



Appeal Decision

Site visit made on 12 May 2025

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 27th May 2025

Appeal Ref: APP/G5750/C/23/3319475

29 Ernald Avenue London E6 3AL

- 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 1990 Act”).
 - The appeal is made by Mr and Mrs Geeta and Mahendra Limani against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 28 February 2023.
 - The breach of planning control as alleged in the notice is the material change of use to a Use Class C4 house in multiple occupation (HMO).
The requirements of the notice are to: 1) cease the use of the premises as a Use Class C4 House in Multiple Occupation (HMO) 2) remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors, and 3) remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is 6 months.
 - Appeal is proceeding on the grounds set out in section 174(2) (c), (d) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
 - An application for costs is made by the Council against the appellants. This is the subject of a separate Decision.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

Ground (c)

2. In this appeal the onus is squarely on the appellants to show that the matters alleged do not constitute a breach of planning controls.
3. The appellants do not challenge the notice on the basis that the alleged breach has not occurred as a matter of fact or that it does not require planning permission. In this challenge, the appellant argues that the notice does not specify the use from which the alleged material change of use has occurred, such that the appellants suggest the notice is a nullity or invalid.
4. No. 29 is a terraced property situated in a residential street. The site’s history suggests the premises was previously a dwellinghouse similar in character to its neighbours. There is nothing before me to make less than credible the Council’s record of officer site visits. For example, officers visited the property in October 2022 and saw the property was used as a HMO. The house was occupied by 6 unrelated individuals across 5 bedrooms: two bedrooms on the ground floor and three on the first floor. There was one kitchen and shared bathrooms.
5. The judgment in *Miller-Mead v MHLG* [1963] 2 WLR confirms that the notice must tell the person on whom it was served clearly what they had done wrong and what they had to do

to remedy it. *Ferris v SSE* [1989] 57 P&CR 127 tells us it is not necessary for a notice to identify the existing use from which a material change of use is alleged to have changed. In most cases, the person on whom the notice is served would be clear as to the use to which the land could revert; they would know for what the land was used prior to the material change of use alleged.

6. The issued notice is not flawed as it satisfies the statutory requirements. It is clear to me that the notice alleges a change in the use of the appeal property and there is nothing before me to indicate that breach did not in fact occur at the date of issue. The use of a property as an HMO is significantly different to other residential uses. Compared to use as a single dwellinghouse occupied by people forming a single household, there are likely to be different set of circumstances. For example, unrelated individuals or couples are more likely than not to generate significant comings and goings associated with the use of the property as an HMO. Such activities are likely to have both on and off-site planning consequences like the loss of single-family dwellings. In my assessment, use of no. 29 as an HMO is definably different in character to its use as a single dwellinghouse.
7. Use of a dwellinghouse by not more than 6 residents is classified as a Class C4 use as set out in Schedule 1, Part C of the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the UCO"). Normally, there are permitted development rights to change from a use falling within Class C3 (dwellinghouses) of the Schedule to the UCO, to a use falling within Class C4¹. The problem for the appellants is that an Article 4 Direction, which came into force on 31 July 2013, restricts such permitted development rights.
8. Finally, ground (c) appeal cannot succeed because express planning permission is required for the matters alleged and it has not been obtained.

Ground (d)

9. At the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellants, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be sufficiently precise and unambiguous, even if there is no evidence to contradict it.
10. The notice was issued before April 2024 when time limits changed. Transitional arrangements are in place and the agent argues that the time for taking enforcement action where there has been a material change of use as a Class C4 HMO is 4 years and not 10. The former s171B(2) of the 1990 Act said the following with my emphasis: *Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach*. However, the 4-year time limit does not apply in cases where there has been a change of use to an HMO or some other residential use where units are not self-contained. Even if there has been a material change in use to a use within Class C4, that is, use of a dwellinghouse as a HMO, there will not have been a change of use to a single dwellinghouse [my emphasis]. While there is now harmonisation in time limits, the 10-year rule set out under s171B(3) applies in HMO cases.
11. In the context of ground (d), the appellants simply say there has not been a material change in use of the appeal property. However, I have already explained elsewhere that on the

¹ Article 3, Schedule 2, Part 3, to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

circumstances of this case the use of no. 29 as an HMO constitutes a breach of planning controls. The quantum of the evidence presented does not clearly or unambiguously show that the HMO use began on or before 28 February 2013 and continued thereafter for a period of 10 years without significant interruption. I should say that, even if the 4-year time limit is applicable, the quantum of evidence presented does not clearly and unambiguously show the date that when the alleged use of the dwellinghouse as a HMO commenced and that it has continued thereafter for a period of 4 years. Therefore, ground (d) must fail.

Ground (g)

12. The appellants say that the period of compliance is too short, and 12 months is reasonable. The period would allow service of notices on the tenants; occupiers need time to find alternative accommodation and there may be legal issues to resolve. On the latter there is nothing before me to indicate ongoing disputes. Normally, tenancy agreements have termination clauses but, in this case, I have nothing before me to indicate 6 months would not be sufficient time to notify existing tenants and for them to find alternative accommodation. In my assessment, the 6-month period of compliance is reasonable given the nature of the steps required by the notice. Ground (g) fails.

Overall conclusions

13. Having regard to all other matters raised, I conclude that the appeals against the enforcement notice should fail.

A U Ghafoor

INSPECTOR