The Planning Inspectorate

Appeal Decisions

Site visit made on 12 February 2018

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 February 2018

Appeal Refs: APP/B5480/C/17/3177269 & 3177270
293 Mawney Road, Romford RM7 8DR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Gita Patel (Appeal A) and Mr Hament Patel (Appeal B) against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 2 May 2017.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of a dwellinghouse (Class C3) to a sui generis House in Multiple Occupation (HMO).
- The requirements of the notice are:
  (i) Cease using the property as a House in Multiple Occupation (HMO)
  (ii) Remove from the premises all cooking facilities (except for one kitchen on the ground floor), all bathroom facilities (except for three bathrooms on the first floor and a w.c. on the ground floor).
  (iii) Remove all materials and debris arising from compliance with requirements (i) and (ii) above.
- The period for compliance with the requirements is 4 months.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

2. Appeals have been brought under ground (c) on the basis that the matters alleged in the notice do not constitute a breach of planning control. To succeed on this ground it would need to be demonstrated that use of the property as a *sui generis* House in Multiple Occupation (HMO), as alleged, benefits from planning permission or amounts to permitted development. The appellants do not make this argument. Instead, the thrust of the appellants' case is that the property is a small HMO which falls within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (UCO), as amended.

3. Such arguments are more pertinent to ground (b) which applies when the breach of control alleged in the notice has not occurred. If the appellants can show that the property was not in use as a *sui generis* HMO then the allegation will be wrong and the appeals must succeed under ground (b) irrespective of whether a small HMO would be permitted development. The Council has

replied to the submissions made and so no prejudice arises from my dealing with the arguments as though made under ground (b). In order to succeed on this ground it would need to be demonstrated that a change of use to a *sui generis* HMO, as alleged, has not occurred.

4. Submissions are also made by the Council, the appellants and third parties on the planning merits. The Planning Inspectorate wrote to the appellants to advise that the appeals are fee exempt and sought clarification on whether they wished for consideration to be given to ground (a) as part of their appeals. Confirmation was received that the appeals should be considered on ground (c) only. In the absence of a ground (a) appeal and deemed planning application, the planning merits do not fall to be considered.

Reasons

5. The appellants have the burden of proof and the test of the evidence is the balance of probabilities. Thus, the onus is on the appellants to demonstrate that the property was not in use as a *sui generis* HMO at the relevant date, being the date of issue of the notice i.e. 2 May 2017.

6. It is undisputed that the property was a single dwellinghouse falling within Class C3 of the UCO prior to conversion works taking place. Class C4 of the UCO is the use of a dwellinghouse by not more than six residents as a HMO. Where a HMO has more than 6 residents it falls outside any specified class of use within the UCO which is why it is known as a *sui generis*[1] use.

7. The parties agree that the property was in use as a HMO at the relevant date. The point in contention is whether there were more than 6 residents at that time. Whether or not there have subsequently been 6 or fewer residents is not relevant.

8. The building contains six bedrooms with shared kitchen and lounge facilities. The appellants acknowledge that there were 10 people living at the property when the Council undertook an inspection[2], but say they had vacated by April 2016. From May 2016 the appellants maintain that the property has been let as a small HMO with 4/6 Council tenants. A copy of the Lease for the premises supplied by the Council shows that the property was let to managing agents from March 2016 with no restriction on the number of occupants.

9. The appellants' case is contradicted by the Council who say that a site visit in May 2016 revealed over 6 occupants. That same month, the Council served Planning Contravention Notices[3] (PCN) on various parties thought to have an interest in the property requiring them to provide information on its use. One PCN was completed by the managing agents. They named six individuals in occupation who were from Redbridge Council's homeless list. However, they omitted the names of any children. Another PCN reply completed by Redbridge Council in June 2016 confirmed the same six names, but also identified three children living at the address. Appellant A did not provide any names, but simply indicated that each of the six rooms were occupied by Council tenants and described the premises as "six bedsits and a shared lounge + kitchen".

[1] Meaning of 'of its kind' when no use classes order category fits.
[2] The appellants do not provide a date, but their chronology suggests that the visit was February–March 2016
[3] Under section 171C of the 1990 Act

10. Thus, the evidence points clearly to there being a *sui generis* HMO from at least May 2016. The appellants say that Redbridge Council has undertaken to limit occupation to 6 individuals. However, the managing agents are the lessee, not Redbridge Council. When returning the completed PCN, Redbridge Council confirmed that it has no interest in the property beyond using it to house statutory homeless people requiring temporary accommodation.

11. The Council states that it made a further visit in February 2017 and "it was confirmed that ten adults and children were living in the property, the majority of tenants corresponded with the information supplied in the PCN" completed by both the managing agents and Redbridge Council.

12. When the notice was subsequently issued some months later, the Council says that it served the owner/occupier by hand at the appeal premises on 2 May 2017. At that time, one of the occupiers apparently confirmed that "all of the original tenants were still living in the property". I take this to mean that they were the same tenants who were present in February 2017. With more than 6 residents, the use would not fall within Class C4.

13. The appellants have not produced any substantive evidence to rebut the Council's submissions in this regard. Thus, the appellants have failed to discharge the burden of proof to demonstrate on the balance of probabilities that the property was not in use as a *sui generis* HMO on the relevant date.

14. I conclude as a matter of fact that the breach, as alleged, has occurred. The ground (b) appeals therefore fail.

15. Regardless of its previous use, a change of use to a *sui generis* HMO does not benefit from permitted development rights and requires express planning permission. As such, a ground (c) appeal could not succeed.

Whether the steps are excessive

16. Whilst the appellants have not pleaded ground (f) I have considered whether the steps contained in the notice are excessive by requiring removal of additional kitchen and bathroom facilities given the appellants' argument that there was a lawful change of use from a Class C3 dwellinghouse to a Class C4 small HMO [4]. The Council maintains that there is no such fallback position as an Article 4 Direction[5] had come into force on 13 July 2016 to remove permitted developments for a change of use from Class C3 to Class C4. The appellants on the other hand say that the change of use to Class C4 had already taken place. If that is so, then the Direction would not apply and the last lawful use may be Class C4.

17. According to the appellants, the property was in Class C3 use until it was vacated in August 2014 for internal changes including the installation of en-suite and kitchen facilities leading to its use as a small HMO from February 2016. The Lease in fact commenced in March 2016 and only two months later the Council were corresponding with Appellant B over more than 6 people being in occupation. There continued to be more than 6 residents when the PCN replies were filed in June 2016. It was only one month later that the Article 4

[4] under Article 3(1) and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development)(England) Order 2015.
[5] A Direction made by the Council under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015

Direction came into force. Whilst the appellants may have intended to limit occupation to 6 people, the evidence suggests that the property was occupied by more than that number and it was a *sui generis* HMO. On the evidence before me, I am not satisfied that there was a lawful Class C4 use by the time the Article 4 Direction took effect.

18. Therefore, I have no reason to believe that the notice is incorrect to allege the change of use from a Class C3 single dwellinghouse to a *sui generis* HMO for the steps to be excessive.

Conclusion

19. For the reasons given above, I conclude that the appeals should not succeed.

KR Saward

INSPECTOR