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## Appeal Decision

Inquiry held on 20 November 2014

Site visit made on 20 November 2014

by **P N Jarratt BA DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 December 2014

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**Appeal Ref: APP/D1780/C/14/2213042**  
**111 Alma Road, Southampton, SO14 6UY**

- 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 J Rai against an enforcement notice issued by Southampton City Council.
  - The Council's reference is 12/0012/ENCOU.
  - The notice was issued on 8 January 2014.
  - The breach of planning control as alleged in the notice is without planning permission, the change of use of the Land from a single family dwelling house (a use within Class C3 of the Schedule of the Town and Country Planning (Use Classes) Order 1987) to a house in multiple occupation (a use within Class C4 of the Schedule of the Town and Country Planning (Use Classes) Order 1987) accommodating between three and six unrelated persons who share basic amenities.
  - The requirements of the notice are to cease the use of the Land for the residential accommodation of persons not forming a single household (as defined in section 258 of the Housing Act 2004) and return it to use within Use Class C3.
  - The period for compliance with the requirements is 5 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
  - **Summary of Decision: Period for compliance varied and notice upheld**
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### Preliminary matters

1. Separate applications for costs were made by the appellant against the Council and by the Council against the appellant. These applications are the subject of separate Decisions.
2. The appeal was originally to be determined by way of informal hearing but at the request of the Council the hearing was adjourned because a public inquiry was deemed necessary to ensure that the evidence of witnesses was given under oath and subject to cross examination.
3. All oral evidence to the inquiry was given on oath. The Council requested that Mr C McCarthy and Mr K Khokhar should not be present when the appellant was giving evidence because of the nature of the cross examination of the witness. I acceded to this request.
4. A Statement of Common Ground (SoCG) has been submitted but as this is unsigned and undated by the parties, I attach only limited weight to it.

## Reasons

### *Background to the appellant's case*

5. The appeal site is a two storey detached dwelling in a residential street. It has a dwarf wall to the front and a driveway with setback gates at the side. The property is currently being used as a 6 bedroom house in multiple occupation (HMO) within the definitions set out at Class 4 of the Town and Country Planning (Use Classes) Order 1987(as amended) which refers to dwellings occupied by between three and six unrelated individuals who share basic amenities.
6. On 23 March 2012 a citywide Article 4(1) Direction<sup>1</sup> came into effect which removed permitted development rights for change of use from a single dwelling house (Class C3) to a House in Multiple Occupation (Use Class C4). Planning permission is therefore required for a change of use from Class C3 to C4 since 23 March 2012 (the critical date).
7. A Planning Contravention Notice (PCN) was served on Rai Estates on 5 March 2013. In response, the appellant, Mr Rai who is a Director of Rai Estates, indicated that before purchasing the property, he sought advice from the Council to query if the new HMO regulations would affect the property. He was advised that so long as it was let to three or more unrelated people on or before 23 March, it would not be affected by the new regulations. He also responded to the PCN to say that refurbishment work was completed on schedule and the property was let to three unrelated people on 20 March. The Tenancy Agreement was signed at the letting agency, he informed the Council Tax department and utility suppliers and there is proof of rent paid into his account. He also has an NIC certificate to confirm that electrical work was completed prior to the tenants moving in and that a elderly couple living opposite witnessed the occupation of the property.
8. The issue between the parties is whether or not the property was occupied as a Class 4 HMO before the critical date. The appellant asserts that the property was converted to a sufficient extent and occupied by three unrelated persons as a Class 4 HMO before the critical date and that after the critical date further conversion works were carried out allowing six different persons to occupy the property. The Council consider that the change of use did not occur until after the critical date.

### **The appeal on ground (c)**

#### *The appellant's case*

9. The appellant has set out a detailed time line of events in his evidence which in brief indicates that he purchased the property on 18 November 2011 and commenced building operations on that day; downstairs damp proofing was completed on or about 27 January 2012; upstairs plastering on 30 January; broadband and phone line installation on 17 February; electrical work and NIC certificate on 16 March; and the service line at the front backfilled. The appellant considered the house to be habitable on 16 March and consisted of three bedrooms, bathroom, conservatory and kitchen. Two downstairs storage rooms were not habitable but were used for storage and building materials.

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<sup>1</sup> Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995

10. On 19 March, Elliotts Estate Agents confirmed a viewing with three potential tenants and on the same day three sets of bedroom furniture was delivered and the house was ready for occupation. On 20 March a Tenancy Agreement was signed and three tenants moved in to the property, which the appellant satisfied himself about the following day. The appellant says that tenants were East European and worked through agencies but have now left the country. One of the tenants had previously been a tenant of a bedsit at the appellant's sister's property at 119 Alma Road. The appellant received £600 rent on 30 March and the same amount on 26 April.
11. Mr Rai's evidence then describes the events from the end of May relating to a garden bonfire; the receipt of an Abatement Notice; the departure of the three tenants between the last week of May and the first week of June; the redecoration of some of the communal areas, the tiling of the kitchen floor and the moving in of 6 student tenants on a 12 month assured tenancy on 1 July 2012.
12. Mr Rai has submitted copies of the Tenancy Agreement dated 20 March 2012 signed by the three tenants, Zoltan Veraszto, Matel Romana and Sabina Miron<sup>2</sup>; a Southern Water letter dated 26 April 2012 confirming the opening of an account in the tenants names; a Southern Water bill dated 17 Jul 2012 addressed to the three tenants for their account between 20 March and 30 June; a Natwest account transaction search for Mr Rai showing £600 rent paid for 111 Alma Road on 30 March 2012 and 26 April 2012; and a copy of a Furniture World delivery note dated 19 March 2012 for three sets bed, desk, wardrobe.
13. In support of the appellant's case, five witness statements were submitted by Mr Calum McCarthy of Elliotts Estate Agents; Mr Kunal Khokhar, director of KSK (Global) Ltd; Mr Mitesh Patel, a self employed energy assessor; Mr James Lisk, resident of 91 Alma Road; and also one from Mr Jaswinder Rai, the appellant. However, none of the witness statements was signed although Mr McCarthy, Mr Khokhar and Mr Rai gave oral evidence under oath to which I attach greater weight than I do to the unsigned statements of Mr Patel and Mr Lisk.
14. Mr McCarthy under oath confirmed that he had met the three tenants when viewing the property, arranged the tenancy agreement and was satisfied without doubt that the three tenants moved in on 20<sup>th</sup> March 2012 and remained resident until around June 2012.
15. Mr Khokhar on oath stated he had visited the property on 23 March 2012, although he did not meet the tenants. He said it was clear that the three rooms upstairs and the kitchen and upstairs bathroom were being used although only one side of the kitchen was complete and the floor required tiling.
16. A letter dated 20 March 2014 from Margarett Chingwaro of 103 Alma Road confirmed that the internal renovation work was completed by mid March 2012 and 'it appeared to me that people were occupying the property from this time'

### *The Council's Case*

17. The Council consider that the Tenancy Agreement, Southern Water letter, Council Tax bill and the Electrical Installation Certificate do not prove

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<sup>2</sup> Only the cover page and final page of the 14 page agreement were submitted

occupancy on the critical date in view of the representations and evidence of neighbours and that the first tenants did not move in until the start of July 2012. Neighbours indicate that there were no signs of occupancy and that the property was still being renovated on the critical date. Photos taken by a neighbour (Appendix 3 of Mr Gregory's evidence) show an empty ground floor room containing a cement mixer, services being installed, outside storage of rubble and the refuse bins stored behind locked gates.

18. Mr Tyrell, for the Council, visited the appeal property on 29 May 2012 in connection with a smoke nuisance relating to the burning of builders waste and he observed that the downstairs rooms were empty, undecorated and had bare floorboards. He met the decorator inside the dwelling who said there were several weeks left to get the building ready for the new students. Mr Tyrell recalled that the kitchen had the carcasses of units, two having doors, a screed floor, cables sticking out of the walls and no signs of occupation.
19. The Council considers that the appellant has fabricated evidence to support his case, as he had done in another appeal<sup>3</sup> at Brookvale Road, Southampton, where he asked an electrical contractor to alter an electrical certificate.

#### *The Local Residents' case*

20. Signed and dated statutory declarations have been submitted by Rose Lindsey of 108 Alma Road, David Rounce of 107 Alma Road, John Dorney of 108 Alma Road, Simon Fitzjohn of 104 Alma Road and from Gordon Gillies of 30 Avenue Road, formerly Chairman of the Residents' Association. Messrs Gillies, Fitzjohn and Dorney also gave evidence on oath. In summary, the residents were aware of the significance of the critical date and took photos of the property on that date; there were no responses to knocks on the door; and no lights were observed being switched on and off. Mr Gillies frequently cycled passed the property and saw no activity relating to people living in the property.
21. From the critical date, renovation work continued and the appellant attempted to make the property appear occupied, either through the occasional parking of a car in the drive, although sometimes this was the car of a resident from elsewhere on the street, the same set of curtains would be moved from room to room and a light left on to deter squatters. In June the property was advertised to let and from July 2012, tenants moved in.

#### *Reasons*

22. The onus and burden of proof is on the appellant to demonstrate on the balance of probability that the change of use occurred before the critical date and was permitted development not in breach of planning control. The Court has held<sup>4</sup> that the applicant's own evidence does not need to be corroborated by independent evidence in order for it to be accepted. If the Council has no evidence of its own, or from others, to contradict or to otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous. In this appeal, evidence from neighbours raises doubts over the appellant's submitted evidence.

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<sup>3</sup> APP/D1780/C/09/2095052

<sup>4</sup> FW Gabbitas v SSE and Newham LBC [1985] JPL 630

23. The witness statements for the appellant's case are neither signed nor dated, some of which bear a similarity in wording in describing the state of the property to be 'newly decorated and fully carpeted', even though this was not the case on the critical date. No signed statements have been submitted by any of the tenants. At the hearing in July 2014, the appellant produced a signed letter from one of the tenants but this has not been submitted to the inquiry. Margarette Chingwaro's letter refers to the internal renovation works being completed by mid March 2012, when clearly it was not.
24. The Southern Water bill from 20 March 2012 to 30 June 2012 indicates that an average of 97 litres of water was used per day to be well below the efficient daily water usage for a 3 person house of 388 litres per day. The appellant explains the reduced level of water usage due to a number of factors, including one of the tenants working in London and the others working on farms who took showers at a gym, rather than at the appeal property. Whilst this is possible I find that it would more likely to have been improbable.
25. I do not disregard the bank records and other documentary evidence lightly, but in this case I am inclined to accept the Council's argument that such documents could have been created without tenants moving in. Furthermore it does not require the named person on a water bill or Council Tax bill to have notified the authority in person. I note also that the Council tax bill of £57 in the name of Zoltan Veraszto from 20 March 2012 for the appeal property was not paid and a further £800 Council Tax bill relating to 119b Alma Road also in the name of Zoltan Veraszto was also not paid.
26. I find that the people who were in the best position to observe whether the appeal property was occupied as an HMO from the critical date to be the local residents and in view of their signed and dated statutory declarations, I attach substantial weight to their evidence. On the other hand, the appellant's evidence and that of Mr McCarthy and Mr Khokar was given under oath but Mr McCarthy, whilst remembering details about the state of the property, could not recall the appearance of the tenants, who according to the appellant, included a short, bald, tattooed male (Zoltan Veraszto) a tall blond blue eyed female (Sabina Miron), and a shaven headed slim male (Matel Romana). Additionally, in reaching my conclusions, I also attach some weight to the fact that the appellant sought to change written evidence in the Brookfield Road appeal.
27. It may well have been the case that the appellant, in full knowledge of the implications of the Council's Article 4(1) Direction, may have intended to change the use of the dwelling to a Class C4 HMO before the critical date, but the facts indicate that, on the balance of probability, this was not achieved. Whilst the nature of the appellant's documentary evidence is such that it would normally be sufficient to satisfy the test, in this case, the evidence from the Council and the neighbours contradicts this and makes the appellant's version of events less than probable.
28. The appeal on this ground fails.

### **The appeal on ground (f)**

29. An appeal on this ground is that the steps required with the notice are excessive and lesser steps would overcome the objections.

30. The appellant considers that as the current use of the appeal property is a C4 occupied by 6 people, the notice ought to be amended to refer only to a 6 person HMO. Additionally the Council has not considered the impact of a C4 HMO with 3,4 or 5 tenants.
31. The appellant made no submissions in support of this ground of appeal at the inquiry.
32. Furthermore it appears that the appellant is seeking to argue the merits of the use, despite an appeal under ground (a) not having been made.
33. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
34. The appeal on this ground fails.

#### **The appeal on ground (g)**

35. The appellant considers that the time given to comply with the notice is too short as leases are granted to students for one year and any lease requires a two month notice period.
36. The original compliance period of five months was based on the end of student tenancies in June 2014. As this has now passed and the Council does not wish for the tenants being made homeless, the Council has suggested a compliance period coinciding with the termination date of the current tenancy, this being 30 June 2015. As this would avoid disruption to the student's accommodation, it would be reasonable to extend the compliance period to 6 months which will coincide roughly with the date suggested by the Council.
37. For the reasons given above I conclude that a reasonable period for compliance would be 6 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

#### **Formal decision**

38. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 5 months and the substitution of 6 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

*P N Jarratt*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mrs L Buckley-Thompson of Counsel

She called

Mr M Rai

Mr C McCarthy

Mr K Khokhar

Appellant

Elliots Estate Agents

KSK(Global)

### FOR THE LOCAL PLANNING AUTHORITY:

Mr G Harding, Solicitor

He called

Mr A Gregory BSc

Mr M Tyrell

Mr K Collymore

Senior Planning Officer

Environmental Health Technician

Enforcement Officer

### INTERESTED PERSONS:

Mr G Gillies

Mr S Dorney

Mr S Fitzjohn

Local resident

Local resident

Local resident

## **DOCUMENTS PUT IN AT THE INQUIRY**

- 1 Opening by Mrs Buckley-Thompson for the appellant
- 2 Bundle of enlarged photographs submitted by the Council