



Appeal Decision

Site visit made on 26 September 2019

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 20 March 2020

Appeal Ref: APP/A5270/C/18/3215625

50 Brentmead Gardens, Park Royal, London NW10 7ED

- 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 ZKS Housing Ltd against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 26 September 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission: The material change of use of the main house (marked with an 'X' on the attached plan) and the outbuilding (marked with a 'Y' on the attached plan) to the rear of the property to 6 self-contained dwellings.
 - The requirements of the notice are to:
 - a) Cease the use of the main building and outbuilding on the land as 6 self-contained dwellings.
 - b) Remove the kitchens from all of the 5 self-contained flats in the main building, not including the communal kitchen on the ground floor.
 - c) Remove the kitchen and bathroom and all drainage connections from the outbuilding.
 - d) Remove the internal locks from the doors in the main building.
 - e) Remove all resultant debris from the land.
 - The period for compliance with the requirements is within three months from the date this notice takes effect.
 - 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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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld, as corrected and varied, in the terms set out in the Formal Decision below.

Matters concerning the Enforcement Notice

2. The enforcement notice seeks the cessation of the use of the property as six self-contained dwellings. However, it was unnecessary to prescribe the number of residential flats in the requirement. As drafted, the notice can be interpreted to mean that it does not prevent the use of the property for any number other than six flats. Clearly, that was not the intention. Pursuant to my decision, any clarification as to the rights of reversion of use should, in the interests of certainty, be by way of a formal approach to the Council.

Background

3. In October 2017, under ref 17/4318CPL, the Council issued a Certificate of Lawful Use/Development (CLEUD) under 192 of the 1990 Act which confirmed, in the Council's opinion, that the change of use of a dwellinghouse (Class C3)

into a House in Multiple Occupation (HMO) comprising four bedrooms with a maximum occupancy of 6 persons (Class C4) along with a single storey rear extension and roof extension, would not require the benefit of planning permission.

4. The Council claims that subsequently the main building was divided into five self-contained flats, with a further flat located in a single-storey outbuilding in the rear garden. This is based on two separate visits to the property by Council tax officers, on 10 September 2018 and 20 September 2018, which revealed that each room plus the outbuilding were in use as studio flats. The site visit notes indicate the following accommodation:

Ground floor – two flats, and separate kitchen; First floor – two flats;
Second floor – one flat; and garden outbuilding in use as flat.

5. The facilitative works, which involved extensions to the building, along with the findings of the said inspections caused Council tax officers to reassess the property as comprising, in total, six individual self-contained flats. As a result, the Council rebanded the property which, its representations claim, updated the position shown on the property's Council tax bill for 2017/18. In light of this the Council then issued the enforcement notice, the subject of the current appeal.

The Appeal on ground (b)

6. The appeal on ground (b) is whether the matter alleged to be a breach of planning control has occurred as a matter of fact. The appellant must show on the balance of probability that those matters have not occurred. The relevant date is that of the issue of the notice.
7. The appellant indicates that following the issue of the CLEUD, works to the property were undertaken and it has been subsequently rented out as a HMO (Class C4) for a maximum of six persons. It is claimed that the rooms are let out to single individuals, each with a licence agreement.
8. The appellant has provided examples of the agreements which suggest that tenants are directed to availability at the property by London local authorities for homelessness assistance. In signing the agreement the tenant accepts that occupation is not an actual grant of tenancy, only that of bed & breakfast status, and is for as long as the local authority allows the tenant to remain at the property. The agreement stipulates the cost of the particular room per night and mentions the expectation that the occupier shall keep the communal kitchen clean and tidy and shall share the cooking facilities supplied within the designated area.
9. The agreements, those of which have been provided, were signed prior to the inspections in September 2018 and a clause indicates that the tenants will not be liable for Council tax nor Utility bills. However, given that no copies of agreements subsequent to the property being reassessed for Council tax purposes and rebanded have been provided for my purposes there is no persuasive evidence to suggest that this arrangement continued. Indeed, the Council says that since the reassessment records show that individual tenants have been liable for their own Council tax. My attention is also drawn to the evidence provided that the property has separate utility meters which, given

the numbers marked upon them, seemingly correspond to the individual residential units.

10. The appellant says that each room in the main house has an en-suite shower/toilet and a "small sink with tea making facilities", indicating that the shared kitchen/living area was used for the preparation and cooking of food. However, the Council tax officers, from their two visits to the property in September 2018 found that each room had a kitchen unit with a worktop, a steel recessed sink and a kitchen tap. Photographs provided by the Council show that the kitchen area in Flat 3 has a fridge, a toaster, and what appears as a microwave oven, with Flat 5 also having a number of kitchen accessories and utensils. Kitchen cupboards complement the facilities. The garden outbuilding can be clearly seen as having a fully fitted kitchen, although at the time of my site visit I observed that the previous residential use had ceased, with the building now being used largely for storage purposes.
11. A 'self-contained flat' is defined within s254 of the Housing Act 2004 as a separate set of premises (whether or not on the same floor) which forms part of a building, either the whole or a material part of the building and in which all three basic amenities – defined as a toilet, personal washing facilities and also cooking facilities - are available for the exclusive use of its occupants.
12. In contrast S254(1)(a) of the Housing Act provides that a building, or part of a building, is a HMO if it meets the conditions of 'the standard test', of which criterion (f) is that two or more of the households who occupy the living accommodation share one or more of the basic amenities or the living accommodation is lacking in one or more basic amenities.
13. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence. It did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons.
14. In taking account of the above factors I consider that the distinction between HMOs and self-contained flats lies in the physical and social separation of the living areas, with HMOs usually characterised by having certain facilities such as toilets or bathrooms shared between separate households occupying exclusive bedrooms or bedsits. In contrast, self-contained flats are usually characterised by having exclusive use of all facilities within their own physical envelope. In this particular instance, although there is a communal kitchen available for use, I consider that the extent of the basic amenities in each of the occupied rooms is significant, with the kitchen area provided in each room clearly going beyond the appellant's description of that comprising "a small sink with tea making facilities".
15. I find that the appellant's evidence on the property's use to be somewhat limited. There is an absence of documentary evidence to support a HMO use. Although the facilities in the communal kitchen are consistent with the appellant's position, only very scant evidence has been provided from the occupiers of the property as to the nature of their occupation and use of the wider property.
16. The balance of evidence, along with the photographic evidence provided by the Council, suggests that when the notice was issued each of the rooms had all

that was necessary to be self-contained flats, with the locks on the doors facilitating an independent existence. In the context of things, notwithstanding the cooking facilities in the communal room, it seems to me unlikely that the residents would have necessarily relied on shared use of communal cooking facilities to such a material extent as this to be sufficient for the property to be considered as a HMO. The *Gravesham* judgement is obviously pertinent in this appeal case.

17. Having regard to all the above I conclude that the alleged change of use to six self-contained dwellings (or residential flats) did occur. The appeal on ground (b) therefore does not succeed.

The Appeal on ground (f)

18. An appeal on this ground is that the steps required by the notice exceed what is necessary to remedy any breach of control which may be constituted by the matters alleged or, as the case may be, to remedy any injury to amenity which may have been caused by the breach. The notice alleges a material change of use and requires it to cease so that its purpose is to remedy the breach by discontinuing the unauthorised use rather than to remedy any injury to amenity. A notice directed at a material change of use may also require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works in their own right do not constitute development.
19. The Council notes correctly that the kitchen units within the flats were not shown on the plans which accompanied the application for the Certificate of Lawful Use, approved under ref 17/4318CPL. In the circumstances I can only conclude that the various facilities installed in this respect were to facilitate the breach. Retention of such would doubtless perpetuate matters, but the removal of the kitchen fittings would not preclude "tea making facilities". Nonetheless, it is vague and imprecise to require for the removal of "the kitchens". This would be best termed as the removal of the kitchen sink units and associated fittings. In the main, though, I agree with the enforcement notice's requirements.
20. Nonetheless, if the building was in use as a Class 4 HMO then it would not be an uncommon occurrence in instances where the various residents were unrelated and without social connection, as is often the case, for locks on the bedroom doors to be installed. Indeed, s254 of the Housing Act, in its definition of a HMO, gives the proviso that the living accommodation is occupied by persons who do not form a single household.
21. With a Class C4 HMO, for the purposes of the Use Classes Order, the HMO will also be a 'dwellinghouse' to accord with Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, and so long as it fits within the relevant definition will enjoy permitted development rights. Although this entitlement does not allow for an independent self-contained residential unit in addition to the main building I see no good reason why a permissible outbuilding should not contain bathroom facilities. In the circumstances there is no necessity to remove the outbuilding's drainage facilities.
22. The appeal on ground (f) therefore succeeds in part and, I will correct the notice, accordingly.

The Appeal on Ground (g)

23. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers that a three month period is too short and it should be extended to twelve months.
24. The appellant indicates that the remedial works, as required, are significant, and that the tenants would need to move out of the property for a period and find alternative accommodation. However, in view of the enforcement notice's correction, the works now involve only the removal of the main building's individual rooms' kitchen sinks and associated fittings, the removal of the kitchen from the outbuilding and also all resultant debris. I see no reason why the occupiers need find alternative accommodation from this as the required works can be undertaken swiftly and with only limited disturbance occasioned to the occupiers. Further, at my site visit, in noting that the outbuilding was in use for storage purposes, I was assured that its residential occupation had ceased.
25. In the circumstances I do not regard the specified compliance period as unreasonable but, to allow for the necessary contractual works to be arranged, I will extend the period for compliance to four months.
26. The appeal on ground (g) therefore succeeds to that extent.

Formal Decision

27. It is directed that the enforcement notice be corrected by deleting the various specified requirement steps, and their substitution with:
- a) "Cease the use of the main building and outbuilding as independent flats."
 - b) "Remove the kitchen sink units and associated fittings from all of the flats in the main building, not including the separate kitchen on the ground floor."
 - c) "Remove the kitchen from the outbuilding."
 - d) "Remove all resultant debris from the land."

The notice is also varied with the time for compliance extended from three months to four months.

28. Subject to these corrections and variation, the enforcement notice is upheld.

Timothy C King

INSPECTOR