

Appeal Decision

Site visit made on 24 April 2023

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 12th July 2023

Appeal Ref: APP/B5480/C/22/3291629

347 Rainham Road, Rainham, RM13 7TB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Sonata Andrijauskiene against an enforcement notice issued by London Borough of Havering.
- The notice was issued on 22 December 2021.
- The breach of planning control as alleged in the notice is the material change of use from dwellinghouse to a house in multiple occupation.
- The requirements of the notice are to
 - (i) Cease the use of the property as a house in multiple occupation.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The enforcement notice is quashed.

Preliminary and Background Matters

2. The Council refused an application for planning permission relating to the appeal property on the 26 November 2021. The Council's decision notice **describes the proposal as "Retrospective planning permission for change of use from C3 Residential to C4 House in Multiple Occupation."**
3. The Council issued the enforcement notice on the 22 December 2021. The Council relied upon its reasons for refusal for the planning application as the reasons for issuing the enforcement notice. However, this is an appeal against an enforcement notice not the refusal of a planning application. The Council has referred to linking 2 appeals in its statement but there is only one appeal.

Reasons

4. For the ground (a) appeal and the deemed planning application, the terms of the deemed application derive directly from the allegation in the notice. The allegation **refers to** 'the material change of use from dwellinghouse to house in multiple occupation.' However, there are two types of houses in multiple occupation (HMO). An HMO (C4) is defined as a shared house occupied by between three and six unrelated individuals as their only or main residence who share basic amenities such as a kitchen or bathroom. However, occupation by 7 or more persons falls outside Class C4 Use and is a Sui Generis (HMO). In order to make her arguments under ground (a), the appellant needs to understand the allegation and to know whether the deemed planning application is for planning permission for between 3 and 6 occupiers or more than 6 occupiers.

5. The notice does not specify which type of HMO is alleged and there is limited information from either party as to how the property was used across three floors prior to the issue of the notice or the number of occupiers. The Council subsequently suggested that the allegation be amended by adding C4 Use and considers that such an addition does not cause injustice to any party. The Council refers to the appellant being vague about numbers of occupiers. However, the Council has to make sufficient enquiries to establish the nature of a breach of planning control before deciding to serve an enforcement notice.
6. Amending the allegation would create a mismatch with the reasons for issuing the notice. The appellant does not know from the reasons why up to 6 occupiers is an issue. Equally, the Council has not had the opportunity to put forward its reasoning for up to 6 occupiers. The appellant has not objected to the amended allegation but states that the notice was served 'wrongly.' The appellant appears to have disregarded the enforcement notice element and treated the appeal as being against the planning refusal. However, the two types of HMO are likely to have different consequences in terms of noise and disturbance, room sizes and parking needs. I do not consider that the allegation can be amended without causing injustice to both parties as the reasons for the notice relate to 8 occupiers.

Other matters

7. In addition to the reasons in the notice, the Council's statement seeks to add a **further reason which relates to the size of the 'original property' of between 80 to 90 square metres not being compliant with Policy 8 of the Havering Local Plan 2016-2031.** No further details are provided and there is no explanation as to why the Council took a contrary view for the planning appeal. Whilst I have not relied upon this matter in reaching my decision as it is not part of the notice, this is a matter for the parties to discuss.
8. The notice refers to an immunity period of four years. However, that period only applies to the change of use of any building to use as a single dwellinghouse under Section 171B(2) of the Act. The notice does not allege a change of use to a single dwellinghouse. The use enforced against is from a dwellinghouse to a house in multiple occupation. The relevant time period for establishing immunity is ten years under Section 171B(3).

Conclusion

9. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under Section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
10. In these circumstances, the appeal on the ground set out in section 174(2)(a) of the 1990 Act as amended and the application for planning permission deemed to be made under section 177(5) of the 1990 Act as amended do not fall to be considered.

E Griffin

INSPECTOR