
Appeal Decision

Hearing held on 25 April 2017

Site visit made on 25 April 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 22 May 2017

Appeal Ref: APP/N4720/C/16/3164123

8 Providence Avenue, Woodhouse, Leeds LS6 2HN

- 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 Hedley Manton against an enforcement notice issued by Leeds City Council.
 - The enforcement notice, numbered 15/01139/UCU3, was issued on 02 November 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the making of a material change of use from single dwellinghouse to four self-contained flats.
 - The requirements of the notice are: Step 1 – Cease the use of the property as four flats. Step 2 – Remove all internal partition walls and locked doors that restrict the use of the property as a single dwelling. Step 3 – Cease the kitchen use on three of the floors within the property and remove all fixtures, fittings and equipment therewith, including all cooking equipment, refrigerators, freezers and sink units. Step 4 – Remove all detritus, equipment, fixtures and fittings resulting from the above steps from the land.
 - The period for compliance with the requirements is six months beginning with the day on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and building at 8 Providence Avenue, Woodhouse, Leeds LS6 2HN, as shown on the plan attached to the notice, as four self-contained flats subject to the conditions set out in the schedule appended to this decision.

Application for Costs

2. An application for costs has been made by Mr Hedley Manton against Leeds City Council. That application is the subject of a separate Decision.

The Appeal on Ground (d)

3. An appeal on ground (d) is made on the basis that, at the time the enforcement notice was served, it was too late to take action against the breach of planning control alleged in the notice. The onus, on the balance of probability, rests with the appellant to demonstrate his case. Having regard to
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the statutory time limits at section 171B of the Town and Country Planning Act 1990 enforcement action must be taken within a period of four years from the date of the breach where the allegation relates to a material change of use to a dwellinghouse. For the purposes of the Act a dwellinghouse includes a self-contained flat and it is therefore necessary for the appellant to demonstrate that each of the four flats had been in use for that purpose for a minimum of four years from the point at which the notice was served on 02 November 2016.

4. The appellant purchased the property in August 2015 and undertook a programme of refurbishment after which the property was let as four flats, in effect, in its current state. Prior to the point of purchase the appellant had no involvement with the property and his case relies upon tenancy agreements and two letters, dated 08 November 2016 and 01 March 2017, provided by Mr Zaman who was employed by 'My Homez Ltd', the letting agents from the period 18 May 2010 until the death of the previous owner, Mr Blagnys in 2014.
5. Although the letters from Mr Zaman suggest that the property was already divided into four one bedroom apartments by May 2010, no corroborative information for the period before that date is provided. In addition, no statutory declaration has been provided by Mr Zaman which is a factor that limits the weight I can attach to the letters. Setting that aside, no explanation is given within the letters as to what facilities were contained within each apartment and whether the 'one bed apartments' would have constituted independent dwellinghouses for planning purposes is not clear.
6. The tenancy agreements relate to three units, referred to as the Basement Flat, Flat 1 (which was on the ground floor) and Flat 2 (first floor). No tenancy agreements relating to the second floor flat are provided until the period after which the property was purchased and let by the appellant, the first of which commenced on 01 January 2016. The reason for that, according to the appellant and the letters from Mr Zaman, is that Mr Blagnys lived on the second floor as the owner of the property. However, there is no indication of when he commenced occupation of the building in that manner or any indication of whether he continued to live in the property up until his death in May 2014 or whether he was required to move out due to ill health for example. Therefore, information to support the claim that the upper floor was used as a self-contained flat for a period of four years or more is lacking.
7. Moreover, the tenancy agreements do not demonstrate how the property was laid out throughout the period in which they were in force. In particular, the agreements do not shed any light on what facilities were available within each unit, whether access was available between different units, or whether any facilities were shared by the respective tenants. The letters from Mr Zaman indicate that the general condition of the property over the period 2010 to 2014 was very poor and that all bills were paid by Mr Blagnys and included in the rent. The fact that separate bills were not provided for each unit may be an indication that services and facilities were shared between tenants and it is not clear if each of the four units was provided with the basic facilities required for day to day living.
8. The Council has appended sales particulars with attached photographs to its statement which post-date the death of the previous owner. The property is described as a 7 bed terraced house and a detailed description of the layout is

- provided. That description indicates that the ground floor contained a kitchen and living room, the first floor contained two double bedrooms and the second floor contained two bedrooms and a bathroom. The basement is described as having three rooms but no further details of what was contained within those rooms is given.
9. It is noticeable that only one bathroom and one kitchen are described. If each floor had been occupied as a self-contained flat during the period from 2010 onwards it would be normal to expect that each floor would have been provided with at least some form of bathroom, washing and cooking facilities. The appellant indicated at the Hearing that the property may have been marketed as a dwelling as opposed to flats in 2015 on an assumption that it may be more valuable in that condition. However, no real evidence to support that assertion was provided and I can think of no logical reason why bathrooms and kitchens would have been removed, presumably at some cost, prior to marketing the property.
 10. Therefore, the sales particulars and the associated photographs depict what appears to be a dwelling with rudimentary facilities, as opposed to four self-contained flats. That would tally with Council Tax records which show that the property was registered with two occupants up to August 2007, after which a single person discount was applied until that occupant, Mr Blagnys, died in May 2014. Consequently, the evidence provided in the form of tenancy agreements and letters from Mr Zaman is contradicted by the evidence relating to the sale of the property and Council Tax records.
 11. The fact that Council Tax was not being paid in relation to four flats does not, of itself, indicate that tenants were not residing at the property. Accommodation may well have been let without the knowledge of the Council Tax department. However, given the uncertainty regarding the nature of the accommodation, as described above, I am not satisfied that the tenancy agreements and the letters from Mr Zaman provide sufficient clarity to demonstrate, on the balance of probability, that the property was let as four self-contained units during the period covered by the agreements.
 12. Moreover, the fact that an individual signed a tenancy agreement does not necessarily mean that he or she lived in the property for the duration of that period. People may move in after the commencement date of the agreement or leave prior to the end of the tenancy period. There is an absence of any corroborative statements from those named within the tenancy agreements or any bills or other correspondence to indicate that they did live at the address during the period of the tenancy. Consequently, the weight I can give to the agreements, of themselves, is limited.
 13. For the reasons given the information presented does not, on the balance of probability, demonstrate that the building had been used continuously as four self-contained flats for a period of four years or more at the date when the enforcement notice was served. The information before me is contradictory and lacks clarity in a number of respects. Whilst there is some indication that the building may have been let to tenants, the precise details of who lived at the property and when they lived there is uncertain and the way in which the building was laid out is unclear. Given that the property was marketed as a single dwelling in 2015 with little evidence of kitchen and bathroom facilities on each floor it seems unlikely that it contained four flats, each with the basic

facilities for independent living prior to that point. In view of the above I conclude that the appeal on ground (d) must fail.

The Appeal on Ground (a)

14. Having regard to the reasons for issuing the enforcement notice, the information contained within the respective appeal statements, and the comments of the parties on the day of the Hearing, I consider that the main issues in the determination of the appeal on ground (a) are:
- i) The effect of the development on the housing mix within the local area and, in particular, whether the loss of a family dwelling would be harmful to the balance of the local housing stock; and
 - ii) Whether the accommodation provides acceptable living conditions for the occupants of the flats with regard to levels of outlook, privacy, outdoor amenity space and natural light.

Effect on the Local Housing Mix

15. Policy H6 of the Leeds Core Strategy (2014) (the CS) relates to development involving HMOs, student accommodation and flat conversions. The preamble to the policy notes that the conversion of houses into flats will be one of the means of meeting need for smaller households but that factor needs to be reconciled against a need to ensure that dwellings with a good standard of amenity are created and that the amenity of the local area is not adversely affected. Subsection (C) of the policy states that the conversion of houses into flats will be accepted where seven criteria are met. In terms of the effect on the local housing stock the Council relied upon the fourth criterion which states that, "where there is a demand for family sized accommodation and the property has (or has the potential for provision of) good access to suitable space for private recreation, provision is normally made for at least one family sized unit in the proposed mix of flats".
16. Firstly, it is clear that the policy does not seek to preclude the principle of housing being converted into flats; it is a positively worded policy noting that such development will be acceptable providing that it meets the specified criteria. The preamble also notes that flat conversions will be one of the means of meeting a need for smaller households. That would indicate that there is a need for such accommodation within the city. Acceptance of the principle of conversion appears to be based upon a need to plan for a size and type of accommodation to reflect local demand, consistent with the aims of paragraph 50 of the National Planning Policy Framework (the Framework).
17. Having regard to paragraph 50 of the Framework the Council has provided no figures relating to the housing need for particular types of accommodation to set the context of its concerns. In other words, whilst the Council has referred to a loss of family housing, policy H6 also refers to a need to provide for smaller households. In the absence of any statistical analysis it is difficult to conclude that the loss of a family house and the subsequent provision of four smaller units has caused harm to the overall balance of the housing stock or the ability to meet the housing needs of the area.
18. Further, the loss of family dwellings is not resisted *per se* but policy H6 seeks to include a family sized unit within the proposed mix of flats where there is a demand for such accommodation. In this case, the Council has provided no

information with regard to the level of demand for family accommodation within the local area. At the Hearing, the Council noted the level of need for family housing across its administrative area but it seems to me that the assessment of need for plan making purposes is not necessarily the same thing as the assessment of demand for the purposes of policy H6.

19. If the intention was for the policy to be applied based on a city wide need for family housing, irrespective of local circumstances, there would be no need for the first limb of the policy which requires an assessment of demand. The policy could have applied a blanket requirement to provide at least one family sized unit within any proposals for flat conversions within suitably sized dwellings across the city. The policy does not take that approach but requires an assessment of whether there is a demand for family housing. To my mind, that must require an assessment of whether there is a demand for such housing in a particular location.
20. As set out, no information has been provided by the Council with regard to the demand for family housing. The appellant, who is a local letting agent with an office close to the appeal site, noted at the Hearing that he rarely sees any enquiries from families wishing to live in the Woodhouse area due to the high numbers of student housing and HMOs and the common perception that such areas are likely to attract greater levels of noise and disturbance and anti-social behaviour. To some extent those comments were anecdotal and not supported by any empirical evidence. However, the Council noted within its statement that the Woodhouse area has 'fairly high' concentrations of HMOs and flat conversions.
21. The planning history search conducted by the appellant also revealed a large number of planning permissions relating to flat and HMO conversions in the area. In particular, the terrace on the opposite side of Providence Avenue was converted into flats as part of a single scheme. Having viewed the immediately surrounding properties and noted features such as the number of bins, boards advertising student lets and the provision of intercom buzzers to the front of some properties, it is clear that there is a high concentration of flats, student lets and HMOs on Providence Avenue. Given that the appeal property is in the middle of the terraced row, surrounded largely by non-family orientated accommodation I am minded to agree with the evidence of Mr Manton that the location is unlikely to be one that would appeal to most families.
22. In addition, the preamble to policy H6 notes that remaining C3 dwellings on streets with a high concentration of HMOs may be unappealing and unsuitable for family accommodation such that a further conversion would not cause additional harm¹. That advice is aimed particularly at HMO conversions but I see no particular reason why the logic should not be applied to the current proposal. Having regard to the character of the surroundings, the nature of the housing stock on the street and the likely low level of demand for family housing I am satisfied that the conversion into four flats does not contravene the requirements of subsection C(iv) of policy H6.
23. Moreover, in the absence of any statistical data regarding the make up of the local housing stock and the need for particular types of accommodation within the area I cannot conclude that the proposal has caused undue harm in terms

¹ Paragraph 5.2.24

of the prevailing mix of housing and the ability to meet the needs of the local population.

Living Conditions of Occupants of the Flats

24. The Council identified a number of specific concerns with regard to the living conditions of occupants of the flats. With regard to the basement (lower ground floor) flat those concerns were that the outlook onto the rear yard was unappealing, that the living accommodation could be overlooked from within the rear yard, and that the lightwell to the front bedroom provided a limited outlook and lack of natural light. In terms of the second floor flat the Council referred to the lack of outlook and natural light arising from low level windows within the roofspace. No particular concerns were raised with regard to the internal arrangement or outlook from the ground and first floor flats.
25. Access to the lower ground floor flat is gained from the rear of the property, through the rear yard. The flat contains two principal rooms; the rear room containing the living area and small kitchen and the front bedroom which benefits from an en-suite bathroom. The yard is in a somewhat dilapidated condition and, in its present state, presents an unwelcoming entrance to the unit and provides a poor outlook from the main living area. That is largely due to the condition of boundary treatments and the surface of the yard and the lack of any obvious greenery. Aside from providing a poor outlook the current arrangement is such that it would discourage residents from using the outdoor space.
26. At the hearing, the appellant suggested that a condition could be attached to any approval to secure a scheme of landscaping to enhance the appearance of the yard. For the reasons given such a condition is necessary and, subject to appropriate details being implemented in line with a scheme to be submitted to and agreed in writing by the Council, I am satisfied that the rear yard could be enhanced to provide a suitable entrance to the basement, a more attractive outlook and a more usable outdoor space.
27. I understand that the yard is available for the occupants of all four flats to use. Thus, there is the possibility that residents of the other three flats could look into the rear living and kitchen area of the basement unit whilst occupying the space. However, given the location of the yard at the rear and the limited number of flats in the building I would not expect that the level of use would be excessive. In addition, it is not uncommon for terraced houses to open directly onto the street or for ground floor windows in flats to sit adjacent to communal areas and the level of overlooking would not be any greater than one may reasonably expect to find in an urban area. The rear window is directly adjacent to the kitchen area and residents could erect blinds or net curtains if they were particularly concerned about overlooking.
28. The lightwell to the front of the property is of a reasonable scale, as is the window to the front bedroom in the lower ground floor unit. Whilst views are somewhat restricted it is possible to view out onto the terrace opposite and the scale of the window provides ample natural light. Therefore, although in the basement, the level of light and outlook is not significantly different from what one would expect to find in a tightly packed area of terraced housing and I am satisfied that the arrangement provides suitable living conditions.

29. The second floor flat is located within the roof space and contains a living/ kitchen area to the front and a rear bedroom with ensuite bathroom. The windows are essentially set at floor level and terminate approximately 1m above floor level at the junction between the wall plate and the roof joists. Therefore, views out of the property would be available for those seated or lying in bed but the outlook is limited for those in a standing position. I appreciate that many conversions work with the form of existing buildings, resulting in window positions that may not be what one would expect in a conventional dwelling. In this case, despite being less than conventional, the windows do allow an outlook to the front and rear and, purely in terms of outlook I am satisfied that the arrangement is within reasonable limits.
30. However, the windows are relatively small and I noted that natural light was low when I requested that the lights were turned off in the living area. To my mind, the low level of light in combination with the unconventional window locations results in a poor internal environment in both the living room and the rear bedroom. The appellant has suggested that rooflights could be inserted into the roofslope to give additional natural light. I am satisfied that their provision could be secured through a planning condition and, subject to that matter, I find that the living conditions would be acceptable within the second floor flat.
31. Finally, the Council has raised concerns regarding the size and suitability of the outdoor amenity space. I have found that the external environment could be enhanced through the provision of a landscaping scheme. The size of the yard is modest but that is commensurate with the nature of the property and the area in general. To my mind, the space is no less suited to use by residents of the flats that it would be for a family if the property were to be used in that manner. The site is also within close proximity of the large public open spaces that straddle Woodhouse Lane and residents would have ready access to spaces for recreation and physical exercise.
32. In view of the above I conclude that the conversion to four flats provides acceptable living conditions for existing and future residents, subject to conditions to secure the implementation of a scheme of landscaping and the installation of rooflights in the upper floor flat. In that respect, the development complies with the requirements of policy H6(C)(ii & vi) of the CS, policy GP5 of the Leeds Unitary Development Plan Review (2006) and paragraph 17 of the Framework which identifies that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Other Matters

33. Within its statement the Council referred to potential effects that could stem from the conversion of houses to flats including additional comings and goings and added competition for car parking. At the Hearing the Council was keen to stress that it was referring to potential impacts in a general sense rather than suggesting that any harmful impacts had been identified in the present case. The appellant refurbished the premises and it has been let as four flats, in its present form, since that time and there are no records of any complaints with regard to noise or any evidence of undue parking pressure in the area. The site is within walking and cycling distance from the city centre with good transport links and I am satisfied that the use can be accommodated without

the provision of off street parking. Equally, the street would appear to be within an area with a high concentration of flats and HMOs and the use, and the likely level of activity, is commensurate with the established character of the area.

34. The Council cannot demonstrate a five-year supply of housing and, accordingly, the presumption in favour of sustainable development applies, as set out at paragraph 14 of the Framework. That said, policy H6 of the CS does not set a presumption against flat conversions and the Council stressed that it did not have an objection in principle, providing that the terms of the policy were met. To my mind, the policy still carries significant weight because it does not explicitly seek to restrict housing numbers but aims to ensure that any flat conversions are of an appropriate scale and standard, taking account of factors including the demand for family housing in the area and the need to ensure a good standard of living. Those aims are consistent with the wider aims of the Framework, particularly the social and environmental aims. Consequently, I find that the criteria within the policy remain an appropriate measure by which to assess the suitability of flat conversions and the absence of a five year supply of housing has not had a significant impact on my decision.

Conditions

35. As set out, I find that conditions are necessary to secure a scheme of landscaping for the rear yard and to ensure that rooflights are fitted within the living room and bedroom of the upper floor flat. Where development is retrospective any condition to secure the implementation of further work needs to be worded in order to allow a time period for the submission of a scheme to the planning authority, a period for that scheme to be agreed in writing, including an allowance for an appeal if necessary. The scheme must also specify a period for compliance. The condition also needs to remove the benefit of the planning permission if the development is not carried out in accordance with the condition because the scheme would be unacceptable without the required works. In that regard I have imposed a requirement that the use should cease within 6 months of a failure to meet the specified deadlines within the respective conditions. I am satisfied that represents an adequate period of time to enable tenants to find alternative accommodation in the event that such a course of action is necessary.
36. I am satisfied that no conditions beyond those suggested are necessary to make the development acceptable in planning terms.

Conclusion on Ground (a)

37. I am satisfied that the conversion of the dwelling into four flats has not had an undue impact on the balance of the local housing stock and no evidence has been presented to demonstrate a demand for family dwellings within the specific area of the site. Subject to conditions, the accommodation will provide acceptable living conditions for occupants of the units. The site is located in a sustainable location close to the city centre and university and no objections have been raised in terms of traffic, car parking or the amenity of neighbouring residents. Consequently, the development complies with the aims of policy H6 of the CS, no other conflict with the development plan has been identified, and I am satisfied that it represents sustainable development having regard to the terms of the Framework, taken as a whole.

38. Accordingly, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Bradley Stankler
Mr Hedley Manton

Bradley Stankler Planning
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Caroline Harris
Ms Lisa Hart
Mr David Newbury

Compliance Officer
Principal Planning Officer/ Team Leader
Development Management Group Manager

APPENDIX

SCHEDULE OF CONDITIONS:

- 1) The use hereby permitted shall cease within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for landscaping the rear yard, including boundary treatments, hard surfacing and a planting scheme shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The use hereby permitted shall cease within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the insertion of rooflights to provide light into the front and rear rooms of the second floor flat shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.