The Planning Inspectorate

Appeal Decision

Site visit made on 7 February 2017

by Chris Preston BA(Hons) BPl MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/P4605/C/16/3158632
121 Warwards Lane, Selly Oak, Birmingham B29 7QX

- 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 S Butt against an enforcement notice issued by Birmingham City Council. The enforcement notice, numbered 2013/1166/ENF, was issued on 15 August 2016.
- The breach of planning control as alleged in the notice is: Without planning permission:
  1) The material change of use of the premises to a house in multiple occupation for more than six persons;
  2) The erection of a single storey extension in the approximate position edged in green on the attached plan; and
  3) The erection of a roof enlargement to the rear roof slope and rear wing of the premises in the approximate position edged blue on the attached plan.
- The requirements of the notice are:
  1) Cease to use the premises as a house in multiple occupation for more than six persons;
  2) Demolish the single storey extension, remove the demolished materials from the site and restore the premises to its condition before the breach took place; and
  3) Demolish the roof enlargement to the rear roof slope and rear wing of the premises, remove the demolished materials from the site and restore the roof to its condition before the breach took place.
- The period for compliance with the requirements is 3 months after 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.

Decision

1. The enforcement notice is varied by the deletion of the words "3 months" from the time period for compliance at section 6 and the substitution of the following words "6 months" and the deletion of the words "You are required to comply with this notice by 15th December 2016" from section 6. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. An appeal has also been submitted against an enforcement notice that has been served in relation to an alleged breach of planning control at the neighbouring property, No. 119 Warwards Lane[1]. I have determined both

[1] Planning Inspectorate ref: APP/P4605/C/16/3158643

appeals. The two properties are attached and there is some overlap in the nature of the appeals, particularly in relation to the ground floor extensions and roof alterations at the rear of each property. However, the alleged use in relation to each is different and, for clarity, I have issued a separate decision in relation to each appeal.

The Appeal on Ground (b)

3. An appeal on ground (b) is made on the basis that the matters alleged in the notice had not occurred at the time the notice was served. The appellant has clarified that the appeal on this ground is made only in relation to the alleged change of use. He contends that the property was not in use as a dwellinghouse within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987, as amended (the UCO) prior to being used as an 8-bedroomed House in Multiple Occupation (HMO) but was in use as a HMO for no more than 6 people, falling within Use Class C4.

4. In relation to the first point, the notice does not specify a former use but simply alleges that there has been a material change of use to use as a HMO for more than six persons. Consequently, it is unnecessary to conclude on the former use in relation to ground (b); the relevant point is whether the property was in use as a HMO for more than 6 occupants at the time the notice was served. The question of whether any change of use was material is more appropriately considered under ground (c).

5. On that point, the appellant does not dispute that the property was in use as an 8 bedroomed HMO at the point at which the notice was served. The matters stated in the notice had therefore occurred and the appeal on ground (b) must fail.

The Appeal on Ground (c)

6. The appeal in relation to ground (c) again relates to the material change of use and the appellant does not dispute that the single storey rear extension and roof alterations constitute a breach of planning control. The appellant's position in relation to ground (c) is that use of the property as a large HMO with eight bedrooms would not amount to a *material* (my emphasis) change of use based on the assertion that the previous use was as a HMO for up to six people, falling within Use Class C4 of the UCO.

7. The onus, on the balance of probability, rests with the appellant to demonstrate his case under ground (c). In effect, there are two strands to the submissions. Firstly, the appellant contends that the property was in lawful use as a HMO within Use Class C4 immediately prior to the change to a large HMO with more than 6 people. On that basis he asserts that a change from a HMO within Use Class C4 to a large HMO of more than 6 people did not represent a material change of use.

8. The appellant states that he purchased the property in July 2002 and operated it as a HMO for no more than six people, with accommodation over two floors. However, no corroborative information has been provided as to the use of the property prior to July 2012. Two tenancy agreements have been submitted. The first, covering a twelve month period from July 2012 to June 2013, was signed by four tenants and the second, covering a nine month period from September 2013 to June 2014, was signed by six tenants.

9. The appellant maintains that the work to refurbish and extend the property took place in 2013 and a licence to use the property as an 8-bedroom HMO was granted by the Council on 03 September 2014. In the appellant's version of events, the work to refurbish and extend the property took place in 2013 whilst tenants were in situ. The practicalities of how that was done are unclear but it would have been possible to isolate tenants from the work given that no tenants occupied the roofspace prior to the roof alteration and the single storey extension is situated at the rear of the premises. There was also a three month gap in occupation during the summer of 2013.

10. Consequently, I have no reason to doubt the veracity of the information provided by the appellant and the Council has provided nothing of its own that would lead me to conclude that the appellant's timeline of events is inaccurate. That information suggests that the property was in use as a HMO within Use Class C4 up to June 2014. The area in question is subject to an Article 4 direction which withdraws 'permitted development rights' for the change from a use within Use Class C3 to a HMO within Use Class C4 of the UCO. However, that Article 4 Direction came into effect in November 2014 and the Council have provided no information to suggest that the conversion and use of the property as a HMO within Use Class C4 prior to that point would have required planning permission.

11. Following the end of the tenancy agreement in June 2014, the licence was granted for use as a large HMO in September. From the information before me, it is likely that the present use as an 8-bedroom HMO commenced around that time. There is no suggestion that there was any intervening use between the cessation of the tenancy agreement in June 2014 and the commencement of the current use. Therefore, I see no reason to disagree with the appellant's claim that the property was in use as a HMO in Use Class C4 immediately prior to the commencement of the current use.

12. I recognise that the Government has specifically sought to distinguish between large and small HMOs, as a result of the creation of the C4 Use Class, for the purposes of the UCO. However, it does not automatically follow that a change from a HMO within Use Class C4 to a large HMO falling outside that class will amount to a material change of use. Whether any change is material will be a matter of fact and degree given the circumstances of the case.

13. In this case, the creation of an 8-bedroom HMO has only been possible due to the significant extension and alteration of the property in the form of the large rear extension and significant roof alteration. For reasons set out in more detail in relation to the appeal on ground (a) I conclude that those alterations have had a negative effect on the character and appearance of the area. It seems to me that those alterations were undertaken to facilitate use as an 8-bedroom HMO. In its previous state, I find it very unlikely that the modest terraced house could have accommodated that number of residents. Thus, it is reasonable and necessary to consider the effect of the development as a whole when arriving at a conclusion as to whether the change of use is material. Purely in terms of the visual effect on the character and appearance of the property and the wider area I conclude that the formation of an 8-bedroom HMO has had a material impact.

14. Moreover, the effects of conversion to HMOs, primarily for student housing, is clearly an issue of particular local significance and the local impacts have been

considered sufficiently important to warrant the designation of the Article 4 direction. The additional number of residents, over and above a use within C4, is significant in my view. The additional population density will result in an increase in the number of comings and goings to the property. The way in which the space is used by occupants is also affected; one bedroom in particular has no windows, other than a skylight, and has no outlook as a result. In effect, that arrangement has arisen due to the increase in the number of bedrooms and the change to a large HMO.

15. Taking all of the above into account I have no doubt that the change from a six person HMO within Use Class C4 to a large HMO for 8 people has resulted in a material change of use. The appeal on ground (c) fails accordingly. In reaching that conclusion I have had regard to the appeal decisions referred to by the appellant. However, whether a change is material will be dependent upon the specific circumstances of the case and the numerical increase in the number of bedrooms or occupants is not the only matter for consideration. All of the above factors are relevant and I am not satisfied that the particular circumstances of the case before me are replicated in the other appeal decisions. Consequently, reference to those decisions has not altered my conclusion.

The Appeal on Ground (a)

16. I consider that the main issues in relation to the appeal on ground (a) are:

    i) The effect of the single storey rear extension and roof enlargement on the character and appearance of the property and the surrounding area;

    ii) The effect of the conversion to a large HMO on the residential character of the surrounding area, with regard to the potential for increased comings and goings and associated noise and disturbance and additional demand for on-street parking; and

    iii) Whether the accommodation provides acceptable living conditions for any occupants.

The effect of the single storey rear extension and roof enlargement on the character and appearance of the property and the surrounding area

17. As noted above, the original property was a modest two storey dwelling set within a row of similar properties. A two-storey outrigger projects to the rear, such that the building had an L-shaped floor plan. No plans of the property prior to conversion have been provided but the traditional arrangement for the outrigger would most likely have contained a kitchen at ground floor level and bathroom above.

18. The small void between the side wall of the outrigger and the boundary of No. 119 has been filled in and the extension projects by approximately 11 metres from the original rear wall of the dwelling and appears disproportionately long in relation to the size of the host property. The shallow mono-pitch roof also contrasts awkwardly with the predominant roof form in the area which is characterised by steeper, dual-pitched roofs to dwellings and rear outriggers. The result is a structure that appears completely at odds with the character of the original property in terms of its scale and outward appearance.

19. Similarly, the roof enlargement extends flush with the rear wall of the dwelling across the full width of the house and out onto the outrigger. The flat roof of the enlarged section projects above the pitched roof of the outrigger and overall effect is of a large incongruous box-like structure which takes up the whole of the rear roof slope, paying no regard to the original roof form.

20. Little thought appears to have been given to the design or outward appearance of either extension and, individually and cumulatively, I consider that they cause significant harm to the character and appearance of the terraced dwelling. That impact is exacerbated by the presence of similar extensions on the neighbouring property at No.119. The extensions are situated to the rear of the property and are not visible from Warwards Lane. Thus, the visual effects from public vantage points are limited. Nonetheless, the dwelling is situated within a tightly packed urban area and the effects of the development will be apparent when viewed from a number of neighbouring properties. Thus, the harm that has been caused by the unsightly and unsympathetic alterations has an adverse effect on the character of the local area, in addition to causing harm to the property itself.

21. Paragraph 57 of the National Planning Policy Framework (the Framework) notes that it is important to plan for high quality design for all development, including private spaces and the fact that the extensions are not visible from the street to the front does not excuse the poor design and harm that I have identified. The also proposal fails to conform to the aims of policies 3.14c and 3.14d of the Birmingham Unitary Development Plan (the UDP), which seek to ensure a high quality of design which has regard to the character of the surrounding area. Saved policy 3.10 of the UDP states that proposals that have a poor effect on the built environment will not normally be permitted and that policy is consistent with paragraph 64 of the Framework also identifies that planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

22. The appellant contends that a very similar roof alteration and a smaller rear extension could be constructed under the provisions of the Town and Country Planning (General Permitted Development) Order 2015 and that a smaller rear extension could be constructed. However, the information provided would suggest that the property was let as a HMO with accommodation over two floors prior to the completion of the extension and roof alteration. There is no indication that the roof space was used as living accommodation prior to the works and the single storey rear extension has been used to create a communal living area and kitchen. Those facilities were, presumably, located elsewhere in the property prior to the works. Thus, the alterations would appear to have been constructed to facilitate the material change of use and the associated increase in the number of bedrooms and not for the benefit of any pre-existing use.

23. A large HMO is a sui generis use that falls outside the definition of C3 or C4 uses, as defined by the UCO. There is nothing before me to indicate that large HMOs benefit from permitted development rights granted through the GPDO and, accordingly, I conclude that the single storey rear extension and the roof alterations were unauthorised development in their entirety. Accordingly, I am not satisfied that the fall-back scenario put forward is soundly based.

24. Moreover, even if I were wrong on that point, no certificate of lawful development has been granted in relation to any roof alternation and no drawing is before me to demonstrate what such an alternative would comprise. It is difficult to attach any significant weight as a result. Any rear extension that would project by more than 6m from the original rear wall would require planning permission and any extension between 3m and 6m would need to go through a prior approval process. I cannot determine whether such permission or approval would be granted and, in any event, the end result would be substantially smaller extension than the one that has been erected in this case. Thus, the appellant's submissions in that regard do not amount to a material consideration in favour of the development.

25. In addition, given the scale and impact of the extensions I am not satisfied that the harm could be overcome through the imposition of conditions.

The effect of the conversion to a large HMO on the residential character of the surrounding area, with regard to the potential for increased comings and goings and associated noise and disturbance and additional demand for on-street parking

26. Policies 8.23, 8.24 and 8.25 of the UDP set out criteria for the consideration of planning applications relating to the conversion of properties into HMOs. I am satisfied that the criteria based policy is consistent with the thrust of paragraph 58 of the Framework which requires local authorities to develop policies that set out the quality of development that will be expected in an area, based on an understanding of its characteristics. The aims of paragraph 58 relate not only to design but to the mix of uses in an area.

27. The area in question is subject to an Article 4 direction which withdraws 'permitted development rights' for the change from a use within Use Class C3 to a HMO within Use Class C4 of the UCO. That Article 4 Direction came into effect in November 2014. From the information provided by the Council and the local Member of Parliament, the article 4 Direction was established with the aim of trying to ensure an appropriate balance in the mix of residential uses, following concerns at the number of conversions into HMOs for the student market. I have no reason to doubt that those aims are well founded and they are supported in the aims of policies 8.23 to 8.25 of the UDP. The appellant acknowledges that the Council's policies can be afforded significant weight.

28. However, no specific information has been provided about the premises to suggest that it has caused harm by way of noise disturbance or car parking problems. There is no information from the Environmental Health department to indicate that noise complaints have been received. I understand that proximity to the University is one thing that attracts students to the area and it is unlikely that all students will own cars in that context. No information has been provided to suggest that the use has caused parking congestion or added to it.

29. I am mindful that the neighbouring property is also in use as seven self-contained flats and that has resulted two properties side by side aimed at the student market, a situation that could result in 15 or more young adults occupying what were previously two modest terraced properties. It seems to me that is a significant concentration in a small part of the street and one that has the potential to cause disturbance to the immediate neighbours. However, whilst I have some concerns in that regard, due to the lack of any specific information to suggest that the use has caused harm to the amenity of the

wider area I find it difficult to conclude that planning permission should be withheld on those grounds alone, having regard to the policy context outlined above.

Whether the accommodation provides acceptable living conditions for any occupants

30. The Council has not referred to any particular space standards with regard to the internal layout of the property. Whilst the rooms are of a modest size, they contain space for storage, a bed, chair and desk and all have an en-suite shower room. Each room would appear to be aimed at single occupants. There is also a large, well equipped, kitchen and communal living area on the ground floor which provide a comfortable communal area. A patio door leads out onto the garden which is also of an adequate size for the intended use. Consequently, I am satisfied that the size of the rooms and the layout of communal space is adequate.

31. However, room 2 on the ground floor is situated at the end of a long and rather gloomy corridor leading to the front door. The room does not benefit from an external wall with a window and the only natural light comes from a single skylight which is above head height. As such, no outlook is provided onto the outside world. To my mind that results in a bunkered sense of enclosure that provides an extremely poor internal living environment for the resident of that particular room, contrary to a core principle of the Framework, set out at paragraph 17, which states that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Conclusion on Ground (a)

32. Limited evidence is before me to suggest that the use of the property has caused undue disturbance to neighbouring residents or that it has increased the demand for on-street parking to the detriment of the area. Consequently, whilst I have some concerns in those respects, those matters alone do not indicate that planning permission should be withheld.

33. However, I have identified significant concerns in terms of the design of the extensions to the property and the effect on the character and appearance of the area. I have also found that the development provides poor living conditions for occupant of room 2. On an individual basis, both of those aspects would warrant the refusal of planning permission.

34. Policies 8.23-8.25 set out detailed criteria for the consideration of applications relating to HMOs. That includes an assessment of the size and character of the property. The use as an 8-bedroomed HMO has only been made possible as a result of substantial extensions that have had an adverse effect on the character and appearance of the property and surrounding area and the internal layout provides unacceptable levels of amenity for certain occupants. It is clear that the modest terraced property is not of sufficient size to accommodate the number of bedrooms or occupants without the unacceptable alterations that have been carried out. Accordingly, the appeal on ground (a) fails and I shall refuse to grant planning permission for the development.

The Appeal on ground (f)

35. The appeal under ground (f) is made on the basis that the property benefits from permitted development rights under Classes A and B of Schedule 2 of the GPDO. Permitted development rights under Part 1 of Schedule 2 apply to development within the curtilage of a dwellinghouse. It is likely that the extensions were carried out to facilitate the unauthorised change of use to a large HMO. There is nothing before me to indicate that large HMOs benefit from permitted development rights granted through the GPDO and, accordingly, I conclude that the single storey rear extension and the roof alterations were unauthorised development in their entirety. The Council has specified that the requirements of the notice are intended to remedy the breach of planning control and, in view of the above, I find that those requirements do not go beyond what is required to remedy the breach of planning control.

36. Even if I were wrong on that point the appellant has failed to suggest how the terms of the notice could be varied in a way that would be sufficiently precise and unambiguous. No alternative plans have been presented and varying the notice to require that the development was altered to accord with the terms of Class A or B of Schedule 2 of the GPDO would be vague in my view and would leave some uncertainty as to precisely what was required. There is significant room for interpretation within the GPDO and I am not satisfied that it would be appropriate to vary the notice in the way suggested by the appellant.

37. In view of the above, the appeal on ground (f) fails.

The Appeal on Ground (g)

38. The appellant contends that the three month period is unreasonably short on account of the fact that the property is currently let to tenants who would need to be re-housed elsewhere. No details of the current tenancy agreements have been provided but all of the rooms appeared to be occupied at the time of my visit. In the absence of details regarding the terms of any tenancy agreements it is difficult to attach much weight to the appellant's case. However, the Council has suggested that it would be amendable to an extension and I am mindful that the tenants would need to move out before the physical works could be undertaken.

39. On the basis of the information before me, I consider that a period of six months represents a reasonable period to complete the works. Three months should be sufficient for the physical works, with a three month period to serve notice on residents and allow them time to find alternative accommodation. The appeal on ground (g) succeeds to that extent and I shall vary the terms of the notice accordingly.

Chris Preston

INSPECTOR