



Appeal Decision

Site visit made on 10 December 2019

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/Y0435/C/19/3223889

34 St Peters Way, New Bracknell, Milton Keynes MK13 0ET

- 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 Abel Asiamah against an enforcement notice issued by Milton Keynes Council.
 - The enforcement notice was issued on 7 February 2019.
 - The breach of planning control alleged in the notice is: Without planning permission, the material change of use of the Premises from a single dwelling house to use as a House in Multiple Occupation.
 - The requirements of the notice are: Cease the use of the Premises as a House in Multiple Occupation.
 - The period for compliance with the requirements is: 5 months from the date of the Notice.
 - The appeal is proceeding on the grounds set out in sections 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

Preliminary Matter

2. As a result of an Article 4 Direction covering the whole of the borough of Milton Keynes that was confirmed on the 23 December 2011, a change of use to a Use Class C4 from a dwellinghouse (C3) cannot rely upon permitted development rights. Planning permission is therefore required for a change of use from a dwellinghouse (C3) to a House in Multiple Occupation (HMO).

The appeal under ground (a) and the deemed application

3. The main issues are (i) the effect of the development upon parking provision and (ii) whether the development maintains a suitable mix of housing in the area.
4. The appeal property is a two storey terrace which is one of five similar houses in a row with a pedestrian accessway along the front of the houses from St Peters Way.

Parking provision

5. Policy H10 of the Milton Keynes Local Plan 2001-2011 Adopted December 2005 (the Local Plan) refers to four criteria that need to be satisfied prior to granting planning permission for HMOs. Criteria (ii) refers to providing off street parking to meet the Council's standards. The Milton Keynes Parking Standards SPD January 2016 (the Parking Standards) indicates that the appeal property is within Parking Zone B of the SPD. Zone B applies to areas outside town and district centres where accesses to services and public transport is more limited. The appellant has referred to a 6 bedroomed HMO as there are four bedrooms on the first floor and two on the ground floor requiring 5 car parking spaces under the Parking Standards.
6. The layout of St Peters Way is of rows of houses side on to the main road so that houses do not have driveways. The general lack of on-site parking inevitably puts pressure upon off street parking provision. There are around 10 communal spaces at the end of the block of houses which includes the appeal property, although a nearby resident indicates that 17 houses share those spaces. Whilst there were some spaces in that parking area at the time of my morning visit, parking demand is likely to increase in evenings and at weekends. The nearby resident has also referred to parking issues generally and inconsiderate parking, although there is no evidence to link those issues to existing occupiers of the appeal property.
7. The appellant accepts that the street is currently congested but has suggested a number of measures to limit car ownership to use of two cars by tenants or, if it was considered appropriate, to limit it to one car or space. Measures suggested include specifically excluding car ownership in the tenancy agreement and terminating tenancies if the agreement is breached. Other measures include monitoring tenant details against DVLA records and discounting rents to non-car owners. However, any grant of planning permission would not be personal to the appellant and such measures would not meet the tests required to be able to impose conditions particularly with regard to enforceability. The appellant indicates that only two tenants have had cars and three of the current occupants either walk to work or have bikes. Nevertheless, with occupation by up to 6 tenants, the absence of any enforceable mechanism to control or restrict car ownership of existing or future occupiers is likely to adversely impact upon parking issues.
8. With regard to bicycle provision, one bike was stored in a cupboard at the time of my visit and there is likely to be room in the shed or the hall area for further bike storage. However, the potential availability of bike storage does not in itself overcome the parking issues.
9. The appellant has referred to a grant of planning permission at 11 Leaberry as being comparable to the appeal property and has provided an extract from that decision. He considers that it is within the control of the Council to impose a restriction upon car parking spaces taken up by the appeal property. However, in the Leaberry extract, a restriction was imposed upon the use of the property by a charity for 16-21 years olds only. A restriction with regard to age for the use of a property by a charity for younger people is not comparable to the type of restrictions suggested by the appellant for the appeal property.
10. I do not share the appellant's view that occupation as an HMO would alleviate the parking situation as compared to car use if family occupation took place.

Whilst, it is the case that a family in occupation with adult children could result in use of more than two cars, it is not necessarily comparable to occupation by 6 unrelated adults in terms of potential car usage.

11. Whilst the appellant has offered to pay a sum towards converting land to communal parking, that is not a matter that falls within the remit of this appeal. Moreover, even if it did, there is no mechanism such as a planning obligation by which the money could be appropriately secured.
12. The development does not provide off street parking provision and the measures suggested by the appellant do not overcome the lack of off street parking. The absence of parking provision in an area where there is already limited on street parking is likely to have an adverse effect upon parking congestion in the area. The appellant has referred to a demand for HMOs in Milton Keynes and planning laws restricting the overall numbers of these types of housing. Whilst limited information is provided, I have to assess the development on its own merits in accordance with the relevant planning policies.
13. The shortfall in the parking requirement is contrary to Policy H10 of the Milton Keynes Local Plan 2001-2011 Adopted December 2005 which, amongst other things, states that planning permission will not be granted for the creation of houses in multiple occupation unless certain criteria are satisfied including off street parking to meet the Council's standards. It would therefore also be contrary to the Parking Standards which, amongst other things, states that an application submitted with on plot parking below the required levels will normally be refused. The Council has referred to several other policies in the reasons for issuing the notice, but I find the above policies to be the most relevant, particularly when several of the other policies deal primarily with design.

Housing Mix

14. The Council's Statement indicates that planning permission should not be granted primarily regarding the lack of parking provision. However, as the reasons for issuing the notice and the Council's delegated report refer to housing mix, I shall address it. The criteria of Policy H10 of the Local Plan includes at (iv) that the proposal should not lead to an unacceptable concentration of HMOS within the area. In order to avoid an overconcentration of HMOs within a given area and to maintain a mix of dwellings, the Council's Houses in Multiple Occupation Supplementary Planning Document Adopted April 2012 (HMOSPD) provides that the number of HMOs should not exceed 35% of the total number of properties within a 100 metre diameter buffer of the application property. Although the Council states that the figure is well above the threshold, no details are provided by way of maps or details or properties to show how that percentage has been reached or exceeded.
15. The appellant considers that there are no HMOs within a 50 metre radius of the appeal property. He has been unable to find details of HMOs in the area on the Council's website. The neighbour objector has referred to two HMOs in the immediate area one of which is 11 Leaberry and another on St Peters Way. Although the neighbour thinks that neither have planning permission, the appellant believes that 11 Leaberry does. Whilst I understand that the underlying aim of the policy is to maintain a reasonable balance between family housing and other types of housing in this part of Milton Keynes, I have very

limited evidence of other HMOs in the relevant area or any details of what the current percentage is:

16. There is, therefore, insufficient evidence for me to find that the development would conflict with Policy H10(iv) of the Local Plan or the HMOSPD which both refer to leading to an unacceptable concentration of HMOs in the area.

Ground (a) Conclusion

17. With regard to the ground (a) appeal, whilst I have not found that the development would not maintain a suitable mix of housing on the evidence before me, I have found that there is a shortfall of parking which is likely to have an adverse impact upon parking congestion in the area. That harm is the prevailing consideration. Consequently, the ground (a) appeal fails.

The appeal under ground (f)

18. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. With regard to ground (f), it is essential to understand the purpose of the notice. Under s173(4)(a) of the 1990 Act, one of those purposes is to remedy the breach of planning control by discontinuing any use of the land. In the notice, the matter which constitutes the breach of control is "the use of the premises as a House in Multiple Occupation." The notice requires the use of the premises as a House in Multiple Occupation to cease. The purpose of the notice is therefore clearly to remedy the breach of planning control by ceasing the use. As the steps require no more and no less, they are not excessive requirements. As such, the ground (f) appeal must fail.

Conclusion

19. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E. Griffin

INSPECTOR