

Appeal Decision

Site visit made on 23 January 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 27 January 2017

Appeal Ref: APP/D1780/C/16/3154196
14 Silverdale Road, Southampton, SO15 2NG

- 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 K Singh-Sahota against an enforcement notice issued by Southampton City Council.
- The enforcement notice was issued on 5 July 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, change of use of the Land from a single dwelling house (C3) to 6 self-contained flats.
- The requirements of the notice are:
 - i) Cease the use of the Land as 6 self-contained flats;
 - ii) Remove all fixtures and fittings enabling the use as 6 self-contained flats;
 - iii) Revert the use back to a single dwelling house.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with correction and variations.

Procedural issues and the Notice

1. It is common ground that the property is currently in use as 6 self-contained flats, albeit with one shared room on the ground floor. An appeal against the refusal of planning permission for the 6 units was dismissed on 14 March 2016¹. The appeal has been made on Grounds (f) and (g) only and thus the planning merits of the development are not before me.
2. The parties dispute the lawful use of the premises prior to the conversion to 6 self-contained flats but it is outside my remit to assess this as part of this appeal. This can only be resolved by an application for a lawful development certificate under S191(a) of the Act².
3. Thus there is an uncertainty about the nature of the previous use. It is not necessary for an allegation concerning a change of use to specify anything other than the alleged breach of planning control. Consequently the Notice can be corrected to omit the description of the previous use. I am satisfied that this correction would not prejudice either party.

Appeal on Ground (f)

4. Ground (f) is the ground where an appellant seeks to argue that the steps required by the Notice exceed what is necessary to remedy the breach of

¹ Appeal reference: APP/D1780/W/ 15/3135329

² Town and Country Planning Act 1990 as amended

planning control or, as the case may be, to remedy the injury to amenity which has been caused by any such breach.

5. In this case the appellant does not challenge steps i) and ii) in Section 5 of the Notice; these steps require that the use as self-contained flats ceases and relevant fixtures and fittings are removed. However he proposes an alternative requirement to substitute for step iii: "Revert the use back to a single dwelling house". He suggests that a lesser step would be to revert the use to a six bedroom house within Class C4 of the Use Classes Order.
6. But the requirement to revert to another use is unreasonable whether or not that use is a C3 dwellinghouse or a C4 HMO because any such positive requirement goes beyond remedying the alleged breach of planning control (S173(4)(a) of the Act). Accordingly I shall vary the Notice to omit this step in its entirety.
7. Consequently, to this limited extent, the appeal on Ground (f) succeeds.

Appeal on Ground (g)

8. This ground of appeal is that the compliance period is unreasonable short because the appellant says the tenants have 12 month tenancy agreements which do not expire until July 2017.
9. But the Council say that these are periodic rolling tenancies and that the landlord and tenants would have been aware of the enforcement notice issued in July 2016. In these circumstances a 3 months compliance period would allow existing tenants to find alternative accommodation.
10. However the appellant is entitled to hope that his appeal would be successful and in the absence of further evidence about the length of the tenancies I consider that extending the period for compliance to 6 months to be proportionate. I consider that such a period would strike the appropriate balance between competing public and private interest. To this limited extent the appeal on Ground (g) succeeds.

Formal Decision

11. It is directed that the allegation in Section 3 of the Notice is corrected by the deletion of the words "from a single dwelling house (C3)"

and varied by:

- a) The deletion of step iii) in Section 5 of the Notice;
- b) the deletion of the words "3 months" in Section 6 of the Notice and the substitution of the words "6 months".

12. Subject to the correction and variations the appeal is dismissed.

Sukie Tamplin

INSPECTOR