

Appeal Decisions

Site Inspection on 6 March 2017

by Graham Self MA MSc FRTPi

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

Decision date: 20 March 2017

Appeal Reference: APP/H1705/C/16/3158783

Site at: 6 Apple Way, Old Basing, Basingstoke RG24 7HA

- The appeal is made by Ms Marie Stearn under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Basingstoke and Deane Borough Council.
- The council's reference is 16/01031/ROC.
- The notice is dated 25 August 2015.
- The breach of planning control alleged in the notice is:

"Without planning permission, material change of use of the land and building from a Class C3 dwellinghouse to a Class C4 four bedroom House in Multiple Occupation. Use Classes as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended).

'House in Multiple Occupation' has the meaning given in Section 254 Housing Act 2004 (as amended), and can be summarised as a property rented out by at least 3 people who are not from 1 'household' (eg a family) but share facilities like the bathroom and kitchen."
- The requirements of the notice are:

"Permanently cease the use of the land as a House of Multiple Occupation (Class C4) and return it to a dwellinghouse (Class C3) as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended and as defined in paragraph 4 [of the enforcement notice] above."
- The period for compliance is two months.
- The appeal was made on ground (a) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The enforcement notice is corrected and varied. The appeal is dismissed and the notice as correct and varied is upheld.

Appeal Reference: APP/H1705/W/16/3155809

- This appeal, which relates to the same site, is made by Mrs Marie Stearn under Section 78 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against the refusal of an application for removal or variation of a condition subject to which planning permission has been granted.
- The condition subject to this appeal is Condition 1 of planning permission reference 14/03327/FUL, which granted permission for continued use of the property as a four-bedroom HMO. The condition stated:

"The use of the property known as 6 Apple Way as a house of multiple occupancy shall be for a limited period of 12 months from the date this [sic] decision, on or before which date, the use shall cease and revert back its [sic] former use as a C3 single dwellinghouse, unless otherwise agreed in writing with the Local Planning Authority."¹

- In the application, the applicant stated: "I would like the licence to be extended for a period of 2 years". In the council's refusal notice, the proposal was described as: "Variation of condition 1 of 14/03327/FUL to allow continued use of property as a 4 bedroom HMO".

Summary of Decision: The appeal fails.

Abbreviations

1. As has been common in most of the documents submitted for this appeal, I use the abbreviation "HMO" for "House in Multiple Occupation".

Procedural Matters - Site Inspection

2. At the site inspection a group of people who appeared to be local residents was gathered by the roadside, obviously by prior arrangement. I do not know who organised the presence of this group, but he or she should note for future reference that inspectors decide written representation appeals by assessing the evidence and submissions made in writing, together with evidence from inspecting the site and surroundings. Arranging for a group of residents to stand nearby could be taken to indicate that those involved have a weak case on planning grounds, needing artificial boosting by a show of numbers. Be that as it may, it was a pointless exercise which merely caused unnecessary distraction and has not affected my decisions in any way.

Enforcement Notice

3. The enforcement notice is flawed in two ways. First, the allegation is incorrect. Planning permission was granted in March 2015 for "Change of use from dwelling to house of multiple occupancy". This permission was subject to Condition 1 as quoted above. When the property at 6 Apple Way continued to be used as an HMO after the 12 month period covered by Condition 1 of the 2015 permission, there was no material change of use. The change of use had occurred some time previously, but was permitted retrospectively by the 2015 permission, so an enforcement notice purporting to be directed at that development was obviously misguided.
4. If I were to quash the enforcement notice as being incorrect, the council would almost certainly issue an amended notice, which would be followed by another appeal, causing delay, cost and inconvenience to all involved. It is also apparent that the appellant has understood the real breach in this case to be the breach of the condition which imposed a 12 month time limit on the permission. I shall therefore use the powers available to me under Section 177(5) of the 1990 Act to correct the allegation, so that it refers to a breach of condition instead of a change of use. I am satisfied that I can do so without causing injustice to any party. In line with this correction, it is also necessary to amend the first paragraph of the enforcement notice so that it refers to Section 171A(1)(b) of the 1990 Act instead of Section 171A(1)(a).

¹ The omitted words in "date this decision" and "back its former use", and the misplaced comma after "date" in this condition are in the original.

5. The second flaw in the enforcement notice concerns the requirements. I deal with this point later below.

Ground (a) of Section 174 Appeal and Section 78 Appeal

6. Allowing for the correction to the allegation, permission is sought under ground (a) of Section 174(2) for continued use of the appeal property as an HMO without complying with Condition 1 of the 2015 planning permission. The Section 78 appeal seeks the same outcome, so I consider both appeals together.
7. The original change of use to use as an HMO was a material change of use which involved development requiring planning permission. In many locations, the use of a dwelling as an HMO for a limited number of occupiers might not need *specific* planning permission, because of "permitted development" rights under the Town and Country Planning (General Permitted Development) Order. In this instance, the appeal site is evidently within an area subject to a direction under Article 4 of the Order, taking away normal permitted development rights.
8. The main issues raised by these appeals are whether the continued use of the appeal property as an HMO would have an undesirable effect on road safety or cause unacceptable harm to the residential amenities of nearby properties.
9. The use of the appeal property as an HMO has been carried on under the temporary permission granted in 2015. As has been pointed out for the appellant, the council's planning officer made an assessment of the effects of the use and recommended that planning permission be granted for the HMO use to continue. Some other aspects of the appellant's case also have considerable force: for example, the number of people who have occupied Number 6 under the temporary permission has been no greater than might happen with normal family occupation of a four-bedroomed house. The occupiers have evidently spent periods of time away from Apple Way because of their working arrangements² and I have no reason to believe that when in the house or garden they have behaved in what might be called an anti-social manner affecting neighbours. There are no other HMOs in the immediate vicinity, so the area does not have the sort of over-concentration of HMOs which appears to have been the main reason behind the removal of permitted development rights mentioned earlier.
10. I also get the impression from what I have seen and read that some of the objections to the development have been orchestrated. Indeed, one comment by a local resident states that Mr Wellstead of 7 Apple Way has represented the views of "the majority of residents of Apple Way", although it is not clear that he has been appointed to do so by any formal or openly organised process. I can understand why, as an immediately neighbouring occupier, Mr Wellstead might want to encourage local residents to make their views known but I have to allow for the possibility that some residents may have objected out of neighbourly willingness to respond to a request rather than deciding independently to put forward their own first-hand evidence. That does not apply to all the representations I have read - the statement by the occupiers of Number 5 Apple Way reads as a measured comment giving an independent view and assessment.
11. On the road safety issue, there is some evidence that vans driven by occupants of Number 6 have been parked in the road or partly on the pavement. However, I suspect that other residents or their visitors often park vehicles in much the same way - as is neatly illustrated by the photograph taken by an occupier of Number

² I understand that the occupiers are all employees of a company named Restoration Force, which according to a statement by an employee provides "emergency assistance to those in peril".

6, allegedly showing that a car belonging to a councillor visiting Mr Wellstead was parked partly obstructing the highway. Some of the vans which have from time to time evidently been parked in the road may well also have been there for purposes unrelated to the occupation of Number 6 (a property in Byfleet Avenue has apparently generated some parking at the entrance to Apple Way). There is no clear evidence that the risk of accidents has been materially increased as a result of the HMO use at the appeal site.

12. In summary, I find that the evidence about road safety or obstruction of the highway is inconclusive and does not justify refusing planning permission.
13. Turning to amenity matters, the appeal property is located at the end of a residential cul-de-sac. The houses in Apple Way are detached family-sized dwellings which stand in individual plots but are quite closely spaced (despite the comment in one of the appellant's statements about "spacious plot sizes"). The frontages have a "semi-open plan" layout, and the front plot boundary between number 6 and its neighbours is not marked by any significant physical feature such as a fence or hedge.
14. Because of the location of the appeal site and the street layout, any activity having a potential to cause disturbance to neighbouring occupiers will tend to be more noticeable than would be so in a location on, for example, a busy main road. The house at Number 6 has evidently been occupied by a group of tenants who work together, often arrive and depart together, and usually travel in quite large hired vans which are parked at the appeal site. It is this activity which seems to have been the main concern to neighbours. Some loading or unloading of the vans also appears to have taken place on the driveway of the appeal property to a greater extent than would be normal for a dwelling occupied by a family, and because of the way the houses here are grouped around the head of the cul-de-sac I can see why such activity would be likely to cause noise and disturbance to neighbours. The fact that the vans seem to have usually been hired, high-sided vehicles labelled with the hire company's lettering has probably not helped, since it would have made the appeal property look rather like commercial premises at times.
15. It is necessary to bear in mind that circumstances can change. After a temporary permission, it is not normally appropriate to grant a further temporary permission, but even if a further temporary permission were granted for two years as sought by the appellant, the ownership and occupation of the property could change at any time. The house could be occupied by a different group of people, who might be employed, or perhaps students, and who may or may not be vehicle users, or could be a mixture of these descriptions. Taking that wider view, it seems to me that the position of Number 6 at the head of this quiet residential cul-de-sac is intrinsically unsuitable for an HMO use. On this point, I disagree with the view expressed for the appellant that "the morphology of the house and the cul-de-sac lends itself to an HMO development". Occupiers of HMOs typically have lifestyles which differ from the lifestyles of occupiers of family-sized houses. Whilst that in itself is not necessarily a cause of harm to amenity, it is likely to be so in this particular location.
16. Policy EM10 of the development plan for this area provides that all development proposals will be required to respect the amenities of neighbouring properties. Even allowing for the probable exaggeration of some of the objections raised in this case, I judge that the use of the appeal property as an HMO has harmed the normal residential amenity of neighbouring properties to a degree which conflicts with the planning authority's adopted policy.

17. In reaching my decisions I have had regard to all the other matters raised in evidence on which I have not specifically commented, including the possibility of imposing conditions on a permission. They do not outweigh the considerations discussed above. I conclude that planning permission should not be granted for the use to continue. Therefore the appeal on ground (a) against the enforcement notice and the appeal relating to Condition 1 of the 2015 planning permission both fail.

Requirements of Enforcement Notice

18. Although the appellant has not raised the matter, the requirements of the enforcement notice as drafted by the Borough Council go beyond what is necessary or reasonable. It is not feasible or reasonable to try to force a landowner to use property for any particular purpose (as opposed to leaving it unused). All that is appropriate in this instance is a requirement to cease the use which is in breach of the condition. I shall therefore delete the requirement that the appeal property shall be "returned to a dwellinghouse". This does not mean that the property can be put to some other use, merely that it could be unused, although normal market forces would make that unlikely.
19. I note in passing that Condition 1 of the 2015 permission itself purported to require (in part) that the use of the property "shall...revert back [to] its former use as a C3 single dwellinghouse". For the reason I have just explained, that part of the condition would have been unenforceable, but I judge it to have been a severable requirement which did not invalidate the first part of the condition.

Formal Decisions

Section 174 Appeal

20. I direct that the enforcement notice be corrected and varied in the following ways:
- (i) by deleting from paragraph 1 of the notice "paragraph (a) of section 171A(1)" and substituting "paragraph (b) of Section 171A(1)";
 - (ii) by deleting the first paragraph of the text describing the matters which appear to constitute the breach of planning control and substituting: "Failure to comply with Condition 1 of planning permission reference 14/03327/FUL. The condition appears to have been breached because the use of the property permitted under this permission did not cease as required by Condition 1";
 - (iii) by deleting the text of the requirements (headed "What you are required to do") and substituting: "Permanently cease the use of the land as a House in Multiple Occupation".
21. Subject to the above corrections and variation, I dismiss the appeal, uphold the enforcement notice as corrected and varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

Section 78 Appeal

22. I dismiss the appeal.

G F Self

Inspector