
Appeal Decision

Site visit made on 9 January 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/N4720/C/16/3159857

Railway House, Balm Road, Leeds, LS10 2HU

- 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 Act).
 - The appeal is made by Mr Paul Rothwell (Empire Property Concepts) against an enforcement notice issued by Leeds City Council.
 - The notice was issued on 8 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of public house to 12 self-contained flats.
 - The requirements of the notice are:
 - (A) Cease the use of the premises as 12 self-contained flats;
 - (B) Remove the kitchen sinks, cooking facilities and kitchen units and work surfaces from each of the 12 flats and make good the walls from where they have been removed;
 - (C) Make alterations to the ground floor of the premises so that the layout accords with planning approval 12/02657/FU which will include the removal of the additional self-contained unit created on the ground floor and replace it with the approved kitchen.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by:
 - (i) deleting all the words after the word “flats” in section 5(B);
 - (ii) deleting all of section 5(C).
2. Subject to the variations the appeal is dismissed and the enforcement notice is upheld.

The appeal site and background

3. Railway House is a detached former public house in a mixed area of residential, office, and other land uses.
 4. Planning permission subject to commencement within three years was granted in September 2012 for the *Change of use of the public house to form 11 bedsits/house in multiple occupation including first floor side extension and external alterations*.
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The appeal on ground (b)

5. The ground of appeal is that the matters referred to in the alleged breach of planning control in the notice have not occurred as a matter of fact. The burden of proof in legal grounds such as this is on the appellant, and the test of the evidence is on the balance of probability.
6. It is clear to me from both my visit to the appeal site and from all other evidence before me, that since the works of converting the public house first began further internal alterations relevant to the use of the building have been carried out during 2016, including after the issue of the enforcement notice ("the notice"). Indeed the appellant confirms the continuing works by letter¹. However, a ground (b) appeal must be determined on the basis of any new use as implemented and enforced against.
7. The appellant acknowledges that the conversion of the public house to residential use comprised an internal layout which included twelve habitable units. In addition, the Council state² that each of the units was provided with its own working fitted kitchen incorporating base and wall units, counter top, sink and drainer, fridge and counter top cooker, along with living space and en-suite washing and toilet facilities. Although I accept the situation has now changed over time, there is no substantive evidence from the appellant that the layout and facilities within each unit were not originally provided as described by the Council. The appellant also refers to negotiations with the Council to *remove the cupboards from the larger rooms and the cooking facilities and sinks from all rooms*, which seems to some degree to reflect the Council's description.
8. Given the above factors, I find on the balance of the evidence that the occupiers of each unit had their own toilet, personal washing facilities, and cooking facilities.
9. In arguing that the use of the property was implemented as a House in Multiple Occupation (HMO) the appellant points to a communal kitchen on each floor, the shared use of an external amenity area, refuse bins, notice boards, laundry facilities, dining room, and utility room. However, there is no clear evidence that the laundry facilities, dining room, and utility room were present when the use was first implemented. I also note that tenants have a single postal address and share utility bills, although there is no evidence provided of which utility bills are shared, or whether that has always been the case since the building was first occupied.
10. Reference is also made to section 254(2)(f) of the Housing Act. It sets out that in order to be a HMO a building must, amongst other requirements, contain two or more households who occupy the living accommodation and who share one or more "basic amenities"; those are: a toilet, personal washing facilities, and cooking facilities. There is no dispute in this case that the occupiers do not share the first two of those, hence the issue here relates to cooking facilities.
11. Section 254(2)(f) is only one condition within a number of 'tests'; all of which are required to be met under section 254(1) for a building to qualify as a HMO. Another condition, at section 254(2)(a), is that the building must consist of one or more units of living accommodation **not** (my emphasis) consisting of a

¹ DLP letter to PINS dated 19.12.16

² Council's Statement, paras. 5.3-5.4

self-contained flat, or flats. Section 254 defines "self-contained flats" as a separate set of premises (whether or not on the same floor) in which all three of the "basic amenities" **are available for the exclusive use of its occupants** (my emphasis).

12. During my visit to the appeal site I saw that some of the units were unoccupied, but at least two of them still had cooking facilities in the form of counter-top microwave oven, toasters, and grill. Those are without doubt quite limited cooking facilities. However, while I note the provision of communal kitchen facilities in the property, I have already found previously that each unit had its own cooking facilities when the residential use was implemented. As such, it follows that each unit had all three of the "basic amenities" *available for the exclusive use of its occupants*. Thus when the use changed from public house to residential use each unit was a self-contained flat in terms of the Housing Act, and hence the "standard test" at section 254(2)(a), for the building to qualify as a HMO in section 254(1), is not met.
13. I am reinforced in my view that each unit was occupied as a separate dwelling house (self-contained flat) by the Court's judgment in *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307, where it was held that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the *facilities* required for day to day private domestic existence. I consider that to be the case here.
14. The appellant refers to a 2012 appeal decision³ in Brent. In making an assessment in that case as to whether the use of the dwelling house had changed to a HMO, reliance was made on the guidance in Circular 10/97. However, the Circular was withdrawn in 2014. In addition, I am not convinced that the circumstances and details of that case are directly comparable to this case. It does not carry any significant weight in support of the appeal.
15. For all the above reasons I conclude, on the balance of probability, that the change of use to twelve self-contained flats occurred as a matter of fact.
16. The appeal on ground (b) therefore fails.

The appeal on ground (c)

17. The ground of appeal is that those matters (i.e. the matters stated in the notice which give rise to the alleged breach of planning control), if they occurred, did not constitute a breach of planning control.
18. I have already found that the change of use from public house to twelve self-contained flats occurred. As such, it was a material change of use constituting 'development' within the meaning of section 55 of the Act. There are no permitted development rights for such a change of use and therefore it required planning permission.
19. The 2012 planning permission was granted for the change of use to an eleven unit HMO. However, the change of use was to a different use as twelve self-contained flats, and with significant variations to the approved plans, hence the planning permission was never implemented. Since no planning permission existed for the material change of use to twelve self-contained flats it constitutes a breach of planning control.

³ APP/T5150/C/12/2173635

20. The appeal on ground (c) therefore fails.

Other matters

21. Some of the evidence submitted in support of the appeal relates to the use of the property in the context of further internal works the appellant has more recently undertaken, and the merits of retaining those and controlling the nature of the occupancy and use of the building. However, the merits of any proposed use and layout are not matters before me to consider in this appeal. They should be subject of a planning application to the Council in the first instance.

The appeal on ground (f)

22. The ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary.

23. When a ground (f) appeal is made it is essential first to understand the purpose of the notice. Section 173(4) (a) and (b) of the Act provide that the purpose is (a) to remedy the breach of planning control that has occurred or (b) to remedy any injury to amenity which has been caused by the breach.

24. The breach of planning control is the change of use to twelve self-contained flats, and requirement 5(A) requires that unauthorised use to cease. The purpose therefore lies within section 173(4)(a) to remedy the breach of planning control that has occurred. Any lesser step than requiring the use to cease would not remedy the breach of planning control. Therefore it is not an excessive requirement.

25. A notice directed at a material change of use may require the removal of works that were integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement. Requirement 5(B) seeks the removal of internal fittings in each unit (kitchen sinks, cooking facilities, etc). I am satisfied, for the reasons I have set out previously, that those works were integral to and facilitated the unauthorised use. They go no further than remedying the breach of planning control and hence they are not excessive.

26. However, the requirement in 5(B) to "make good" the walls is somewhat vague. It does suggest that it requires some re-decoration which would go beyond simply remedying the breach. Given its imprecision I will remove this element from 5(B).

27. Requirement 5(C) seeks to achieve a layout in accordance with the 2012 planning permission, including the removal of the additional twelfth unit and its replacement with a kitchen.

28. Given that the breach is the unauthorised change of use to twelve self-contained flats, I consider that requirements 5(A) and 5(B) (as varied), taken together, fully remedy the breach. The notice could also have reasonably required the restoration of the building to its former condition (as existed as a public house) but does not do so, presumably because the Council did not consider that was expedient in all the circumstances. However, the 2012 planning permission was never implemented as I have previously set out. Thus requirement 5(C) is excessive because it seeks works to be carried out which

go beyond remedying the breach of planning control. I will therefore remove the whole of 5(C) from the requirements in section 5 of the notice.

29. The appeal succeeds to the limited extent I have set out above with regard to requirements 5(B) and 5(C) and I have varied the notice accordingly.

Thomas Shields

INSPECTOR