
Appeal Decision

Site Inspection on 17 July 2019

by Graham Self MA MSc FRTPI

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

Decision date: 31 July 2019

Appeal Reference: APP/P4605/C/18/3213105

Site at: 187 Gristhorpe Road, Birmingham B29 7SP

- The appeal is made by Ms Saira Mian under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Birmingham City Council.
- The council's reference is 2017/0956/ENF.
- The notice is dated 3 September 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, the material change of use of the premises from a dwellinghouse (Use Class C3) to temporary accommodation (Sui Generis)".
- The requirements of the notice are: "Cease the use of the premises as temporary accommodation and return the property to its original condition as a C3 dwelling house".
- The period for compliance is three months.
- The appeal was made on grounds (b), (c) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

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

Procedural Matters and Format of Decision

1. There are some similarities between this appeal and two other appeals relating to neighbouring properties at 183 and 185 Gristhorpe Road. I inspected all three sites consecutively on the same day. Parts of the statements submitted for the appellants and the council are common to the three appeals where the issues are similar, so the same applies to my decisions, although there are differences because of differences in some of the evidence and grounds of appeal.¹
2. During the site inspection I could not gain access to all of the rooms in the appeal property. Five of the rooms were locked, there was no response to knocking on the doors and none of the three people representing the appellant and bodies involved in operating the premises had a key available. This applies to the rooms on the first and second floors and one of the ground floor rooms.
3. The appellant and those representing her and her supporting parties at the inspection had ample opportunity to make arrangements for the inspection. Their failure to arrange for access for a full inspection may not have been a deliberate

¹ The appeal relating to number 185 was on grounds (a), (b), (c), (e) and (g). The other two appeals were both on grounds (b), (c) and (g).

ploy, but in these circumstances I am entitled to make assumptions on what I would have seen in the rooms I was prevented from inspecting, and the assumptions may go against the appellant.

4. After my inspection I arranged for an email to be sent through the Planning Inspectorate to the council and the appellant's agent, inviting comments on certain points relating to the requirements of the enforcement notice. I did so because it appeared to me that the requirements of the council's notice were badly drafted, neither side had mentioned this matter in their written statements, and I considered it appropriate in the interests of natural justice to give the parties the opportunity to comment. I have taken the written responses into account. I return to this topic under the heading "Requirements of the Notice" below, before I refer to the points raised by ground (g) referring to the compliance period.
5. Both the appellant and the council set out their written statements dealing with grounds (b) and (c) of Section 174(2) together, under a combined heading. I consider these grounds separately below. Some of the issues raised have a bearing on both grounds, though it seems to me that most of the appellant's arguments relate to ground (b).

Legal Background

6. For any readers of this decision who may not be familiar with planning law, I set out briefly here some basic points applicable to this case. Two pieces of legislation have a particular relevance. One is the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (abbreviated elsewhere to "GPDO"); the other is the Town and Country Planning (Use Classes) Order 1987 as amended ("UCO"). Taken together, these Orders grant planning permission for certain types of change of use within and between specified use classes. One of the classes refers to "dwellinghouses".
7. Those provisions can be removed by a direction under Article 4 of the GPDO and such a direction evidently applies to properties in Gristhorpe Road, taking away what would otherwise be permitted development rights for material changes of use from Class C3 of the UCO ("dwellinghouse") to Class C4 ("small house in multiple occupation"). This does not entirely prevent the development involved in such a change; but it means that specific planning permission is required for it to be authorised. There is no Article 4 direction affecting permitted development rights to change to Class C3(b) - the latter being defined as use by not more than six residents living together as a single household where care is provided to them.

Ground (b)

8. Under ground (b) of the appeal it is claimed that what is alleged in the enforcement notice has not occurred. The basis of the appellant's case is that the property remains a dwellinghouse, classified under the UCO as Class C3(b).
9. The appeal property is evidently leased and operated by Saif Homes, a registered social housing provider, working in partnership with Three Conditions Housing Association. The occupiers of the property have apparently changed quite frequently, but have typically been people who have a need for short-term accommodation. I can see that occupiers have broadly similar needs and have some aspects of their personal histories in common. I am also aware of the court

judgment referred to for the appellant,² which held that people who reside in the same property can be regarded as forming a single household without them having come together beforehand as a pre-formed group.

10. However, there are three key flaws in the appellant's case. First, the occupied room inside which I saw was not only a bedroom with en-suite toilet and shower but was provided with kitchen fixtures and fittings (such as a kitchen sink and cupboards, and a fridge), which appeared to be in regular use. It seems to me likely that the other rooms which I could not inspect were also provided with similar facilities used by their occupiers. Moreover, cupboards in the ground floor "kitchen" (as labelled on the architect's Drawing 4380/23A showing the approximate layout of the house) were mostly empty and what kitchen equipment was there (which did not include a fridge) appeared to be little used.
11. This evidence suggests to me that the occupants of the property do not normally share catering, cooking and eating arrangements, but have a more individual lifestyle with the rooms being used as self-contained bedsits with their own cooking, washing and other facilities for day-to-day living. The fact that the individual rooms had separate locks is also indicative of separate lifestyles, although not decisive by itself. Although the occupiers may be living here because they all have a similar need, all the signs are that they do not live together as a single household.
12. Second, the council's evidence indicates that the property has been occupied by more than six persons. When a council officer made an inspection he was not able to see all of the rooms, but at least one was evidently occupied by two people and there appear to have normally been six tenanted rooms, making at least seven, possibly more, occupants of the whole building. Although the identity of the occupiers has probably changed since then, I have no good reason to think that the number of occupiers has materially reduced, especially as I could not enter the majority of the rooms to look for evidence.³
13. Third, the available evidence also indicates to me that the occupiers of the property are not receiving care, in the sense of that term applicable here.⁴ They - or some of them - may well be receiving "support" (which typically appears to involve help or advice about obtaining work or longer-term accommodation); but that is not the same as care. I also note that Saif Homes Ltd's apparent operating partner (Three Conditions Housing Association) is described in one of the statements for the appellant as a registered provider of "supported housing projects". Supported housing is aimed at providing support, not personal care. Uncontested evidence in the council's statement also makes clear that no support workers live on site and there is apparently no on-site personal care treatment for mental health, drug or alcohol dependencies which are reported to be an issue with some occupiers.
14. One of the people occupying a room at the time of the council's inspection told the council officer that she saw a support worker once a week to help with applications for housing and jobs. A couple occupying another room said they

² *R (oao Yvonne Hossack) v Kettering Borough Council & Another and English Churches Housing Group* [2002] EWCA Civ 886.

³ Both the appellant and the council opted for the appeal to be determined by written representations. Under this procedure I could not question the occupiers whom I saw on the premises, because that would have involved hearing impermissible oral evidence.

⁴ "Care" here means *personal care* (my italics) for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder.

"had a support worker but had only met her once in the last month". The type of support indicated by this evidence is not "care" for the purposes of Class C3(b) of the UCO.

15. In summary, nothing I have seen or read causes me to believe that anything more than a small minority of the occupiers, if any at all, have been receiving care. At the very least, the onus is on the appellant to make out a case on ground (b), and the evidence falls a long way short of doing so to the appropriate standard.⁵
16. Other considerations further undermine the appellant's case. For example, it is claimed in the appellant's statement that the appeal property is laid out and appears similar in character, nature and form to that of a C3 dwellinghouse. That is stretching a comparison too far - the basic structure of the building may look like a house, but dwellinghouses occupied by a single household do not normally have kitchen fittings in the numerous rooms including bedrooms.
17. Moreover, it is abundantly clear from the evidence before me that the use enforced against has been materially different from use as a dwellinghouse, even allowing for the various types of "dwellinghouse" use covered by Class C3 of the UCO. The materiality of the difference arises from a combination of factors, including the number of occupiers, the frequency of change linked with the apparent fairly short stay nature of occupancy, and the lifestyles of the occupants. The representations by local residents about noise, disturbance, anti-social behaviour and frequent visits by the police also show that the way the property is used has had a significant impact on the neighbourhood and on the amenities of people living nearby; and this reinforces my assessment that the character of use is significantly different from use as a dwellinghouse and that the change of use has been "material".
18. Taking the above factors into account, I find that the use of the appeal property at the relevant time when the enforcement notice was issued was not use as a dwellinghouse falling for the purposes of planning law within Class C3(b) of the UCO (or any other sub-class within Class C3). The actual use appears to fall somewhere between a house in multiple occupation and a short-stay hostel, plus some features of use as "flatlets"; and the fact that the use does not fit easily into the UCO is itself a sign that this is a "use of its own type" (or *sui generis*). The description in the enforcement notice - "temporary accommodation (*sui generis*)" - is a reasonably accurate description of the actual use.
19. I conclude that the material change of use as alleged in the enforcement notice has occurred, as a matter of fact. Therefore ground (b) of the appeal does not succeed.

Ground (c)

20. This ground of appeal is a claim that the matters alleged in the enforcement notice do not constitute a breach of planning control. I have found on ground (b) that the material change of use alleged in the enforcement notice has occurred. It involved development as defined in Section 55 of the 1990 Act, and the only ways such development would not constitute a breach of planning control could be if the development had become lawful by gaining immunity from enforcement through the passage of time, or was authorised by a specific planning permission, or was authorised through planning permission granted by the GPDO and UCO.

⁵ The standard of proof required on legal grounds of appeal is the balance of probability.

21. Taking each of these in turn, there is no reason to believe that the change of use occurred so long ago as to have become immune and so lawful (the relevant period being ten years before the date of the enforcement notice). No claim has been attempted to this effect, and anyway I cannot see any basis for such a claim. Clearly no specific planning permission has been applied for or granted for the development. Nor has planning permission been granted by the combined provisions of the GPDO and UCO - as explained above, the use enforced against is a use of its own type, which does not fall within any of the classes of the UCO, and is not "permitted development" by any other means.
22. In summary, I judge that the disputed use has involved a material change of use of the appeal property amounting to development as defined in the 1990 Act. The development was unauthorised and unlawful. Therefore it constituted a breach of planning control. I conclude that ground (c) fails.

Requirements of the Notice

23. Although ground (f) of Section 174(2) (which relates to the requirements of enforcement notices) was not pleaded as part of this appeal, it would be wrong for me to ignore the unsatisfactory nature of part of the requirements as set out by the council. There are two main flaws. One is the imprecision of the requirement to "return the property to its original condition as a C3 dwelling house". As a matter of English language the term "condition" can have numerous meanings depending on its context. The *condition* of the property - if meaning its state of maintenance - is not good, but that is not the disputed issue: it is the *use* which is being enforced against in the allegation. The second flaw is that, if the expression "return to....condition as a C3 dwelling house" is meant to mean "convert back into and re-use" as a dwellinghouse (which appears to be so but is not altogether clear), it is unreasonable to require any property owner to use his property for a specific purposes, as opposed to leaving it unused.
24. It seems that what the council's phrase "return the property to its original condition as a C3 dwelling house" was really requiring is that the current arrangement, with kitchen fittings in what would typically be the bedrooms or reception rooms of a house, should be made suitable for use as a normal dwellinghouse.⁶ Market forces, combined with the restrictions on HMO use mentioned above, should then ensure that the property becomes used as such; but it is unreasonable to specify that this should happen within the compliance period.
25. I have a duty to get the notice in order if I can.⁷ To remove the flaws just mentioned and to make the requirements more satisfactorily clear as far as is feasible, I have decided to use the powers available to me under Section 176 of the 1990 Act to amend the notice so that it requires the unauthorised use to cease and the physical layout and fittings of the property to be made suitable for use as a Class C3 dwellinghouse, without actually requiring such use to start. An

⁶ The email inviting comments from the parties referred to in paragraph 4 above mentioned the apparent intention of this part of the notice, as drafted by the council, to require undoing aspects of the physical arrangement of the property, such as the provision of kitchen fittings in rooms other than the main ground floor kitchen, so as to make the property suitable for use as a normal dwellinghouse.

⁷ If I were to quash the enforcement notice on the grounds that the requirements were not precise enough, the council would almost certainly issue another notice with better drafted, more precise requirements, leading to a further appeal and causing delay, inconvenience and expense for all involved.

enforcement notice directed at an unauthorised material change of use can validly require the removal of works or operations which are integral to and facilitate the unauthorised use, even if the operations would otherwise be immune from enforcement or do not need planning permission (because, for example, they only affect the inside of a building).⁸ In this instance such a step would obviously include, as a minimum, removing the kitchen fittings in all the rooms except the main ground floor kitchen, as well as carrying out whatever work may be necessary to make the rooms inside which I could not see suitable for normal use as bedrooms or reception rooms in a dwellinghouse occupied by a single household.

26. It is difficult to see how the property could be marketed and used as a single-household dwellinghouse without one or more of the rooms which at present have kitchen fittings and en-suite shower and toilet being used for reception or living room purposes. This appears to be another point not considered when the council drafted the requirements of the enforcement notice. It would seem odd, and possibly contrary to building regulations, to have a toilet and shower room leading directly off a reception room such as a dining room. But I cannot go as far as specifying exactly what should happen to particular toilet and shower facilities since that might well involve more than just removing fixtures or fittings (it could involve removing partition walls, amounting to a building operation, with further implications for the compliance period).
27. Omitting any requirement enforcing actual future use will make the notice partly less onerous, and the overall aim of the amendments is to make the notice clearer, by avoiding the imprecision of the term "condition as a dwellinghouse".

Ground (g)

28. Ground (g) of Section 174(2) concerns the period for compliance.⁹ The appellant contends that the three month period specified by the council is unreasonably short given the difficulties of re-housing tenants when the supply of suitable accommodation is limited, and that 12 months would be more appropriate.
29. Local residents have had to endure far more than just mild disturbance since the start of this unauthorised development. Although one nearby resident considers that objections by local people are hysterical and vindictive, most of the written submissions contain corroborating comments, with the sort of detail which leads me to judge that they are not exaggerating. Disturbance from noise has been caused at night as well as during the day; some residents have felt harassed by the behaviour of some occupiers intimidating passers-by. Drug use and dealing by occupiers of the appeal site has also been observed. There is a primary school nearby, where staff have evidently felt concerns for personal safety.
30. In view of those points there would have to be strong arguments for extending the compliance period. The appellant and other bodies responsible for the use of the property have been entitled to await the outcome of the appeal before taking action to comply; but in my judgment the problems caused to the neighbourhood have gone on for too long already. Details of the personal circumstances of current occupiers of the property are not available to me, apparently for reasons

⁸ This point has been confirmed in well-known court judgments: *Murfitt v SSE* [1980] JPL 598 and *Somak Travel v SSE* [1987] JPL 630. The Somak Travel case concerned an internal stairway which facilitated the unauthorised use of the upper floor of a building, and the court held that an enforcement notice could require the removal of the stairway - comparable to the internal fixtures which help to facilitate the unauthorised use of the appeal property in the present case.

⁹ As is the case with all enforcement appeals, the appeal has in effect suspended the notice, so the compliance period will now run from the date of this decision.

relating to confidentiality. However, it seems that there is a fairly regular turnover of occupants and they do not have long-stay tenancy arrangements.

31. I am aware of the need to consider the human rights of the occupiers of the appeal property. But local residents, too, have human rights, including the right to peaceful enjoyment of their homes.
32. Bearing all the above considerations in mind I judge that with regard to the unauthorised use of the property, the compliance period specified by the council should not be extended; so ground (g) of the appeal does not succeed in that respect. However, I am allowing a further two months to carry out the remedial works mentioned above, to return the property to what the council called its "original condition" as a dwellinghouse. Although no significant structural changes or building operations would be involved, I think it would be reasonable to allow this work to be done after the building has been vacated. Depending on details of the site's past history which have not been covered in the evidence put before me, a planning application may be needed to authorise a future use.

Formal Decision

33. I direct that the enforcement notice be varied in the following ways:
 - (i) by deleting from the requirements the words "and return the property to its original condition as a C3 dwelling house", and re-numbering the remaining original requirement ("Cease the use of the premises as temporary accommodation") as sub-paragraph (i) under the heading "What You Are Required To Do";
 - (ii) by adding as sub-paragraph (ii) of the requirements: "Carry out works to return the property to a physical layout suitable for use as a dwellinghouse as defined in Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended, including the removal of kitchen fittings from rooms other than the ground floor kitchen";
 - (iii) by amending the period for compliance so that it states: "three months for step (i) of the requirements and five months for step (ii) of the requirements".
34. Subject to those variations I dismiss the appeal and uphold the notice as varied.

G F Self

Inspector