; (vi) who allocated rooms; (vii) the size of the property; (viii) how stable the group composition was; and (ix) whether the mode of living is communal.
10. I have been provided with a copy of a tenancy agreement for the period from 18 February 2023 to 17 February 2025, which it is stated reverts to a periodic tenancy after these dates. The agreement relates to the appeal property as a whole, with four tenants listed and expressly stated to be jointly and severally liable for the obligations therein, including the payment of rent, which is listed as a single sum. It is therefore clear that the tenants came to the property as a group, rather than being independently recruited, and that they are responsible for the whole house rather than just their particular rooms. There is no suggestion in the agreement that rooms were allocated to the tenants, such that it is reasonable to assume that they distributed these among themselves. Further, on my reading of the agreement, it appears that if any tenant left during the term the responsibility to find a new tenant would fall to those remaining, or they would be liable to cover the outstanding rent.
11. I observed the mode of living during my visit. On the ground floor was a spacious shared lounge, which had a ‘lived in’ domestic feel. It provided sofa space for four

¹ Barnes v Sheffield CC [1995] 27 HLR 719

people and contained a drinks cabinet, television, and games console. A shared kitchen with dining space for four people was also on the ground floor. All expected facilities to meet day to day needs such as food preparation, cooking, and laundry were present. I viewed inside the fridge and cupboards and found that the storage of food, utensils, and crockery appeared to be communal, and did not suggest particularly separate living arrangements. The downstairs hallway was also used for communal storage of footwear and other items, such as keys hanging on a shared board by the entrance door to the property.

12. The four bedrooms were laid out as such, each with a double bed and other furniture expected in a bedroom e.g. desks and wardrobes. None of these rooms had locks on the doors or contained items or furniture that would be out of place in a bedroom. Two of the bedrooms had en-suite facilities to include a shower and toilet, with a further two bathrooms in the house providing the same. While this could indicate one allocated bathroom per tenant, I noted that those bathrooms that were not en-suite contained numerous products and toothbrushes of a level that suggested more than one regular user, rather than each bathroom being strictly assigned to a particular tenant.
13. It is stated that the tenants share the payment of bills and maintenance, with the tenancy agreement making it clear that payment of services and Council Tax are the responsibility of the tenants. It is further stated that the tenants part-furnished the property together, and that they socialise as a group. However, the evidence before me in these regards is largely anecdotal and can be attributed little weight. Nevertheless, given my other observations above, I found the mode of living at the property to be communal.
14. The size of the appeal property does not conclusively point to either a C3 or C4 use. Further, I have limited substantive information on the stability of the group composition beyond a statement that there is no intention to change the named persons on the tenancy agreement. However, given my findings on all other points suggested in *Barnes*, I find that these issues are not determinative in this matter.
15. The Council has previously suggested that the property is let to two couples, being two households, and its current position is that the tenants are a group of unrelated individuals. However, while the tenants may be unrelated, given my observations on the specifics of the tenancy agreement and the mode of living the evidence before me strongly points to a single household such that I find the property was in a C3 use, and not a C4 use, at the time the notice issued.
16. Interested parties have alleged that renovations were undertaken at the property in order for it to function as a HMO. While renovation works may have taken place, there is nothing substantive either before me or observed on my visit to suggest that such works resulted in the property being laid out or used as a HMO. In particular, I saw that the ground floor of the property does not accord with the “as proposed” drawings provided by interested parties for planning application HGY/2019/3218, given the presence of a communal living room rather than the separate rooms 1 and 2 as shown on that plan.
17. Comments from interested parties also refer to levels of anti-social behaviour, noise, and comings and goings relating to the property to evidence its use as a HMO. However, anecdotal evidence of these issues does not, on its own, point to a

HMO use given that such issues could equally arise from a C3 use due to the size and potential occupation level of the appeal property.

18. Reference has also been made to a HMO licence being granted in respect of the property, with an email from the Council appearing to grant a licence for one year on 25 July 2024 and interested parties referring to a one year licence from 27 August 2024. In addition to these dates being after the issue of the enforcement notice, the lack of other evidence supplied in respect of the licence casts further doubt as to whether the appeal property is operating as a HMO.
19. Taking all of the above together, I find that the matters alleged to constitute a breach of planning control as stated in the notice had not occurred at the date the notice was issued. The alleged breach of planning control has not therefore occurred.

Conclusion

20. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

C Rafferty

INSPECTOR