



Appeal Decision

Site visit made on 29 September 2026

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP
an Inspector appointed by the Secretary of State

Decision date: 19 October 2026

Appeal Ref: APP/D1590/C/24/3350701
76 Park Road, Westcliff-on-Sea SS0 7PQ

- 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 Mr Mark Higgins (H4 Property Limited) against an enforcement notice issued by Southend-On-Sea City Council.
 - The enforcement notice was issued on 8 August 2024.
 - The breach of planning control as alleged in the notice is:
Change of use from a Use Class C4 HMO to seven (7no) self-contained flats.
 - The requirements of the notice are to:
 - a) Cease the unauthorised use as seven (7) self-contained flats; AND
 - b) Remove from all units at least one of the following: i. Toilets, shower tubs, bath tubs or any other facility associated with a WC or a bathroom; or ii. Cooker, hob, oven, microwave oven, kettle or any other cooking equipment or facility associated with a kitchen; AND
 - c) Remove from one unit all beds, sofa-beds or any sleeping equipment or facility so that in the property there are no more than six (6no) bedrooms. AND
 - d) Restore the land to its condition before the breach took place, including with provision of any communal facilities for the six bedrooms at the properties. AND
 - e) Remove from site all materials resulting from compliance with requirements (a) to (d) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Costs Application

2. A claim for costs was made by Mr Mark Higgins (H4 Property Limited) against Southend-On-Sea City Council. That application is the subject of a separate Decision.

The Enforcement Notice

3. The notice is widely and significantly defective. In addition to the amendments to the allegation and requirements put forward as necessary by the Council itself during the appeal process (dealt with below), the notice has been incorrectly issued under section 171A(1)(b) of the Act. That provision relates to a breach of condition or limitation of consent. It seems that, instead, the Council was seeking to take enforcement action under section 171A(1)(a) since the alleged breach of planning control suggests the carrying out of development (a material change of use) without planning permission. While potentially correctable in isolation, other defects are fatal on an injustice basis.

Ground (b)

4. In order for the appeal to succeed on ground (b), I must be satisfied on the balance of probabilities that matters stated in the notice said to constitute the breach of planning control have not, in fact, occurred.
5. The Council has, in essence, conceded on this ground.
6. The Council's appeal statement, with limited explanation for the error, has said that the notice is wrong to allege a change of use from a Use Class C4 HMO (House in Multiple Occupation) to 7 self-contained flats.
7. Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 is use of a dwellinghouse by not more than 6 residents as a HMO. The Council asks me to use my discretionary powers under section 176(1) of the Act to correct the error so that the notice instead alleges a change of use from a *sui generis* HMO to 7 self-contained flats, on the basis that a planning permission in 1991 (Ref SOS/91/0026) granted consent for a 8-bedroom HMO with 2 shared kitchen/dining rooms and 2 shared bathrooms. That is a materially different character of use; consequently there would be a material difference between the change of use alleged by the issued notice and the change of use alleged by the notice should I use my powers to change it.
8. The Council also requests that I change the notice requirements to take into account the implications, as it sees them, as to the error in the allegation.
9. The Act requires that I must not use my powers of amendment under section 176(1) unless I am satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
10. The appellant has stated quite clearly that he would be caused injustice were the notice to be amended at this stage.
11. While I am mindful that the previous use does not need to be recited in a notice alleging a material change of use, the issued notice notably *did*. And I am also mindful that the appellant chose not to make a ground (a) appeal, seeking planning permission *on the basis of what was alleged*.
12. While a successful deemed planning application (DPA) on the basis of either the issued notice or the corrected notice would result *de facto* in permission for 7 self-contained flats (as it is agreed currently exist), the notice allegation forms the basis of the DPA. Significantly, it is the material change of use that is the development under consideration and not simply the end use in isolation of the alleged change.
13. In effect, the DPA which would have been sought under the issued notice is consent for a development consisting of a material change of use from a 'small' C4 HMO to 7-self contained flats. Clearly, the appellant did not choose to apply for approval of that development. However, the decision the appellant would have been faced with had the Council actually issued the suggested notice would have been whether or not to apply under ground (a) for a material change of use from a 'large' 8-bedroom HMO with 2 shared kitchen/dining rooms and 2 shared bathrooms to 7 self-contained flats. I do not know what the appellant would have done, or whether any DPA would have been successful, but it is not wholly unreasonable to consider that there *may* have been a different decision by the appellant as to whether to make a DPA.

14. For instance, arguments may have been put forward in a DPA relating to the nature and scale of the change, being different in the 2 scenarios. The Council, in its reasons for issuing the notice has referred to cramped living conditions. It is not fanciful to consider that the appellant may have gauged it more likely, for example, for success to be achieved on ground (a) on the basis that the development could potentially result in reduced occupancy (8 bedrooms to 7 bedrooms, as opposed to 'not more than 6 residents' to 7 bedrooms alleged in the notice actually issued).
15. For these reasons, and on the balance of probabilities, ground (b) succeeds and I am not satisfied that the appellant would not be caused injustice were I to correct the notice. The appeal is allowed and the enforcement notice is quashed. In these circumstances, it is not necessary to consider the appeals made under grounds (d), (f) and (g).

Andrew Walker

INSPECTOR