The Planning Inspectorate

Appeal Decisions

Site visit made on 1 April 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal Ref: APP/L5240/C/23/3324676
97 Melfort Road, Thornton Heath CR7 7RT

- 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 Miss Musarat Khan.
- The enforcement notice was issued on 18 May 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, conversion of dwelling as HMO (sui generis) for 10 occupants and an unauthorised construction of an outbuilding.
- The requirements of the notice are to:
  1) Cease the use of the property as a House in Multiple Occupation (HMO) and revert the property to its original residential character by removing all walls, partitions, locks and doors which facilitate the conversion of the property into a HMO. You must remove all the kitchens, cookers, cupboards, sinks, extractors except for one complete kitchen serving the whole house. Remove all the gas boilers and electrical meters that were installed apart from the one of each serving the whole house.
  2) Reduce the height of the outbuilding to fall within Permitted Development Rights under Class E of the GPDO and ONLY use the outbuilding for ancillary purposes in connection with the main C3 residential use of the dwelling.
  3) Remove all the resultant debris from the premises as a result of compliance with requirements 1 and 2 as identified above.
- The period for compliance worded as '6 (six) months'
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Formal decision

1. The enforcement notice is quashed.

Background

2. Extraneous to the Town and Country Planning Use Classes Order 1987 (as amended) a House in Multiple Occupation (HMO) is a legal category of housing defined in part 7 of the Housing Act 2004, and is considered to be a residential property rented out by at least three people who are not from the same household, and is not entirely made up of self-contained flats. In other words the residents will share common facilities such as a kitchen, bathroom and wc, and maybe a communal lounge.

3. HMOs are licensable and a property is a HMO if a 'HMO declaration', served by the local housing authority (LHA), is in force in respect of it under s255 of the Housing Act. This confirms that the LHA is satisfied that the building meets the necessary tests, and that the occupation by persons who do not form a single household constitutes a significant use of that accommodation. The appeal

property is licensed, but for a maximum of six persons. However, the position under planning legislation is different, and an existing HMO in planning terms is not necessarily influenced by the above licensing process.

4. The appeal property, originally a single-family dwellinghouse, underwent conversion, along with extensions and, from my site visit inspection, now accommodates eight bedrooms (most of which have en-suites), and also various communal facilities which include a lounge, two kitchens, shower rooms and also an office, spead over three floors. A single-storey outbuilding has also been erected in the rear garden which abuts the rear boundary. At my site visit I observed that this building was in use for general storage purposes, although it does contain a small galley kitchen, a shower-room and a w/c.

5. The Town and Country Use Classes Order defines two types of HMOs. Class C4 relates to small, shared houses occupied by between three and six unrelated individuals whereas larger HMOs, occupied by more than six persons, of which this property is a case in point, are not categorised in the Town and Country Planning Use Classes Order. Instead, they are classed as a sui generis use.

6. In this particular instance I am mindful that in October 2020 a s78 appeal was dismissed and planning permission was refused for the property's conversion from a 7-bed dwelling into a 10 room HMO (sui generis) used as a HMO; this being the Inspector's description. The Inspector, in his decision letter, also indicates that at the time of his site visit the development was being undertaken. For the purposes of the current appeal I must therefore assume that the works then being carried out have resulted in the current layout and also its use which requires the benefit of planning permission.

7. It is not clear how long the outbuilding has been in situ. There is no mention of it in the previous appeal decision letter, although the development the subject of that appeal related only to the main property itself, so it would not have been necessary for the then Inspector to refer to the outbuilding. The enforcement notice, would tend to indicate that it was built within the four years prior to the notice being issued, yet the Council has produced no evidence to this effect such as Building Control records or dated photographs.

Matters concerning the enforcement notice

8. If an enforcement notice does not comply with the various statutory requirements set out in s173 of the 1990 Act, as amended then it will be a nullity and cannot be saved by the curative powers contained in s176(1). In this instance it appears that the document contains all the relevant entries so as not to disqualify it at the outset.

9. Accordingly, I am satisfied that the enforcement notice is not a nullity and the wording of its various elements then fall to be considered. In such circumstances it is obvious that the notice must be clear in specifying what the alleged breach is, what is required to remedy the planning position, and when exactly the particular remedial steps need to be complied with.

10. The appellant has made representations suggesting that the alleged breach of control has not occurred as a matter of fact. She is of the view that no breach has occurred as she says that the property is not occupied by ten persons. As I mentioned there is a total of eight bedrooms within, some of which are of double size, although I noted that one bedroom was vacant. Whilst it is

probable that more than eight persons may be resident at any one time I have not been provided with a schedule of accommodation and there is no indication from the limited representations received as to who resides there. No tenancy agreements have been provided.

11. Importantly, though, the Council has not adduced any evidence that the property is occupied by ten persons, nor have any details been provided of site visits carried out as evidence of the alleged breach. Although it is clear that the property is in use as a sui generis HMO the wording of the allegation is misleading, and most likely incorrect, in saying that the dwelling has been converted for ten occupants.

12. I also have concerns as to certain wording within requirement no 1. Whilst I accept that the partitions which facilitate the HMO should be removed, requiring the removal of walls likely goes beyond what is reasonable to remedy the breach. Further, the phraseology relating to the gas boilers and electricity meters could be open to interpretation. However, I am satisfied that if I was dismissing the appeal and upholding the enforcement notice I could make the necessary corrections on these points to put the document on a proper footing.

13. However, I find that the notice's requirement no 2 is flawed. It indicates that the outbuilding should be reduced in height so that it falls within the parameters of Class E of the 'GPDO.' This is not self-explanatory and reference should instead have been made to Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. Notwithstanding this, no existing height measurement is given nor is the maximum height permissible under Class E specified. Moreover, if the outbuilding was erected and substantially completed following the property ceasing to be used as a single-family dwellinghouse, then no permitted development rights would apply under Part 1. A further point is that the requirement says that the outbuilding should only be used for ancillary purposes yet the allegation makes no mention of its actual use, so no remedy is here necessary.

14. There is an additional imprecision in the enforcement notice which has the potential to cause doubt. Although it is correctly dated and the date it comes into effect is specified, the wording under 'Time for Compliance' should read *'Six months after the date this notice takes effect'* rather than merely saying *'A compliance period of 6 (six) months'* as it is not clear from this whether the six months runs from the date of issue or the date the notice takes effect.

15. Given the circumstances the allegation, the two main requirements and the period for compliance are particularly vague and the wording cannot be considered as sufficiently precise and unambiguous; something one would reasonably expect of a legal document, and certainly one representing a charge on the land. Mindful of the judgement of *Miller Mead v MHLG [1963] 2 WLR 225* I consider that parallels can here be drawn in that the current notice's construction is so nebulous and uncertain to the point where the recipient could easily misinterpret what the actual breaches of planning control are in this instance, and what steps have to be taken to remedy these and also when the time period for compliance runs from.

16. In a nutshell I am concerned that the enforcement notice is so littered with errors, admittedly of varying importance, that when taken together, they compound to strongly suggest its invalidity. I, therefore, doubt whether, in the

form issued, the notice provides the certainty necessary for it to have a reasonable chance of success.

17. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing. However, I cannot here be certain that no injustice would be caused if I were to attempt to make the significant corrections necessary.

Conclusion

18. In such circumstances it is not open to me to correct the errors in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice would likely be caused were I to do so. In other words I find that this notice, as issued, is incapable of correction.

19. The enforcement notice is therefore invalid and will be quashed.

Timothy C King

INSPECTOR