
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/18/3213104

Site at: 185 Gristhorpe Road, Birmingham B29 7SP

- The appeal is made by Miss 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 2017/0955/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 is proceeding on grounds (a), (b), (c), (e) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. An application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

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

Format of this Decision

1. In this decision I consider the grounds of appeal in logical, not alphabetical order. The logic is that if an appeal against an enforcement notice succeeds on ground (e), the notice is quashed and the other grounds become redundant; the same applies to grounds (b), (c), (a) and (g) in that sequence; but before considering ground (g) I refer to some issues concerning the requirements of the notice, which were the subject of an email to the parties as explained further below.

Procedural Matters

2. There are some similarities between this appeal and two other appeals relating to neighbouring properties at 183 and 187 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 some of the evidence and the grounds of appeal differ.¹

¹ The appeals relating to numbers 183 and 187 were both on grounds (b), (c) and (g).

3. At the site inspection I could not gain entry to all of the rooms in the appeal property. Three rooms on the first floor 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. In addition, the occupant of a ground floor room refused to allow me into the room.
4. 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 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. The occupier's refusal to allow entry to the ground floor room, apparently on the grounds that he had not been given advanced notice of the site inspection, was unhelpful to the appellant's case.
5. Some of what I saw during my inspection conflicted with the written evidence supplied for the appellant about the way the property is used. The final comments for the appellant, dated only slightly more than three weeks before my inspection, state that the appeal property "is occupied by women brought together by mutual need due to domestic violence". Although there was some evidence of occupation by a female (a cupboard labelled with a female name) the rooms I saw were occupied by males, including the one who refused entry. Given this disparity I consider the appellant's written evidence about the way the property is used to be unreliable, or at the very least not indicative of what might happen at any one time.
6. 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 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.

Legal Background

7. 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".
8. 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), which is defined as use by not more than six residents living together as a single household where care is provided to them.

Ground (e)

9. Under this ground of appeal it is claimed that copies of the enforcement notice were not served as required by Section 172 of the 1990 Act. Subsection (2) of this section specifies that a copy of an enforcement notice shall be served on the owner and occupier of the land to which the notice relates and on any other person having an interest in the land, being an interest which, in the opinion of the planning authority, is materially affected by the notice. For the purpose of this legislation, the term "interest" means a legal or financial interest.
10. The appellant has contended that the enforcement notice was not served on two parties: Britannia Property Group ("BPG") (described as landlord); and Saif Homes (described as "Tenant RSL" ²).
11. The appellant's arguments on ground (e) are weak for three reasons. First, one of the documents submitted in evidence is a letter from a Mr Peter Hughes of PH Property Consultancy to the appellant's agent dated 1 October 2018. This letter is headed "Planning Enforcement - 183, 185 & 187 Gristhorpe Road". It states that Mr Hughes works as a consultant for BPG and is the nominated HMO licence holder for these three premises. This statement conflicts with a statement by Saif Homes Ltd that they (Saif Homes, not Mr Hughes or BPG) hold an HMO licence.³ Be that as it may, it is clear from the content of the letter that Mr Hughes works closely with BPG. The exchange of correspondence revealed by this letter - before the appeal was lodged - shows to me that BPG either should have been made aware of the enforcement notice by their consultant, or were aware of the notice and could have appealed against it if they had wanted to (assuming they would have had a right of appeal, which I cannot be sure about from the available evidence).
12. Second, there is evidence that a council officer posted a copy of the enforcement notice through the letterbox of Saif Homes Ltd's company secretary. I have no good reason to disbelieve this evidence, and anyway the appellant appears to accept that the company received a copy of the notice "sent direct".⁴ The company should also have been aware of enforcement proceedings since Ms Saira Butt (who is evidently an officer of the company) had earlier completed a response to a planning contravention notice on the company's behalf.
13. Third, Section 176(5) of the 1990 Act provides that a failure to serve a copy of the enforcement notice on a person who should have been served may be disregarded if that person has not been substantially prejudiced by the failure. Even setting aside the points above, it has not been contended that the interests of BPG or of Saif Homes have been prejudiced by not having been served with a copy of the enforcement notice. The appellant (through her agent) has merely argued that the notice was not "formally served" on BPG or Saif Homes Ltd. Although the way the council served copies of the notice was flawed, no case has been made out that the interests of either of those parties were substantially prejudiced, or even prejudiced at all.
14. I conclude that ground (e) of the appeal does not succeed.

² This description (Registered Social Landlord) is in a response to a planning contravention notice. The company also describes itself as "lessee/tenant".

³ This is in the reply to question 15 on page 3 of the company's response to the planning contravention notice dated 13 October 2017.

⁴ Paragraph 5.1 of the appellant's statement refers to "interested parties being...sent direct (in the case of Saife [sic] Housing)...". This appears to mean that Saif Housing received a copy of the enforcement notice sent direct from the council.

Ground (b)

15. This ground of appeal is a claim that what is alleged in the enforcement notice has not occurred, as a matter of fact. In summary, the appellant contends that the property remains a dwellinghouse, classified under the UCO as Class C3(b).
16. The occupiers of the property have apparently changed quite frequently, but have typically been vulnerable or disadvantaged people who have a need for short-term accommodation. It is also true, as is pointed out for the appellant with reference to a court judgment,⁵ 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. A front ground floor room, furnished with a sofa, desk and child's crib, appeared to be available for some communal use but was unoccupied at the time of my inspection (when residents who were present in the building were in their rooms), and did not appear to be in frequent or regular use by residents.
17. However, there are three key flaws in the appellant's case. First, a room in which I was able to see had basic catering facilities including a fridge. It seems to me likely that at least some of the other rooms were also provided with kitchen-type facilities used by their occupiers. The available 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 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.
18. The occupiers may be living here because they all have a similar need, but the evidence that they live together as a single household is very thin, and the atmosphere in the property at the time of my inspection, when those occupiers present were in their rooms, did not give me the impression of a "single household" use. At the very least, the onus is on the appellant to make out a case on ground (b), and this onus has not been discharged, partly owing to the appellant's failure (through his agent and the other representatives at the inspection) to arrange access to the majority of the rooms so that I could gain on-site evidence.
19. Second, the evidence indicates to me that the occupiers of the property are not receiving care, in the sense of that term applicable here.⁶ The council's written statement records that when a council officer visited the premises, two ladies who were in the ground floor kitchen mentioned a "careworker" employed by Saif Housing who was helping the occupants find permanent housing and jobs and "helping with benefits" (which I assume means giving advice about benefit payments). The Saif Housing employee evidently visits the property on two or three days a week for this purpose but does not provide any medical care, and there is no evidence that occupiers receive regular assistance with personal hygiene or cooking or dressing or any other sort of personal care. It seems to me that some or all of the occupiers 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 personal care.

⁵ *R (oao Yvonne Hossack) v Kettering Borough Council & Another and English Churches Housing Group* [2002] EWCA Civ 886.

⁶ "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.

20. Third, 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".
21. 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. The description in the enforcement notice - "temporary accommodation (sui generis)" - is a reasonably accurate description of the actual use.
22. I conclude that what is alleged in the enforcement notice has occurred, as a matter of fact. Therefore ground (b) of the appeal does not succeed.

Ground (c)

23. 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.
24. 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.
25. 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 Section 55 of the 1990 Act. There is no planning permission for the development, either by means of a specific permission or through the UCO and GPDO. The development was unauthorised and unlawful. Therefore it constituted a breach of planning control. I conclude that ground (c) fails.

Ground (a)

26. Under this ground of appeal, planning permission is sought for the development enforced against. Two main issues arise: the effect of the development on the

supply of family housing in the area; and the impact of the development on the amenities and living conditions at neighbouring properties. These issues have to be assessed in the light of relevant planning policies.

27. The city council have apparently had concerns for some time about the number of HMO-type premises in the part of Birmingham including the appeal site, partly because of the demand for student accommodation and proximity of the university. Policies have been adopted in the development plan and in supplementary documents⁷ aimed at controlling the proliferation of multiple occupation uses in order to prevent the loss of family housing and the resultant effects on the area's character. The Article 4 Direction mentioned in paragraph 8 above evidently has similar aims. Other policies refer to requirements to meet social need: for example, policy TP35 of the development plan refers to making the best use of the existing dwelling stock and states that the loss of residential accommodation will only be permitted if there is an identified social need for the proposed use. The appellant's statement also points out that there is a variety of residential accommodation in Gristhorpe Road, and that national policy seeks to achieve balanced and socially inclusive communities.
28. The council say that the percentage of houses in some form of multiple occupation within 100 metres of the appeal property is about 11.3%, above the 10% limit in adopted policy. The appellant argues that the excess is not significant and that the addition of one extra property in this area is not material.
29. Policies with a statistical limit have to be interpreted in a commonsense way. A small percentage difference hardly seems significant looked at in isolation; what is important is the underlying aim of the policy. In this instance I judge that permitting the unauthorised development would conflict with what adopted policies are trying to achieve, which is to maintain a reasonable balance between family housing and other types of housing in this part of Birmingham. Permitting this development would go against that aim and undermine locally adopted policy, as well as national policy guidance about balanced communities.
30. In making that judgment, I take into account not just percentage figures stated in policies, but the actual practical effects which the development has had on this neighbourhood, as indicated in the evidence before me. The appellant's case is not helped by the claim that the landlord⁸ has not received any complaints about noise, disturbance or anti-social behaviour from the local police or other bodies including local councillors, the local member of parliament, or members of the public. The police have evidently been called to one or more of the premises at 183, 185 and 187 Gristhorpe Road on 81 occasions between January 2018 and May 2019. The evidence does not provide a breakdown between the three adjacent addresses, but given the similarities between them and the evidence that occupants of the three often socialise together, it is reasonable to assume that a proportion of these call-outs involved number 185. The recorded reasons for police attendance included domestic violence, arrest attempts, disorder, alcohol and drug-related offences, noise nuisance, burglary, fighting, assault and threats to a housing officer.

⁷ The development plan is Birmingham Plan 2031, adopted in January 2017. Supplementary planning documents referred to in evidence include Places for Living and the Selly Oak SPD, although the appellant points out that the appeal site is outside the latter area's designation.

⁸ It seems that Britannia Property Services Ltd, named in submitted documents as the landlord, may be a joint landlord or tenant or leaseholder, since the appellant is identified in the appeal form as the owner, and Saif Homes Ltd are named as leaseholder.

31. It is also notable that about 20 local persons or bodies have submitted written representations describing the effects of the disputed use.⁹ They raise different points; but there is a common theme relating to disturbance caused by the current use of the appeal property and of the others at 183 and 187. Many residents have evidently reached the point of distress, referring to loss of sleep, loud music and shouting during the night. Other issues mentioned include intimidating behaviour by groups of occupiers of Number 185 and adjacent addresses gathered together at the front of the premises, vehicle and pedestrian traffic at unsocial hours, and frequent obvious drug dealing.
32. Some occupants of the appeal property may live there unobtrusively; others obviously do not. A resident of a nearby house on the opposite side of the road supports the appeal and regards the objections as hysterical and vindictive; but there is a weight of convincing evidence the other way. Something is clearly wrong when local people feel they have to cross the road to move away from the appeal property when walking past. Staff at the primary school a short distance away also evidently have concerns about personal safety.
33. Taking all the above considerations into account, I find that the unauthorised development has harmed the character of the area and caused unacceptable loss of amenity for nearby residents by making this part of Gristhorpe Road a less pleasant place in which to live, contrary to relevant planning policies. I conclude that planning permission should not be granted; so ground (a) of the appeal fails.

Requirements of the Notice

34. 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.
35. 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 bedrooms or reception rooms of a house, should be made suitable for use as a normal dwellinghouse.¹⁰ 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 all happen within the compliance period.

⁹ Some of these representations have been made direct; some have been forwarded by the Muntz Park Neighbourhood Forum together with the Forum's submission.

¹⁰ The email inviting comments from the parties referred to in paragraph 6 above mentioned this apparent intention of the notice, as drafted by the council; so the parties have had the opportunity to comment on this point.

36. I have a duty to get the notice in order if I can.¹¹ To remove the flaws just described 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 of the property to be made suitable for use as a Class C3 dwellinghouse, without actually requiring such use to start. An 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).¹² 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 upper floor rooms inside which I could not see suitable for normal use as bedrooms in a dwellinghouse occupied by a single household.
37. 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 dwelling house".

Ground (g)

38. Ground (g) of Section 174(2) concerns the period for compliance. 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.
39. As I have described in assessing ground (a) above, local residents have had to endure far more than just mild disturbance since the start of this unauthorised development. The appellant has contended that because the two adjacent properties at 183 and 187 are operated by the same Registered Social Landlord as the appeal property the likelihood of harm caused by noise and disturbance is "minimal". That argument misses the point - the adverse impact of the development has affected far more than just the adjacent premises; and the fact that those premises are in similar use seems to have led to interaction between occupiers which has multiplied disturbance to the wider neighbourhood.
40. In view of those points there would have to be strong arguments for extending the period for compliance. The appellant and other bodies responsible for the use of the property have been entitled to await the outcome of his appeal before taking action; 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 relating to confidentiality. However, it seems that there is a fairly regular turnover of occupants and they do not have long-stay tenancy arrangements.

¹¹ 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.

¹² 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.

41. It is of course necessary to consider the human rights of the occupiers of the appeal property. But local residents have human rights, too. In particular, they are entitled to the peaceful enjoyment of their homes.
42. 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.

Other Matters

43. According to the council's evidence the City Council was paying the rent for at least two of the occupants of Number 185 at the time of a planning officer's on-site investigation. It therefore seems that the local planning authority (that is to say, taxpayers) have provided - and may still be providing - financial support for a breach of planning control, which has then caused further public expenditure on enforcement proceedings. Other publicly-accountable bodies do not appear to have realised their role in financing or supporting unlawful development and its resultant problems for local residents. I leave this matter for those involved to consider.

Formal Decision

44. 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".
45. Subject to those variations, I dismiss the appeal, uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector