
Appeal Decisions

Hearing held on 13 September 2016

Site visit made on 13 September 2016

by Chris Preston BA (Hons) BPI MRTPI

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

Decision date: 12 October 2016

Appeal A: APP/B5480/C/16/3146056 79 Sheffield Drive, Romford RM3 9YB

- 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 Robert Deblinger against an enforcement notice issued by the Council of the London Borough of Havering.
 - The Council's reference is ENF/72/15.
 - The notice was issued on 29 January 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises into six self-contained studio flats with one communal kitchen.
 - The requirements of the notice are: (i) Cease using the property as six self-contained studio flats; and (ii) Remove; all cooking facilities, except one kitchen, all bathrooms, except one bathrooms [*sic*] (including w.c.) and one separate w.c., and all electricity meters/ fuse boxes apart from one, from the premises including all materials and debris associated with the works to return the property to its lawful use as a single family dwellinghouse.
 - The period for compliance with the requirements is 4 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/B5480/C/16/3146057 53 Sheffield Drive, Romford RM3 9YB

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 - The appeal is made by Mr Robert Deblinger against an enforcement notice issued by the Council of the London Borough of Havering.
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 - The period for compliance with the requirements is 4 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A:

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

Appeal B:

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

Application for costs

3. At the Hearing an application for costs was made by Mr Robert Deblinger against the Council of the London Borough of Havering. This application is the subject of a separate Decision.

Procedural Matters

4. The Hearing was held on 13 September 2016. I made accompanied site visits during the course of the event and was able to gain access to all of the rooms within each property, as well as viewing the associated rear gardens.
5. Appeals on ground (c) were submitted in relation to both cases. An appeal on ground (c) is made on the basis that there has not been a breach of planning control. An appeal on that ground is determined on the premise that the matters stated in the notice have, in fact, occurred. In this case, the alleged breach is the material change of use of the premises into six self-contained studio flats with one communal kitchen. Under ground (b), the appellant contends that the breaches of planning control in relation to each property have not occurred as a matter of fact. In his view, both properties were converted from family dwellinghouses into small houses in multiple occupation (HMOs) and the appeals on ground (b) are made on the basis that neither property has been used as self-contained flats, as alleged in the notice.
6. The appellant does not dispute that a change from a family dwellinghouse to six self-contained flats (as alleged in the notices) would have represented a material change of use for which planning permission would have been required. In other words, if a material change of use to use as six self-contained flats had occurred at the time the respective notices were served, it would have amounted to a breach of planning control. Thus, the basis of the ground (c) appeals is not correctly founded.
7. The Council accepts that a change from a use within Class C3 (dwellinghouses) to Class C4 (HMO) of the Town and Country Planning (Use Classes) Order 1987 (the UCO) would have been lawful, at the time the notices were served. Such a change would have benefitted from deemed planning permission under the terms of Class L(b) of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). An 'Article 4 Direction' covering the area where the two properties are located is now in place which has the effect of removing permitted development rights for a change from a use within Class C3 to a use within Class C4. However, that Direction came into force in July 2016, after the alleged change of use had taken place and does not apply retrospectively.
8. Thus, there is no dispute between the parties that a change of use to a HMO within Class C4 would have been lawful at the time of the alleged breach. The

dispute relates to whether there was a material change of use of the two properties to use as six self-contained flats. Those matters are properly considered under a ground (b) appeal, as opposed to ground (c) and that is how I shall consider the matter in my decisions below.

The appeals on ground (b)

9. In appealing against a notice on ground (b), the onus of proof falls on the appellant to demonstrate that the matters stated had not occurred at the time the notices were issued. The appropriate test is whether matters had occurred, on the balance of probabilities. The judgement in *Gabbitas v SSE & Newham LBC* [1985] JPL 630 makes clear that, if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there will be no good reason to dismiss an appeal on any legal ground, including ground (b), providing that the appellant's evidence is sufficiently precise and unambiguous.
10. The appellant has submitted the legal opinion of Reuben Taylor Q.C. at appendix 7 of his hearing statement, relating to the application of the UCO in respect of use classes C3 and C4. Whilst the advice was provided in relation to a different case, I find it to be an accurate resume of the definition between the two uses and no evidence has been presented that would lead me to doubt the validity of the conclusions reached.
11. As noted above, the change of use of a building to a use falling within Class C3 of the UCO to a use falling within Class C4 benefits from deemed planning permission by virtue of the terms of the GPDO. The UCO defines Use Class C4 as: *Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"*. The following clarification is given as to the interpretation of the Class: *For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.*
12. The two properties in question are not converted blocks of flats and, consequently, it is necessary to look at the terms of section 254 of the Housing Act in determining whether the use of a building falls as a HMO within Use Class C4. With reference to s254 a building would constitute a HMO if it meets the six conditions set out in the "standard test", as prescribed at s254(2). In order to meet those tests, the building should not contain one or more self-contained flats; it should be occupied by persons who do not form a single household; the accommodation should be occupied by persons as their main residence; their occupation of the living accommodation should constitute the only use of the accommodation; rents should be payable by at least one of the persons' occupation of the living accommodation; and two or more of the households who occupy the living accommodation share one or more basic amenities.
13. The evidence presented identifies that no more than six residents have occupied each property. The Council do not dispute that point. Those residents are unrelated individuals who do not form a single household; they occupy the buildings as their main residence; the properties are put to no other use; and rents are payable by each tenant.

14. Accordingly, key to the dispute between the parties in respect of the two appeals is whether either of the properties were in use as self-contained flats or whether the households shared one or more basic amenities. Basic amenities are defined in the Housing Act as a toilet, personal washing facilities, or cooking facilities. A self-contained flat is defined in s254(8) as a separate set of premises (whether or not on the same floor) which forms part of a building; either the whole or a material part of which lies above or below some other part of the building; and in which all three basic amenities are available for the exclusive use of its occupants.
15. Each of the six units of occupation in both dwellings contains an en-suite bathroom with a toilet and personal washing facilities; two of the three basic amenities defined by the Housing Act. The dispute between the Council and the appellant is therefore the extent to which the units shared kitchen facilities and, more specifically, whether individual units contained their own cooking facilities, such that residents of those units were not reliant upon the shared cooking facilities that are available in each of the buildings.
16. The terms of the Housing Act are such that a fine line exists between the definition of a self-contained flat and a HMO. In situations where all three amenities were contained within a single unit, with its own lockable door, it would fall within the definition of a self-contained flat. Where individual units contain two of the three basic amenities but share cooking facilities, they would fall within the definition of a HMO. As noted within the legal opinion provided it would be relatively easy for a use to switch between one definition and the other. For example, if a tenant were to bring a hob and microwave into a unit, such that cooking facilities were provided, that could be sufficient for a specific unit to move from one class to another.
17. The Council note that each property is registered by the Valuation Office (VO) as six separate flats, as opposed to a HMO. However, it is not clear that the VO uses the same criteria in assessing whether a unit is a self-contained flat, as that prescribed by the Housing Act. Three very similar appeals, made by the same appellant against the London Borough of Havering, were determined on 28 June 2016¹. Within his decision letter, the Inspector referred to VO advice to the effect that separately let rooms within HMOs that have their own shower and wc but share other facilities may still be given their own banding for Council Tax purposes. Consequently, the fact that individual units may be banded as separate flats for tax purposes has little bearing on my conclusions in respect of whether the buildings were in use as flats or HMOs in planning terms.
18. With regard to the above, I consider that the primary factor in determining whether the alleged breaches took place centres around the extent to which cooking facilities were shared within the two properties. I shall consider the evidence in relation to each in turn.

Appeal A – 79 Sheffield Drive

19. As noted above, the property has been divided into six rooms, each containing its own en-suite toilet and shower. At ground floor level, a shared kitchen is available with two cookers, a sink, and other facilities, as depicted in the photographs appended to the Council's statement. At the time of my visit, no

¹ Appeal references: APP/B5480/C/15/3137773, 3137866 & 3137867

cooking facilities were available in any of the rooms but it was clear that residents chose to store food, cutlery and pots and pans within the kitchen style units that were available in each unit. Steel sinks were also provided, within small work tops situated close above and/or below the storage units. Fridges were also contained within each room. However, the issue in relation to an enforcement appeal is whether the breach had occurred at the time the notice was served, as opposed to whether it was on-going at the time the appeal was heard.

20. Within its hearing statement, the Council states that each studio room contained a small kitchen with a base unit, electric oven and twin hob, stainless steel sink and a fridge². They also state that 'it was difficult gaining access to the individual flats but there was a fully functioning kitchen area within each studio'. The photographs appended to the statement only show the internal space of one of the units (which one is not clear) and there are no cooking facilities in that unit which was unoccupied at the time. At the Hearing, the Council accepted that paragraph 9.1.6 of its statement was inaccurate and had been inserted in error as a result of 'cut and pasting' from another report. Moreover, Mr Jones, representing the Council, acknowledged that they had been unable to gain access into any of the rooms in between the point at which they were first occupied and the time that the enforcement notice was served.
21. Moreover, Mr Jones stated that the Council had taken account of what they had witnessed in rooms at No. 53 Sheffield Drive in reaching a conclusion as to the alleged breach at No. 79. I shall consider the evidence in relation to No. 53 below but, whatever the Council witnessed at that property, could not be taken to mean that the same situation would apply to No. 79; a different property with different tenants. It seems to me that there was no basis to assume the same conditions would apply in No. 79.
22. Whilst it may be difficult to arrange access to a property without giving prior warning, and thus giving the potential to remove any cooking facilities, it appears to me that there must be an onus on the Council to visit the units in question and provide evidence in support of the alleged breach. I find it difficult to attach weight to assertions based upon assumptions about what facilities may be available within individual units.
23. Consequently, no evidence has been provided by the Council to show that cooking facilities were available in any of the individual units. They note that the individual tenancy agreements do not seek to prevent tenants from bringing in cooking facilities. Whilst that may be the case, it does not amount evidence that tenants did, in fact, have cooking facilities within their rooms. The appellant maintains that cooking facilities have not been provided in any of the individual rooms, although little of substance has been presented to support those claims.
24. Mr Mullen, a resident at No. 79, spoke at the Hearing. He confirmed that he has lived at No. 79 since approximately July or August 2015, shortly after the property was converted from a family dwelling, and stated that, to the best of his knowledge, no cooking facilities have been available within his unit, or any of the rooms at the property since that time. Whilst that evidence was not given under oath I have no reason to doubt the honesty of his account – Mr Mullen was not at the Hearing to speak in support of the appellant but as an

² Paragraph 9.1.6

interested observer and resident. Mr Jackman, another resident at No. 79 who spoke at the Hearing, did not dispute Mr Mullen's version of events.

25. I also accepted the submission of a letter at the Hearing on behalf of Mr Manton who resides at Flat 1 at No. 79. Mr Manton was not present himself. That letter indicates that a hot plate had been provided in his flat by the landlord and that he also has his own halogen cooker. He indicates that he stopped using the hot plates 'sometime in February'. Consequently, the evidence before me presents a mixed picture of the cooking arrangements at No 79. One resident indicates that cooking facilities were present in his room until February but Mr Mullen indicated that no facilities had been provided in his room, or any others to his knowledge.
26. Thus, whilst the evidence before me is limited and, to some degree conflicting, it does not indicate that each of the six rooms was in use as a self-contained flat at the time the notice was served. I have no reason to doubt the evidence of Mr Mullen who suggested that no cooking facilities have been provided in his unit or other units as far as he was aware. Whilst Mr Manton may have had cooking facilities within his unit at the point the notice was served, it does not follow that the same was true of the other rooms. The oral evidence of Mr Mullen and Mr Jackman would suggest that the other units did not have their own cooking facilities and there is nothing before me to indicate otherwise. Consequently, it is likely that the majority of the units shared cooking facilities within the communal kitchen that had been provided. In other words, on the balance of probability, the evidence before me indicates that the alleged breach of planning control to use as six self-contained flats had not occurred as a matter of fact.
27. In view of the above, I conclude that Appeal A on ground (b) should succeed and I shall quash the enforcement notice as a result.

Appeal B – 53 Sheffield Drive

28. The internal layout of No. 53 is broadly the same as that at No. 79 with regard to the number of individual rooms and the fact that a shared kitchen is available on the ground floor. Akin to No. 79 there no cooking facilities were in evidence in any of the individual units at the time of my site visit but each unit contained cupboards for the storage of foodstuffs and utensils, a fridge and a small worktop. Within their appeal statement the Council state that each of the studio rooms had a small kitchen, equipped with a base unit, wall unit, electric oven, twin hob, stainless steel sink and fridge.
29. The photographs appended to the Council's statement, taken on 25 November 2015, show the internal space in three of the rooms, none of which are numbered. No cooking facilities are evident in one of the rooms which appears to have a fish tank on the work surface adjacent to the sink (the Council suggested that this may be room 2 at the hearing). The photographs clearly show cooking facilities in two rooms, one with what appears to be either a microwave or a surface mounted electric oven, and the other with a hot plate with two rings situated on the work surface next to the fridge.
30. It is not clear if cooking facilities were provided within other rooms at that point in time and the Council acknowledged at the Hearing that they had not gained access to the other three rooms. Given that point, it is not clear how the Council concluded that all six of the units were self-contained flats. No

evidence has been provided by them as to the cooking arrangements for the other three units. In that respect, the Council's case appears to be based upon assumptions as to whether cooking facilities were available in three of the rooms. I can attach little weight to the evidence in that regard. Based on the information gathered by the Council at their site visit there were no cooking facilities in one of the three units to which access was gained. It follows that resident of that unit would have needed to use the cooking facilities in the shared kitchen to prepare meals. That, of itself, would indicate that the property was not in use as six self contained flats.

31. It is clear that some of the units had access to cooking facilities at the time of the Council's visit. That evidence is supported by information provided by individuals who were living in the property at the time. A letter submitted by Ms Sarah Forester, of flat 5, refers to the cramped conditions within the property and the fact that arguments were frequent, particularly in relation to use of the shared kitchen due to inadequate space for multiple people to prepare food at the same time. That does indicate that residents were sharing the cooking facilities, however unsatisfactory they considered them to be. Ms Forester also notes that residents used to cook in their own rooms until the cooking facilities were removed by the letting agent prior to Christmas 2015. That evidence tallies with that of Mr Reid, another resident at No. 53, who stated at the Hearing that cooking facilities had been provided in rooms but that they had subsequently been removed by the landlord. He was unsure as to the exact date when this occurred.
32. The letter from Ms Forester is not a sworn testimony and Mr Reid's comments were not made under oath. However, both presented information independently and clearly did not do so in order to support the case of the appellant or the Council. Both were critical of the standard of accommodation provided. Consequently, I have no reason to doubt that the information given was accurate and genuine.
33. The appellant maintains that there were no cooking facilities in any of the units at the time the notice was served on 29 January 2016. That would correspond with the information provided in the letter from Ms Forester. The Council did not gain access into any of the individual units between 25 November and 29 January when the notice was served. From the limited evidence before me, it seems likely that any cooking facilities within individual rooms had been removed prior to the service of the notice, as suggested by the appellant and Ms Forester. It is possible that action was prompted by the Council's visit in November 2015. Whilst the appellant has provided little of substance to substantiate the claims that the breach had not occurred, his evidence as to the sequence of events is supported by the information provided by third parties.
34. Consequently, at the time the notice was served, it is likely that the property was in use as a HMO within Use Class C4. Even if I were wrong on that point, and cooking facilities had been retained in some of the rooms, the evidence does not suggest that the each of the six rooms was in use as a self-contained flat, as alleged in the notice. At the time of the Council's visit in November 2015 cooking facilities were not present in at least one of the units and Ms Forester notes that her hot plate was removed shortly after that point. Thus, at the very least, some of the residents within the property shared cooking facilities at the point at which the notice was served.

35. Therefore, on the balance of probabilities, I consider that the matters stated in the notice had not occurred at the time the notice was issued. In other words, the property was not in use as six self-contained flats. Accordingly, Appeal B succeeds on ground (b) and I shall quash the notice.

Conclusion

36. For the reasons given above, I conclude that both appeals should succeed on ground (b). Accordingly, the relevant notices will be quashed.

37. I am mindful that a number of interested parties have raised issues about the impact of the use of the properties in the local area and the standard of accommodation provided. However, those matters would be relevant to an appeal on ground (a) relating to the planning merits of any development. An appeal on ground (b) has no regard to the planning merits of the alleged breach but is essentially a legal ground of appeal that is concerned with whether the matters stated in the notice have occurred. For the reasons given I have concluded that the alleged breaches of planning control have not occurred in relation to both properties. In these circumstances, the respective notices will be quashed and it is unnecessary for me to consider the ground (a) appeal in relation to Appeal B or the appeals on grounds (f) and (g) in relation to Appeals A and B.

Chris Preston

INSPECTOR

