



Appeal Decision

Site visit made on 30 July 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal Ref: APP/N4205/C/18/3218710

First Floor of 101-105 Tonge Moor Road, Bolton BL2 2DL

- 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 Bashir Ahmed against an enforcement notice issued by Bolton Metropolitan Borough Council.
- The enforcement notice was issued on 15 November 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the first floor to an eight bed house in multiple occupation.
- The requirements of the notice are:
 - (i) Cease to use the first floor of 101-105 Tonge Moor Road as a house in multiple occupation;
 - (ii) Permanently remove from the first floor all manifestations of residential use including fitted kitchen, bed(s) and fitted bathrooms.
- The period for compliance with the requirements is 90 days.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a correction and a variation in the terms set out in the Formal Decision.

Decision

1. It is directed that:

- The enforcement notice be corrected in paragraph 4 by the deletion of the wording "the above breach of planning control has occurred within the last four years" and substitution of "the above breach of planning control has occurred within the last 10 years."
- The enforcement notice be varied in paragraph 5 by the deletion of the wording of the requirements of the notice and the substitution of "(i) Cease to use the first floor of 101-105 Tonge Moor Road as a large house in multiple occupation (sui generis); (ii) Remove all the internal walls and internal doors which have facilitated the use of the first floor of 101-105 Tonge Moor Road as an eight bed house in multiple occupation."

2. Subject to the correction and variation above the enforcement notice is upheld.

The Enforcement Notice

3. The enforcement notice refers at paragraph 4 to the breach of planning control occurring within the last four years. However, where there has been a material

change of use, a four year period applies to the change of use of any building to use as a single dwelling house. In this instance, the period for taking enforcement action is ten years. Having had regard to the grounds of appeal and evidence before me, I am satisfied that correcting the notice to refer to 10 years would not cause any injustice to either the local planning authority or the appellant.

Reasons

Appeal on ground (b)

4. The main issue is whether the use as an eight bed house in multiple occupation (HMO) has occurred as a matter of fact. The appellant maintains that although internal works have taken place to subdivide the space within the first floor, the additional space created has been utilised for storage. The property has therefore remained as a five bedroomed HMO.
5. The appellant has provided a copy of a planning application dated 25 April 2017 which describes the proposal as 'Regularisation application for 3 more HMO bedrooms from 5 to 8 at 105 Tonge Moor Rd, Bolton.' It also stated that the building, work or change of use had commenced on the 1 February 2017 but was not complete. The Council refused planning permission for the change of use, as well as the works on 26 June 2017.
6. I appreciate that following this refusal of planning permission, the appellant subsequently sought to regularise the building works, and has provided a copy of a Certificate of Regularisation under the Building Act 1984 and Building Regulations 2010 for works described as 'refurbishment of the HMO with a new WC and storage rooms.' However, the planning application form makes it clear that the proposal was to regularise works which had been undertaken to provide an additional three HMO bedrooms (8 in total). It seems to me that the Building Regulations Certificate provides some support that the works were undertaken for the eight bed HMO as a matter of fact.
7. Moreover, the Council state that their Housing Standards Team visited the property on 11 March 2018 and observed and noted nine residents occupying the first floor of the appeal property. This has not been disputed by the appellant.
8. It was clear from my own observations on my site visit that the works to facilitate the additional rooms had taken place, including partitioning and installation of lockable fire doors. Whilst I appreciate that those rooms may now be being used for storage, I observed that the room identified as a communal living area on the Building Regulation Plan¹ provided by the appellant, had been in use as an additional bedroom, with bedroom furniture still stored in it and a lock on the door. Furthermore, photographic evidence² has been provided by the Council which shows one of the 'storage' rooms laid out as a bedroom during an inspection by Council Officers on 7 August 2018.
9. In conclusion, given the evidence shows that on the balance of probability, the works were carried out and the accommodation used as an eight bedroom HMO. The appeal on ground (b) does not succeed.

¹ Floor Plans and Elevations, drawing no 01 Rev 2, dated Oct 2017

² Appendix B, Council's Statement of Case.

Appeal on ground (c)

10. The issue is whether the change of use to an eight bed HMO is a breach of planning control.
11. The appellant's overall submissions on this ground are that the alleged breach of planning control has not occurred as a matter of fact, no breach of planning control has therefore taken place and that the property has operated as a five bed HMO with an HMO licence since April 2009. Furthermore, its use should not be subject to the Council's Article 4 Direction as it has been in use as an HMO prior to 1 July 2014.
12. I have found that the use of the first floor as an eight bed HMO has occurred as a matter of fact. The grant of a licence for an HMO under the provisions of The Housing Act, 2004 does not grant or prejudice a requirement for planning permission for the use of the property. The Town and Country Planning (Use Classes) Order 1987 (as amended) places uses of land and buildings into various classes. Class C4 covers houses in multiple occupation for small shared houses or flats occupied between three and six unrelated individuals who share basic facilities. However, a large HMO (those with more than six people sharing), as is the case with this eight bed HMO, falls outside any specific class of use and is known as *sui generis*³ use. A change of use from a dwelling house, or from a Class C4 HMO to a large HMO therefore represents a material change of use. The need for planning consent for a change of use to a large HMO would not be as a consequence of any Article 4 direction the Council may have in operation.
13. I conclude that the change of use to an eight bed HMO is a breach of planning control. The appeal on ground (c) does not succeed.

Appeal on ground (d)

14. In relation to a breach of planning control consisting of a change of use of any building to a large HMO, the period for taking enforcement action is ten years beginning with the date of the breach (s171B (3)). The enforcement notice was issued on 15 November 2018. Therefore, the onus is on the appellant to show on the balance of probability that the change of use to an eight bedroomed HMO took place on or before 15 November 2008 and continued for an uninterrupted period of ten years thereafter.
15. The appellant's statement of case states that the premises has operated as a five bed HMO since April 2009. Moreover, the planning application which was described as 'Regularisation application for 3 more HMO bedrooms from 5 to 8 at 105 Tonge Moor Rd, Bolton' stated that the works to facilitate the change of use began on 1 February 2017. Based on the appellant's evidence alone, the change of use to a large HMO has clearly not been continuing for at least ten years. The appeal on ground (d) does not succeed.

Appeal on ground (f)

16. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.

³ Meaning of 'of its kind' when no use classes order category fits.

17. The requirements are to cease the use of the land as a large house in multiple occupation and to permanently remove from the first floor all manifestations of residential use including fitted kitchen, bed(s) and fitted bathrooms. I therefore consider that the purpose of the notice is to remedy the breach of planning control. The appellant's submission is that no breach of any description has occurred, and the site should remain as a five bed HMO.
18. Under section 57 (4) of the Act there is a right of reversion to the last lawful use following the issue of an enforcement notice. The Council now accept that the first floor of 101-105 Tonge Moor Road could revert back to a house in multiple occupation for up to six individuals⁴ (Use Class C4). That said, the requirements of the notice set out in the paragraph above are excessive as they would require the removal of the only kitchen and bathrooms available within the first floor of the property.
19. The appellant has not suggested any lesser steps. However, it seems to me that the material change of use to the eight bed HMO was facilitated by the sub-division of bedroom No. 2 and bedroom No. 3, together with the formation of an additional bedroom. The breach of planning control can therefore be remedied by a requirement to: (i) Cease to use the first floor of 101-105 Tonge Moor Road as a large house in multiple occupation (*sui generis*); (ii) Remove all the internal walls and internal doors which have facilitated the use of the first floor of 101-105 Tonge Moor Road as an eight bed house in multiple occupation. Both parties have had an opportunity to comment on this variation and no objection was raised. I am satisfied that the variation will not cause injustice to the appellant or the local planning authority.
20. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it.

OVERALL CONCLUSION

21. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the notice with a correction and a variation.

Elizabeth Pleasant

INSPECTOR

⁴ Paragraph 8.5, Statement on behalf of the Borough Council of Bolton