
Appeal Decision

Site visit made on 7 February 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/P4605/C/16/3158643

119 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 2013/1614/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 use as self-contained flats;
 - 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 self-contained flats;
 - 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 three 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.
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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. 121 Warwards Lane¹. I have determined both 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

¹ Planning Inspectorate ref: APP/P4605/C/16/3158632

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. The case is made on two grounds. Firstly that the property was not in use as a dwellinghouse prior to conversion to flats but was in use as a House in Multiple Occupation (HMO) within Use Class C4 of the Town and Country Planning (Use Classes) Order 1987, as amended (the UCO). Secondly, the appellant contends that the property has never comprised self-contained flats.
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 self-contained flats. 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 self-contained flats at the point at which the notice was served. The question of whether any change of use was material is more appropriately considered under ground (c).
5. Section 254(8) of The Housing Act 2004 provides a definition of a self-contained flat which is 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. Basic amenities are defined in the Housing Act as a toilet, personal washing facilities, or cooking facilities. It does not automatically follow that the definition of a self-contained flat in the Housing Act should be applied for planning purposes but, it seems to me to be an appropriate test, particularly with regard to the provision of basic amenities.
6. At my site inspection, the layout of the property was broadly in line with the layout plan submitted with the appeal². Seven en-suite rooms were situated over three floors, including the loft conversion. A room containing a toilet and boiler and another communal room with kitchen cupboards, washing machines and a cooker were located within the single storey extension at the rear. Each of the seven rooms had its own lockable door. Internally each had a shower, hand basin and toilet in the en-suite. Outwith the en-suite each of the seven units had a single room which contained a bed, television, a chair or sofa, wardrobes, and a small kitchen 'dinette' complete with kitchen cupboards, small work-surface, a sink and a built in microwave. A built in electric hob with extractor above was present in all but two of the rooms. Bedroom 2 contained a plug in hot plate and the hob appeared to have been removed from Bedroom 3 but the extractor was still present, as was the built in microwave. The microwaves were of the same type in each room and appeared to have a 'grill' facility.
7. Thus, all of the seven units contained the three 'basic amenities' required for independent living and could be accessed and locked independently of the

² Drawing number 4380/37, dated August 2016, Michael Edwards Associates

other rooms. Whilst the communal room on the ground floor was available to all residents, there was an absence of furniture in the room which indicates that it is not used for social purposes and very few items of cooking equipment or food were evident in the cupboards, in contrast to the individual rooms where the cupboards generally contained foodstuffs, pots and pans etc.

8. It was evident that some residents had washed up cooking utensils within the room as they were set to drain next to the sink. That provides an indication that residents tend to utilise the cooking facilities within the rooms, as opposed to utilising the communal kitchen, contrary to the assertion of the appellant which indicates that the facilities in the rooms are used for making snacks. The appellant also asserts that the cooking facilities are temporary and will be removed at the end of the current lease arrangement. However, the microwaves, hobs and extraction hoods appeared to be 'built in' forming an integral part of the kitchen area.
9. Whilst the property has a single water supply, gas meter and consumer unit that does not dictate that residents live in a communal manner. No evidence of how bills are divided has been provided but the layout and facilities on offer indicate strongly that each room is occupied as a self-contained flat. There is nothing to suggest that the arrangement I was able to witness at the time of my site visit was any different from the way in which the property was set up at the time the enforcement notice was served. On the balance of probabilities, based on the evidence before me, I conclude that the property was in use as self-contained flats at the time the notice was served and the appeal on ground (b) fails.

The Appeal on Ground (c)

10. 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 seven 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. In other words, it is based on the assumption that the ground (b) appeal would be successful and that the property was not in use as self-contained flats at the time the notice was served. However, I have found against the appellant on ground (b) for the reasons set out above.
11. The appellant does not seek to argue that a use as seven self-contained flats would not represent a breach of planning control. I conclude that the use is materially different to the previous use, whether that was as a single dwellinghouse or a HMO within Use Class C4. Seven individual flats would be occupied in a very different way to the more communal arrangement of a dwellinghouse or a HMO. By definition, a small HMO is limited to occupation by no more than 6 residents but there is no such restriction in relation to flats. Although not large, the rooms are capable of accommodating double beds and there is no reason to suppose that a flat would be occupied by a single person. The potential number of occupants is therefore significantly greater than would have been possible under the previous use.
12. Moreover, I note that the tenancy agreement signed in 2014 was entered into by 4 residents. Although a HMO within Use Class C4 could theoretically

accommodate up to 6 people, it would appear that the property was modest in size at that point. The conversion to seven flats has only been possible due to the erection of the unauthorised rear extension and loft conversion, alterations that have not only increased the internal capacity of the building but had a material effect on its external appearance. It is reasonable to take account of the effect of the extensions in considering whether any change of use has been material; in effect the extensions and the change of use are part and parcel of the same breach. Looked at in the round, I consider that a material change of use has occurred for the reasons set out above. Consequently, the appeal on ground (c) fails.

The Appeal on Ground (a)

13. 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 into self-contained flats 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 surrounding area

14. 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.
15. The small void between the side wall of the outrigger and the boundary of No. 121 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 flat roof also contrasts awkwardly with the predominant roof form in the area which is characterised by 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.
16. 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.
17. 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.121. 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. 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.

18. In view of the above, the development 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 and policy 8.27 of the UDP, which states that any external works associated with the conversion to self-contained flats should be sympathetic to the character of the building and the surrounding area. Similarly, the extensions contravene saved policy 3.10 of the UDP states that proposals that have a poor effect on the built environment will not normally be permitted. That policy is consistent with paragraph 64 of the Framework which states 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.
19. The appellant contends that a very similar roof alteration could be constructed under the provisions of the Town and Country Planning (General Permitted Development) Order 2015. However, the precise date at which the roof alteration was implemented is not clear. The information provided would suggest that the property was let as a HMO with accommodation over two floors prior to the completion of the roof alteration. There is no indication that the roof space was used as living accommodation prior to the works or that the extended roof accommodation was ever used for a purpose other than as self-contained flats. Thus, the alterations would appear to have been constructed to facilitate the material change of use and not for the benefit of any pre-existing use. Self-contained flats do not benefit from permitted development rights and the appellant has not demonstrated that such a fall-back position exists.
20. Moreover, even if I were wrong on that point, no certificate of lawful development has been granted in relation to any roof alteration 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.
21. 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 into self-contained flats 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

22. Policy 8.27 of the UDP sets out criteria for the consideration of planning applications relating to the conversion of properties into self-contained flats. 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.
23. 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 weight³.
24. Whilst not in use as a HMO, the conversion to flats appears to have been aimed at the student market and the effect on the balance of the housing mix and any associated effects are appropriate considerations. It would be wrong to assume that all student housing will cause problems in terms of the amenity of a local area but I can appreciate that an overconcentration of such accommodation will have potential effects, given the likelihood of increased comings and goings and late night activity over and above traditional family housing. According to information provided by the Council twenty properties are registered as HMOs within a 100m radius of the appeal site. The Council estimates that is just under a fifth (17%) of the housing stock in that area. No information is provided as to the number of flats.
25. It is difficult to assess, in the absence of further information, the point at which the number of "non C3" residential uses, including flats and HMOs becomes excessive to the point where it represents an over-concentration. If 17% of properties within a 100m radius are registered as HMOs, it would appear that the majority are still in use as dwellings within Use Class C3. Purely on a numerical basis that does not appear as an over-concentration.
26. In addition, 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.

³ Paragraph 4.7 of the appellant's statement

27. I am mindful that the neighbouring property is also in use as an 8 bedroomed HMO 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

28. 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, desk, small kitchen area with cupboards and the en-suite bathroom. Each room would appear to be aimed at single occupants. There is also a communal area on the ground floor and a rear garden, albeit that those spaces did not appear to be well used at the time of my visit. Consequently, I am satisfied that the size of the rooms is adequate for their intended purpose.

29. However, rooms 2 and 3 on the ground floor are situated at the end of a long, narrow, and rather gloomy corridor leading to the front door. Neither room benefits from an external wall with a window. The walls to the rooms are either internal partition walls or the party wall to No. 121. As such, no outlook is provided onto the outside world. The only natural light comes from a single skylight to each room. Those skylights are positioned significantly above eye level and are not comparable to a skylight in a loft conversion which would generally be set at a lower level to allow a degree of outlook. Policy 8.27 of the UDP states that properties should be of sufficient size to permit the creation of individual units with satisfactory layouts. In this instance, the fact that two units have been shoe-horned into the ground floor space with no external windows is an indication that the size of the property is not sufficient for the number of units that are presently being accommodated.

30. To my mind that results in a bunkered sense of enclosure that provides an extremely poor internal living environment for the residents of those rooms. That is contrary to the aims of the Framework, 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)

31. 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.

32. 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 occupants of rooms 2 and 3. On an individual basis, both of those aspects would warrant the refusal of planning permission.
33. Furthermore, policy 8.27 of the UDP sets out detailed criteria for the assessment of conversions to flats. In effect, that assessment requires a holistic approach to the consideration of such proposals. The policy requires that properties should be of sufficient size to permit the creation of individual units with a satisfactory size and layout. The use as seven flats 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 units without unacceptable alterations and the development is completely at odds with the thrust of policy 8.27; a policy that is consistent with the aims of the Framework. For those reasons, the appeal on ground (a) fails and I shall refuse to grant planning permission for the development.

The Appeal on ground (f)

34. 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. For the reasons given, I have found against the appellant in that respect. 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 self-contained flats and did not benefit from permitted development rights. In other words, the extensions and alterations were an integral part of the unauthorised change of use to an 8-bedroom HMO and were not constructed for the benefit of the pre-existing use, whether that was within Use Class C4 or C3.
35. Consequently, I conclude that those extensions and alterations are unauthorised in their entirety. The Council has clarified that the aim of the notice is to remedy the breach of planning control and, in view of the above, I find that the 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. 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. No drawings of any alternative have been provided and 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. Accordingly, 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