



Appeal Decisions

Site visit made on 3 February 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal A Ref: APP/M3835/C/19/3234866

Appeal B Ref: APP/M3835/C/19/3234867

30 Grafton Road, Worthing BN11 1QT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Ms Ann-Marie Boon (Boon Homes and Rentals Ltd) and Appeal B is made by Mr Lawrence James Boon, against an enforcement notice issued by Worthing Borough Council.
- The enforcement notice, numbered AWEN/0097/18, was issued on 27 June 2019.
- The breach of planning control as alleged in the notice is within the last four years, the material change of use of a house of multiple occupation, as shown on the attached drawing (drawing A) consisting of: The upper ground floor comprising two bedsitting rooms and separate toilet ; First floor comprising two bedsitting rooms and separate shower/ bath, toilet and WC facilities; Second floor comprising one bedsitting room and one self-contained studio-flat at the front, which have been converted into five separate self-contained micro-flats with basic amenities (a) toilet, (b) personal washing facilities, (c) cooking facilities and maintaining one self- contained studio-flat.
- The requirements of the notice are to:
 - 'Either
 - Revert the development back to previous layout consisting of:
The upper ground floor comprising two bedsitting rooms and separate toilet:
First floor comprising two bedsitting rooms and separate shower/ bath, toilet and WC facilities;
Second floor comprising one bedsitting room and one self-contained studio-flat at the front.
 - Or
 - Permanently remove one or more basic amenities; toilet and personal washing facilities or cooking facilities from room 1, room 2, room 3, room 4 and room 5 as per drawing A, and in order to create separate basic amenities of toilet and personal washing facilities or cooking facilities which must be situated within the dwelling of 30 Grafton Road with shared access to all occupants'.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decisions on both Appeal A and Appeal B

1. The appeals are dismissed and the enforcement notice is upheld.

Reasons

2. The application site comprises a semi-detached property to the east of Grafton Road. There is a one bedroom basement flat at the lower ground floor with a separate access to the side of the building. The remainder of the property is accessed through a hard surfaced frontage and up steps to the front door which faces the road. It is sited within the Chapel Road Conservation Area.
3. It is not in dispute that the lower ground floor basement flat has been established for a number of years. I note that the plan attached to the enforcement notice is not annotated as drawing A, but nonetheless, indicates that the main property comprised six rooms including one marked as No.6 on the second floor. This is also shown to be a self-contained flat. The remaining five rooms were bed-sits sharing basic amenities, such as kitchen and bathrooms. The previous use of the property, as a whole, was therefore a mixed use comprising two self-contained flats and a class C4, small house of multiple occupation (HMO).
4. Both appeals have been lodged on ground (c) only, that the matters stated in the notice do not constitute a breach of planning control. As both appeals relate to the same matters, I shall deal with them together. This is a legal ground where the burden of proof is on the appellants to make out the case that there has not been a breach of planning control. Nevertheless, case law has established that the evidence of the appellant should not be rejected simply because it's not corroborated. If there is no evidence to contradict or make the appellants version of events, less than probable and their evidence is sufficiently precise and unambiguous, there is no good reason to dismiss an appeal on any legal ground. The merits of the development are not a determining factor for an appeal under ground (c).
5. It is clear that the alterations alleged on the face of the issued notice have been carried out and this is the accepted position by the parties. It is the appellants case that the provision of personal washing, toilet and cooking facilities into rooms 1 to 5, does not constitute a material change of use. There is therefore no breach of planning control. The Council, in contrast consider that the provision of the basic facilities into each room, and the lack of any shared facilities, now means that the property is no longer an HMO as defined by section 254 of the Housing Act 2004 and a material change of use has therefore occurred.
6. S.254 of the Housing Act 2004 sets out the meaning of a HMO. It includes a number of criteria, including (a), that the building, or part thereof, consists of one or more units of accommodation not consisting of a self-contained flat or flats, and (f), that two or more of the households who occupy the living accommodation share one or more basic amenities, or the living accommodation is lacking in one or more of the basic amenities. Before the alterations the use of the five bed-sits therefore met these criteria.
7. Where an HMO is converted into self-contained flats, with only internal works and no increase in the number of units, it is necessary to consider the effect of the alterations on the overall character of the use of the property, to determine whether a material change of use has occurred.
8. There are now a total of seven flats at the property, including the basement and flat at No.6. Each new flat comprises a single room with a basic two hob

- cooker, a small range of kitchen storage cupboards. In addition, each flat has a bathroom, with a toilet, shower and personal wash basin. The rooms all have lockable doors. The three basic amenities are therefore available in each flat for the exclusive use of its occupants. There are no longer any shared kitchen, bathroom or relaxation facilities in the building.
9. It is acknowledged that the alterations are to the inside of the building and have not involved any external works, and the overall number of units and residents have not increased. However, these changes have resulted in a total of seven individual dwellings the character of which falls within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 12987 as amended. The use of the property as seven flats is significantly different in character to its previous use.
 10. The limited size of the rooms would, to some extent, limit the number of occupants able to live in each flat. However, the formation of five additional separate dwellings, would allow a significant number of additional residents to live at the property, without the need for planning permission or licensing control. The comings and goings of additional residents would result in additional noise and disturbance for neighbours and existing residents in the property. Moreover, the lack of on-site parking would lead to increased pressure for parking on this and neighbouring streets.
 11. The provision of separate kitchens into each room would lead to changes to day to day living practices. With each household taking responsibility for the disposal and recycling of waste, there will be additional pressure for separate bins. This would lead to the proliferation of bins stored on the frontage of the property. Thus, there would be a clear visual and environmental effect, that would be detrimental to the amenity of the wider area.
 12. Pulling all of the above points together, I find that, on the balance of probabilities, the 'self-containment' of the five individual HMO rooms into self-contained flats, has resulted in a material and definable change in the character of the use. I find that the conversion into self-contained flats represents a material change of use falling within the scope of s55(1). That change requires express planning permission and it has not been obtained. Consequently, the appeals on ground (c) therefore fail.

Conclusion on Appeal A and Appeal B

13. For the reasons given above, I conclude that the appeals should not succeed. I have upheld the enforcement notice.

Hilary Orr

INSPECTOR