



Appeal Decision

Site visit made on 29 October 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2019

Appeal Ref: APP/R5510/C/18/3219556

Land at 27 Warley Avenue, Hayes, Middlesex UB4 0QZ

- 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 Miss Aabha Sethi against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice was issued on 27 November 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the property, comprising both the dwellinghouse and the outbuildings shown hatched orange and blue on the site plan, as a House in Multiple Occupation (Sui Generis) ("the breach").
 - The requirements of the notice are:
 1. Cease the unauthorised use of the Property and the Outbuildings as a House in Multiple Occupation (Sui Generis).
 2. Remove from the Outbuildings the 'fitted kitchen' comprising the sink, washing machine, fridge, microwave oven, worksurface(s) and wall/floor cupboard units.
 3. Remove from the Outbuildings the bathroom to include WC, shower, basin, water service pipes, foul waste drainage pipes and all fixtures and fittings.
 4. Remove from the Outbuildings all the internal wall divisions that have been erected to create separate living/sleeping rooms and the bathroom.
 5. Remove from the Property all debris, items, fixtures and fittings, building materials, plant and machinery resulting from compliance with points (iii) to (iv) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (b)

2. To succeed on ground (b) the onus is on the appellant to show, on the balance of probabilities, that what is alleged in the notice has not occurred as a matter of fact.
3. The notice alleges the material change of use of the land to a House in Multiple Occupation (HMO). An HMO contains two or more households who occupy living accommodation and; share one or more basic amenities; or, the living accommodation is lacking in one or more basic amenities. Basic amenities are a toilet, personal washing facilities or cooking facilities.
4. The land to which the notice relates is that area edged red on the plan attached to the notice. The redline extends around the original house, the garden areas and the outbuildings to the rear. The allegation in the notice is clear that the

breach comprises the material change of use of both the dwellinghouse and the outbuildings shown hatched orange and blue on the plan attached to the notice.

5. I saw from my site visit that the outbuildings comprised two separate units of living accommodation. One unit contained an open plan sleeping, living and kitchen area with cooking, washing, storage and cleaning facilities. It also had a separate shower room with toilet, basin and shower. The second unit was larger, comprising an open plan living room and kitchen. The kitchen similarly contained cooking, washing, storage and cleaning facilities. There were two separate double sized bedrooms as well as a separate shower room with shower, toilet and basin.
6. The units were independently accessible from the main house by a gate on the driveway of the property. The rear garden of the property had also been subdivided with fencing and planting to create smaller, separate garden areas for both units. As such, it seems to me that the units are capable of independent occupation as separate dwellings to the main house.
7. Nevertheless, what matters is not what existed at the time of my visit, but whether the outbuildings were in use as separate residential units at the date the notice was issued.
8. The Council's appeal statement refers to two visits made by its Planning Enforcement Officer on 11 December 2017 and 26 June 2018 – prior to the issue of the notice. However, the details of those visits only indicate that the officer observed the layout and internal arrangement of the dwelling. There are no written observations made in respect of the use of the outbuildings.
9. Additional, supporting photographic evidence has been provided by the Council. Whilst predominately focussed on the main house, the photographs show that the first outbuilding contained a living area, full kitchen with cooking, washing and fridge facilities and a separate shower room. The photographs also show the second, larger outbuilding contained a living room, kitchen with cooking, washing, storage and refrigeration facilities, a separate shower room and two individual bedrooms.
10. The photographs show both units laid out in the same manner and with the same facilities as were present at the time of my site visit. Moreover, the photographs show the garden was delineated into separate areas for the outbuildings with fencing and planting. Also as had been the case on my site visit. These photographs are dated 11 and 18 October 2018, only a few weeks before the notice was issued.
11. Furthermore, the Council's Enforcement Committee Report seeking authority for the issue of the notice is clear at paragraph 2.1 that the outbuilding had been subdivided to create two independent living areas with their own separate access. The Council's notes from its visit on 18 October 2018 (paragraph 2.5 of the report) state that the two units in the outbuilding each contained all facilities necessary for independent occupation.
12. Moreover, the layout and arrangement of these units was identical to that shown on the floor plans submitted by the appellant in support of both the

- 2015¹ and 2016² LDC applications. Whilst those applications were not approved, that was on the basis that the Council did not believe the uses has subsisted continuously for more than 4 years. There is no indication that what had been applied for did not exist at the time the applications were made. Indeed, as the appellant points out, it would be counter intuitive to submit plans in support of an LDC application which did not reflect the actual layout of the outbuilding.
13. Although not a formal decision under section 191 of the 1990 Act, I note that the Council wrote to the appellant on 9 March 2018 indicating that the Council believed, on the balance of probabilities, that the outbuilding had been in continuous use as two self-contained residential units for more than four years. All this suggest that at the date the notice was issued, the outbuildings were capable of use as independent dwellings.
 14. To that end, letters from the Council to the appellant on 23 November 2018, 4 days before the notice was issued, indicated that the two units (described as 'flat r/o 27 Warley Avenue' and 'studio flat' r/o 27 Warley Avenue) were subject to separate Council tax. Separate Council tax bills for the two units postdating the enforcement notice have also been provided.
 15. As a result, in the absence of any compelling evidence from the Council to the contrary, it seems to me that, on the balance of probabilities, the outbuildings were in use as two separate self-contained residential units as the time the notice issued. They were not part of an HMO.
 16. To that end, the alleged breach of planning control in the notice, that being the material change of use of the house and outbuildings to an HMO, did not occur at the date the notice was issued as a matter of fact.
 17. I have considered whether I can correct the notice to omit the outbuildings from both the alleged breach and the land which the notice attacks, such that the notice would solely relate to the material change of use of the dwellinghouse to an HMO. However, to do so would result in injustice to the appellant, as in those circumstances, the appellant may have sought to appeal on ground (a), which they have chosen not to do in this instance.
 18. Likewise, correcting the allegation to refer to a material change of use to a mixed use of an HMO and two self-contained residential units would result in injustice to the Council, as, in the absence of an LDC, I cannot be satisfied that residential units were lawful when the notice was issued. Similarly, in those circumstances, it may be the case that the appellant would appeal on ground (c) or (d). It is not open to me therefore to correct the notice.
 19. I conclude, therefore, that the appeal on ground (b) should succeed. The appeals on grounds (f) and (g) do not fall to be considered.

J Whitfield

INSPECTOR

¹ LPA Ref: 29696/APP/2015/3523

² LPA Ref: 29696/APP/2016/3370