
Appeal Decisions

Site visit made on 12 December 2016

by **K R Saward Solicitor**

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

Decision date: 04 January 2017

41 Ramsons Avenue, Conniburrow, Milton Keynes MK14 7BB

Appeal A: APP/Y0435/C/16/3153240

- 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 Phillips against an enforcement notice issued by Milton Keynes Council.
- The enforcement notice was issued on 25 May 2016.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos (2) & (4) of a planning permission Ref 07/00511/FUL granted on 27 July 2007.
- The development to which the permission relates is change of use from residential (use class C3) to house in multiple occupancy. The conditions in question are Nos (2) & (4) which state:
 - (2) *Unless otherwise agreed by the Local Planning Authority the house in multiple occupation hereby permitted shall at no time be operated with more than 4 lettable rooms.*
 - (4) *The garage shown on the submitted plans, including the garage door, shall hereafter be retained as a permanent feature of the development for storage and parking of a car and/or motorcycle(s) and/or bicycle(s).*
- The notice alleges that the conditions have not been complied with in that the integral garage door to the front of the property has been removed, the resultant gap bricked up and a window installed and the internal space has been converted to a habitable room to provide residential accommodation.
- The requirements of the notice are:
 - i) Permanently cease the use of the original integral garage space as a habitable room.
 - ii) Remove the UPVC window and brickwork from the former garage door opening and reinstate a garage door complete with a surrounding frame in the resultant space.
- The period for compliance with the requirements is i) 2 months, ii) 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(e),(f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed. Planning permission is granted without compliance with the disputed conditions in the terms set out below in the Formal Decision.

Appeal B: APP/Y0435/W/16/3153237

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mark Phillips against the decision of Milton Keynes Council.
 - The application Ref 16/00667/FUL, dated 1 March 2016, was refused by notice dated 28 April 2016.
 - The application sought planning permission for change of use from residential (use class C3) to house in multiple occupancy without complying with conditions attached to
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- planning permission Ref 07/00511/FUL, dated 27 July 2007.
- The conditions in dispute are Nos (2) & (4) which state that:
 - (2) *Unless otherwise agreed by the Local Planning Authority the house in multiple occupation hereby permitted shall at no time be operated with more than 4 lettable rooms.*
 - (4) *The garage shown on the submitted plans, including the garage door, shall hereafter be retained as a permanent feature of the development for storage and parking of a car and/or motorcycle(s) and/or bicycle(s).*
 - The reasons given for the conditions are:
 - (2) *To prevent the intensification of use of the property, which would be likely to have adverse effects upon the amenities of the area contrary to Policy H10 if the Milton Keynes Local Plan 2001-2011.*
 - (4) *To prevent the intensification of use of the property which would be likely to have adverse effects upon the amenities of adjacent residents and to ensure the retention of the garage as a parking and/or storage facility.*

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Mark Phillips against the Council. This application is the subject of a separate Decision.

Procedural Matters

2. The Council failed to attend the pre-arranged site visit at the appointed time. With the consent of the appellant who was present, I undertook the site visit on the basis of an access only visit. No discussion on the merits took place. The Council was subsequently notified and has raised no objection.
3. Whilst the application in Appeal B is expressed in terms of proposed development, it is clear from the submissions made in this appeal that the application was retrospective in nature. That being so, Appeal B should be considered as having been made under s.73A, that is refusal of an application to retain development without complying with conditions. This is a technical matter and does not prejudice any party as their respective cases have been made on this basis.

Background

4. The appeal property is a three storey mid-terrace located in a predominantly residential area. It is in use as a House in Multiple Occupation (HMO) for which planning permission was granted on 27 July 2007¹. Conditions were attached to that permission to restrict the use of the property to no more than 4 lettable rooms and to retain the integral garage for parking/storage purposes. The garage door has been removed and a window inserted in a brick surround and the interior converted into habitable accommodation as a fifth lettable room with en-suite bathroom.

Appeal A – ground (e)

5. Ground (e) concerns whether a copy of the enforcement notice was properly served as required by section 172(2) of the 1990 Act. This provides that a copy

¹ pursuant to Council Ref 07/00511/FUL.

of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person with an interest in the land. In a ground (e) appeal the burden of proof is firmly on the appellant and the test is the balance of probability.

6. The appellant suggests that whilst he received a copy of the notice as the owner, it is unclear whether the tenant of the former garage received the copy addressed to 'The Occupier, Ground Floor (Garage) Room'. The appellant further maintains that the other occupants of the main building should also have been served.
7. Effective service in compliance with section 172(2)(a) can take place by addressing a copy of the notice to 'the occupier' without providing a name and by leaving it at or sending it to the address, as provided by section 329(2). Details on the reverse of the notice record that the occupier has been served at the address. There is no evidence to suggest that service did not take place. I am satisfied that the occupier of the former garage was properly served.
8. The notice is expressed to relate to No 41 Ramsons Avenue and the whole site is outlined on the attached plan. However, the requirements very clearly only concern the former garage. It is this part of the property that is attacked by the notice. It does not relate to the wider unit.
9. Pursuant to section 172(2)(b), a copy of the notice must also be served on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. Thus, it was for the Council to judge whether it considered the other occupiers would be materially affected. The Council says that the other 'tenants' only have an interest in the property as far as the tenancy of their rooms upstairs and are not prejudiced by any changes that are required to be made to the ground floor former garage. On the face of it, that is a reasonable explanation.
10. I have no details on whether any of those occupants had use of the garage prior to its conversion. If so, they could potentially be indirectly affected by the prospect of re-gaining use of the garage if the notice is upheld. They may also be affected in terms of the number of people with whom facilities are shared. Nonetheless, what is clear is that neither the appellant nor the other occupiers will have been substantially prejudiced. An appeal has been lodged and any interests will therefore be protected. So, even if there were any failure of service, I would disregard it under my powers in section 176(5) of the Act.
11. The ground (e) appeal fails.

Appeal A – ground (c)

12. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The appellant argues that the works to convert the garage to living accommodation do not constitute 'development' for the purposes of the 1990 Act. This is on the basis that works which do not materially affect the external appearance of the building are excluded from the definition of 'development' under section 55(2)(a) of the Act.
13. However, the notice does not allege that those works are development. Rather, it is the conversion having taken place in breach of condition which is attacked by the notice. Whether or not the works fall within section 55(a)(a), there is clearly a breach of condition (4) of the 2007 planning permission which explicitly

requires the garage, including the garage door, to be retained as a permanent feature.

14. The ground (c) appeal fails.

Ground (a) of Appeal A, the Deemed Planning Application and Appeal B

Main Issues

15. The main issues are:-

- the effect on the character of the surrounding area and the concentration of HMO's; and
- the effect on parking provision and highway safety in the area.

Reasons

Character and concentration

16. The lawful use of No 41 is as a HMO with no more than 4 lettable rooms.

17. Saved policy H10 of the Milton Keynes Local Plan 2001-2011 (LP), adopted 2005, says that planning permission will be granted for the creation of HMO's subject to fulfilment of specified criteria. The Council has not raised any concerns with regard to noise and disturbance, and adequate outdoor space provision for bin storage and drying area as set out in criteria (i) and (iii). However, the Council objects on criteria (ii) and (iv). In the same way that the parties have done so, I shall deal firstly with criterion (iv). This stipulates that there must not be an adverse effect on the character of the surrounding area or lead to an unacceptable concentration of flats or HMO's in the area.

18. Further details on how the Council anticipates this criterion being applied is contained in its 'Houses in Multiple Occupation Supplementary Planning Document' (SPD) which was adopted in 2012. This specifies that HMO's should not exceed 35% of the total number of properties within a 100m diameter buffer of the application property. For the purposes of the SPD, HMO's are counted by reference to the number of bedrooms. So, in this instance there exists a 4 bedroom HMO and permission is sought for 1 extra bedroom.

19. In its Appeal Statement the Council says that there are currently five other HMO's within a 50m radius and it calculates the concentration as 48%. Further particulars are contained in the Council Officer's delegated report which refers to 32 known HMO bedrooms of which 16 are lawful. Of the remaining 16, one is the room subject to this appeal, 3 others exceed the number given planning permission, 5 are subject to open enforcement cases and 7 have no planning or enforcement history.

20. The appellant takes issue with the Council including HMO bedrooms without the benefit of planning permission within its calculations. The parties agree that if only the 16 rooms known to be lawful are taken into account then the 1 room applied for would take the total to 24% and thus well under the 35% figure set out in the SPD. The Council draws support for its approach from two previous appeal decisions.

21. The first case² supported the inclusion of 1 bedroom flats within the calculation,

² Appeal Ref: APP/Y0435/A/13/2203897 dated 3 January 2014

whereas here the Council acknowledges that there are no such flats within the 100m diameter buffer. In that case, there was only one HMO included within the Council's calculations that was unlicensed and did not benefit from planning permission. The Inspector noted that even if that HMO were to be excluded from the calculation there would be approximately 40%, which was still above the threshold of 35%. The Inspector went on to refer to that unauthorised HMO existing as a matter of fact in the context of establishing whether a family dwellinghouse had become 'sandwiched' between two HMO's.

22. In the second case³, whilst the Inspector acknowledged that HMO's which exist should be taken into account whether or not they are licensed or lawful in planning terms, the appeal concerned a new 6 bedroom HMO where the concentration would be taken up to 72%.
23. In both appeals, the nature of the development and concentration of HMO's differed in material respects from the current appeal. Unlike the scenarios in those appeal decisions, this is not a new HMO but one that has been established for some years and the threshold is only exceeded if unauthorised HMO's are brought into the equation.
24. The SPD policy explains that an over concentration of any one particular type of housing or household would not be in-line with the aim of creating mixed communities. In setting a threshold above which no further HMO's will generally be granted planning permission, a balance needs to be struck between the need to maintain a mix of dwelling types and reducing the overall supply of HMO's in the Council's area. The supporting text to Policy H10 reinforces that one of the critical factors is whether a conversion leads to an unacceptable proliferation of HMO's in an area.
25. In this instance, the development causes no loss of existing housing to a different type and so there is no impact upon the mix of accommodation available in the area. It merely adds one room to a lawful HMO without upsetting the balance of properties required to create a mixed community.
26. Notably, the SPD states that the Council will use the 35% figure as a guide to when the concentration of HMO's is too great. The character of the surrounding area will also be taken into account, but generally concentrations below 35% will be more acceptable. The threshold is not therefore set in stone, but affords a guide indicating that more or less than 35% may be acceptable depending on the circumstances.
27. The SPD goes on to say that in assessing applications, records of HMO's from Housing and Planning records will be used which includes all licensed HMO's, permitted HMO's and those that do not require a license or planning permission but meet the definition of a HMO. No reference is made to unauthorised HMO's, whether in housing or planning terms, being included within the calculation. The view could therefore be taken that they should be omitted.
28. In any event, the current calculation of 48% cannot be a firm figure given the various uncertainties including outstanding enforcement cases and the status of some other HMO's being unknown. The figure could easily change as events unfold and greater clarity emerges. It would not take many rooms to be successfully enforced against for the figure for all existing HMO's to drop

³ Appeal Refs: APP/Y0435/C/14/2217068 & 2217067 dated 17 March 2015

beneath 35%.

29. The principle of a HMO in this location has already been established when planning permission was given in 2007. At that time there were far fewer HMO's in the area than now, but any change to the character of this particular property will already have occurred. The SPD identifies the profile of a HMO occupant as typically younger and more transient than other residents within a community. The conversion of the garage into another bedroom is unlikely to bring about any further change of character by altering the profile of occupant from that which exists already.
30. Therefore, I find no adverse effect on the character of the surrounding area.
31. From the information before me, I am not persuaded that there is conflict with criterion (iv) of LP Policy H10 in terms of the concentration of HMO's given that the 35% restriction on HMO rooms in a 100m diameter buffer provided in the SPD is a guide only and there are uncertainties over the status of several existing HMO rooms. This is in circumstances where the figures are dependant on the approach taken to the calculations which can be variable. It is not a case where the threshold is exceeded whichever calculation is applied.
32. Even if this development does offend criterion (iv) there are a number of significant factors arising in this particular case which weigh in its favour. As set out above, the principle of a HMO in this particular location has already been established with no impact on the housing mix. The development is one room only which has a small impact on the figures. When taking into account the whole of the circumstances described in more detail above, I find that any policy conflict in this case is outweighed by the other considerations.

Effect on parking provision

33. Criterion (ii) of LP Policy H10 requires off-street parking and manoeuvring space to be provided to meet the Council's standards, or if on-street parking is necessary, it would not result in unacceptable congestion in the surrounding area.
34. The appeal property is located within Zone A for the purposes of The Parking Standards Supplementary Planning Document, January 2016, where a HMO now requires 0.5 spaces per bedroom. Rounded up to the nearest whole figure, one extra space should be provided to take account of the additional bedroom.
35. Prior to the conversion, there would have been a single garage providing off-street parking, but garages do not count as parking spaces within the SPD. As such, a parking space cannot be regarded as lost. The lack of any on-site parking has not therefore changed, but the development has resulted in an increase in need for parking provision under the SPD by adding a fifth bedroom. The HMO SPD advises that where the parking standards are not met, an application for a HMO will normally be refused unless it can be demonstrated that the shortfall can be satisfactorily accommodated within properly marked, or laid out, parking spaces in the highway fronting the site.
36. There are parking bays along one side of the highway in Ramsons Avenue and within a central parking area located between the rows of terraces and those opposite. A residents' parking scheme is in operation with parking otherwise restricted to 30 minutes. At the time of my site visit during the morning there were ample spaces available.

37. Undoubtedly, demand will increase during the evenings and at weekends. The Council refers to having undertaken two visits, one in the morning and one at 1730 hours during March 2016 when there was found to be very little capacity within the on-street bays and communal parking areas. The appellant has undertaken his own study at various times of day indicating to the contrary.
38. The Council says that its impression is supported by comments from the Highways Engineer who had previously raised concerns over this part of Conniburrow. However, if the Highways department had significant concerns, then it would reasonably be anticipated that they would have been expressed in writing along with details. Without any form of written elaboration, it seems to me that the parking bays are not overly congested to the extent that the additional parking demand created from the development could not be accommodated by on-street parking. I am also mindful that Zone A is defined within the HMO SPD as having good access to facilities and availability of support networks and public transport. As such, the likelihood of car dependency and associated demands for parking may be reduced.
39. I am not satisfied that the development places unreasonable demands upon the availability of parking in the area to the detriment of highway safety to cause conflict with criterion (ii) of LP Policy H10 or the SPDs.

Other Matters

40. Concerns have been expressed by an occupier in the terrace opposite on various other matters. The enforcement regime is not intended to be punitive and the fact that the conversion is complete cannot impact upon my consideration of the appeal which must be decided on the individual facts and merits.
41. No evidence of existing social issues has been supplied and if they were to arise, there is other legislation in force to tackle such problems. The possibility of anti-social behaviour is not a factor which influences my decision.
42. It follows that with more occupants, there could be more noise. However, it is difficult to see how occupancy of one more room will influence noise levels and frequency to such a degree so as to become unacceptable. Whilst the HMO is in a terrace, there are car ports on either side of the new ground floor room rather than habitable accommodation. This reduces the likelihood of any noise causing disturbance to neighbours. The adjacent property at No 43 is said to be another HMO. The Council's Environmental Health Officer has confirmed that there have been no noise complaints in the past. Furthermore, Building Control has confirmed that party walls have been insulated to satisfy the Council that appropriate noise insulation is in place. I have no reason to disagree. From the information before me, I have no cause to believe that the development poses an unreasonable risk of noise and disturbance.
43. Without specific details, I have no reason to conclude that either the use or increase in activity generated from one additional room will present unreasonable interference with any other neighbouring amenities.

Conclusion on Appeal A, ground (a), the deemed planning application and Appeal B

44. For the reasons given above, and having regard to all other matters raised, I conclude that Appeal A should succeed on ground (a) and that the enforcement notice should be quashed. I propose to discharge the conditions the subject of the notice, and to grant planning permission, on the application deemed to have

been made, for the change of use previously permitted without complying with the conditions enforced against. The appeal on grounds (f) and (g) in Appeal A do not therefore fall to be considered. Appeal B should also succeed and planning permission be granted for the development in planning permission Ref 07/00511/FUL without compliance with condition nos (2) and (4).

Conditions

45. The Council has requested a new condition to address cycle storage to accord with The Parking Standards SPD which has been introduced since the original grant of planning permission. The standards require 1 cycle parking space per 2 bedrooms. I consider such a condition is reasonable and necessary to meet the SPD given that the need arises from the creation of an additional room. At my site visit, I noted that sufficient space is available within the rear garden area to accommodate such provision with access to the highway via a pedestrian gate in the rear boundary.
46. Where an appeal against a notice to enforce conditions is allowed on its merits but a new condition is required, the disputed conditions can be discharged under powers within section 177(1)(b) of the Act and the new condition substituted under section 177(4). The deemed planning application made under section 177(5) and the application for planning permission under section 73A also provide for the grant of a fresh permission subject to conditions.

Formal Decisions

Appeal A: APP/Y0435/C/16/3153240

47. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, the condition Nos (2) and (4) attached to the planning permission dated 27 July 2007, Ref 07/00511/FUL, granted by the Milton Keynes Council are discharged and the new condition below is substituted. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for change of use from residential (use class C3) to house in multiple occupancy at 41 Ramsons Avenue, Conniburrow, Milton Keynes MK14 7BB without complying with the said conditions but subject to the other conditions attached to that permission and to the following new condition:

- (1) The use of the original integral garage space as a habitable room shall cease, the UPVC window and brickwork from the former garage door opening shall be removed and a garage door complete with a surrounding frame in the resultant space shall be reinstated, within 3 months of any failure to meet any of the requirements set out in (i) to (iv) below.
 - i) Within 3 months of the date of this decision, or such other period as the Local Planning Authority may agree in writing, a scheme shall be submitted in writing to the Local Planning Authority for its written approval. The scheme shall include details, including scale drawings, of the provision of secure and covered cycle storage facilities together with a timetable for the provision and retention of each element of the scheme.
 - ii) Within 10 months of the date of this decision, the scheme referred to above shall have been approved by the Local Planning Authority or, if

the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted by, the Secretary of State.

- iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been finally approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and the approved scheme shall thereafter apply.

Appeal B: APP/Y0435/W/16/3153237

48. The appeal is allowed and planning permission is granted for a change of use from residential (use class C3) to house in multiple occupancy at 41 Ramsons Avenue, Conniburrow, Milton Keynes MK14 7BB in accordance with application Ref 16/00667/FUL, made on the 1 March 2016 without compliance with conditions numbers (2) and (4) previously imposed on planning permission Ref 07/00511/FUL dated 27 July 2007 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:

- (1) The use of the original integral garage space as a habitable room shall cease, the UPVC window and brickwork from the former garage door opening shall be removed and a garage door complete with a surrounding frame in the resultant space shall be reinstated, within 3 months of any failure to meet any of the requirements set out in (i) to (iv) below.
 - i) Within 3 months of the date of this decision, or such other period as the Local Planning Authority may agree in writing, a scheme shall be submitted in writing to the Local Planning Authority for its written approval. The scheme shall include details, including scale drawings, of the provision of secure and covered cycle storage facilities together with a timetable for the provision and retention of each element of the scheme.
 - ii) Within 10 months of the date of this decision, the scheme referred to above shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been finally approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and the approved scheme shall thereafter apply.

KR Seward

INSPECTOR