
Appeal Decision

Site visit made on 11 February 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2020

Appeal Ref: APP/C1950/C/19/3236057

Land at 111 The Ryde, Hatfield AL9 5DP

- 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 I Kabala against an enforcement notice issued by Welwyn Hatfield Borough Council.
 - The enforcement notice, numbered ENF/2015/0257, was issued on 29 July 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the sub-division of a dwellinghouse into five self-contained flats.
 - The requirements of the notice are:
 - i) Cease the use of the dwellinghouse as self-contained dwelling units.
 - ii) Remove all but one kitchen from the dwellinghouse to include ovens, hobs, extractor units, sinks, work surfaces, kitchen style cupboards, hot and cold water supply and foul waste drainage pipework.
 - iii) Remove all internal partitions, including doors, which enable the sub-division of the property as self-contained dwelling units in order to allow free internal passage to all areas.
 - iv) Remove from the land all chattels, debris, items, appliances, fixtures and fittings, building materials, plant and machinery associated with the unauthorised use and to comply with points (i) to (iii) above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (b) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is quashed.

The appeal on ground (b)

2. The basis of the appeal on ground (b) is that, when the notice was served, the house was divided into 4 self-contained units and 2 bedrooms with access to shared facilities. On this basis, the allegation of 5 self-contained flats is said to be wrong.
3. The appellant has provided Drawing No 1326/PL/01D, which shows the internal layout of the building. A subsequent update (1326/PL/01E) makes a minor change to the parking arrangements but no change to the internal layout. When I viewed the property, the layout was as shown in the drawings. It is common ground that this layout was in place when inspected by a Council officer on 30 May 2019, shortly before the enforcement notice was issued.
4. Four of the units, described as 'bedsits' on the submitted drawings, are self-contained in that they each have their own beds, living areas, toilets, showers,

- basins and kitchen areas, including cookers, sinks, storage areas and worktops. All 4 of these units were evidently occupied when I saw them.
5. Two first floor rooms are described on the plans as Bedrooms 01 and 02. These rooms do not incorporate their own kitchens, toilets or showers. However, both have access to a first floor 'Bathroom' (which actually contains a shower rather than a bath), together with a kitchen on the ground floor. When I viewed the property, Bedroom 02 was evidently in use, while Bedroom 01 appeared not to be in use.
 6. The Council's position is that Bedroom 02, together with the first floor bathroom and ground floor kitchen, amount to one of the 5 flats alleged. However, these rooms are distributed around the house rather than being clearly related to each other. In my view, this arrangement, in which key rooms such as the kitchen and bathroom can be accessed by other tenants unless they are kept locked, means that this collection of rooms cannot be regarded as a self-contained flat. Accordingly, the allegation in the notice is wrong.
 7. The Council appears to accept this and suggests that it could be remedied by the removal of the words 'self-contained' from the allegation. Yet that would still leave the allegation referring to 5 flats, and this would imply self-contained accommodation, even without those specific words.
 8. The appellant's position is that the allegation should be amended to read, 'without planning permission, the sub-division of a dwellinghouse to a small HMO for up to three to six persons (Use Class C4)'. The Council rejects this, arguing that the property cannot be regarded as a House in Multiple Occupation (HMO) because it does not meet all the criteria in 'the standard test' set out in s254(2) of the Housing Act 2004.
 9. However, a building can also meet the definition of an HMO if it meets 'the converted building test' in s254(4). In order to meet that test, the building must, amongst other things, contain one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats). The appeal property meets that requirement. It is also a converted building and appears to meet the other requirements of 'the converted building test'. The current (unauthorised) use can therefore be regarded as an HMO.
 10. For these reasons, having reviewed the various options before me, I consider that the breach of planning control that has occurred is best described as, 'change of use to a house in multiple occupation for not more than six residents (Use Class C4)'.
 11. The next question is whether the allegation in the notice can be corrected along these lines. I have the power to correct any defect in the notice, but only if doing so would not cause injustice to the appellant or the local planning authority. I am satisfied that there would be no injustice to the appellant, who has suggested revised wording along similar lines.
 12. However, I consider that there would be injustice to the local planning authority. Use as an HMO for up to 6 people is a significantly different use to the 5 flats the Council alleges. The Council's case regarding the appeal on ground (a) is clearly made on the basis that the proposal is for flats. Policies

relating to HMOs, including floorspace requirements, are different, and thus the Council would be likely to want to make out a different case if it were to oppose such a use. To proceed on the basis of the case put to me in relation to the allegation of 5 flats could put the Council at a disadvantage.

13. I appreciate that the Council itself has suggested amending the allegation. However, the wording suggested by the Council is different to the wording I have outlined above and does not alter my view that injustice would occur if I amended the allegation in the notice along those lines. Similarly, the correction to the notice in the appeal decision referred to by the Council¹ is different to the one discussed above and does not alter my view. My decision below to quash the notice leaves open to the Council the option of issuing a further notice with a corrected allegation.

Other matters

14. A range of matters relating to this appeal have been raised by local people. By and large, these matters relate to the planning merits of the development and would thus be properly considered in the context of a deemed planning application. However, as I explain below, my decision to quash the notice means that the appeal on ground (a) and the deemed planning application do not now fall to be considered with this appeal. I have noted the various requests for a hearing to be held but am satisfied that the appeal can be properly considered through the written procedure.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeal under ground (a), as set out in section 174(2) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not fall to be considered.

Peter Willows

INSPECTOR

¹ APP/T5150/C/15/3007122