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## Appeal Decision

Site visit made on 25 August 2020

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 September 2020**

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**Appeal Ref: APP/F5540/C/20/3245247**

**41 Swanscombe Road, Chiswick W4 2HL**

- 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 Frank Pons against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice was issued on 20 December 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised conversion of a single family dwelling house into three self-contained flats.
- The requirements of the notice are: (i) Cease the use of the property as three self-contained flats. (ii) Return the property to a condition to enable its use as a single family dwelling house. (iii) Remove all but one of the kitchens and associated kitchen facilities. (iv) Remove all but one of the bathrooms and associated bathroom facilities. (v) Remove all the resultant debris from the land.
- The period for compliance with the requirements is three 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. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: The appeal is allowed following variation of the enforcement notice in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. Step (i) of the enforcement notice requirements is to cease the use of the appeal property as three self-contained flats. However, the number of flats enforced against is already clearly set out in the alleged breach of planning control. Therefore, specifying the number of flats in the requirements is unnecessary. It could also lead to uncertainty, for example whether the notice requires the cessation of a use for a lesser or greater number of flats. Consequently, I intend to vary the notice to delete the reference to three flats from step (i). In doing so, I am satisfied that there will be no injustice.
2. There is no deemed planning application arising from an appeal made under ground (a). Therefore, the planning merits of the matters alleged in the notice are not before me in this appeal.

### Ground (b) appeal

3. In order to succeed on this ground, it is for the appellant to show that the matters alleged in the notice have not in fact occurred, the relevant test of the evidence being on the balance of probability.

4. The appeal concerns a mid-terrace residential property, in which accommodation is arranged over four floors. During my visit, I saw that there are two bedrooms on the lower ground floor, one of which has an ensuite shower room. Elsewhere on this floor, there is a second shower room together with a kitchen containing a worktop, sink and drainer, cabinets, a cooker, hob and extractor as well as a fridge, freezer, dishwasher and washing machine. There is also a living/dining area with a table, chairs and a sofa next to the kitchen. Externally at this level, there is a rear courtyard garden. On the upper ground floor are two bedrooms, a kitchen containing similar facilities to that on the lower ground floor and a shower room. A hallway and stairs lead to two further bedrooms on the first floor. Additional stairs lead to the top floor, which contains a kitchen with similar facilities to those on other floors, a living/dining area with furnishings akin to those on the ground floor and another shower room.
5. I also saw during my visit that although each bedroom has a lockable door, there are no internal doors between the upper ground floor and the first floor/top floor. As a result, there is nothing physically preventing access to the top floor kitchen, living/dining area and shower room from the upper ground floor accommodation and also nothing to prevent access from the first floor accommodation to the corresponding facilities on the upper ground floor. In addition, there is no means of external access to the first floor/top floor except via the upper ground floor entrance. Had the property been used as separate flats, it would not be unreasonable to expect that the upper ground floor accommodation would have some form of physical separation from the first floor/top floor, to provide privacy for the respective occupiers. Consequently, neither the upper ground floor nor the first floor/top floor accommodation possesses all of the physical attributes that would normally be associated with self-contained flats.
6. The lower ground floor accommodation has its own external entrance and cannot be accessed internally from the other floors. However, in itself this is not conclusive of the use of that part of the property as a self-contained flat. The presence of three kitchens is the primary reason for the Council concluding that the property has been subdivided into three self-contained flats. Even so, the existence of additional kitchens is another factor which in itself is not conclusive of the formation of separate residential planning units. In relation to both of the above matters, this is because whether separate residential units have been formed at the property is not solely based on the physical arrangements, but also depends on how the accommodation is used.
7. Copies of Assured Shorthold Tenancy Agreements (ASTs) in respect of five of the six bedrooms at the property were supplied, the other bedroom apparently having remained vacant. The ASTs show that each bedroom has been let to unrelated individuals. The ASTs give the occupiers of each bedroom shared rights in respect of use of the kitchens, living/dining areas and shower rooms on any floor, together with shared rights to use the courtyard garden. Occupiers of the lower ground floor bedrooms also enjoy similar shared rights in respect of the facilities on other floors. These factors do not suggest that the property has been used as more than one unit of accommodation.
8. Furthermore, the property has been licenced as a House in Multiple Occupation (HMO) for up to six people since May 2019. There is not more than one electricity and gas meter for the property and I am given to understand that

there is not more than one bill issued in respect of those utilities. This evidence is also therefore inconsistent with use of the property as self-contained flats. Moreover, the appellant's evidence concerning how the property is used is not inconsistent with use as a small HMO falling within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). Accordingly, I shall give significant weight to the appellant's submissions.

9. Nowhere in the marketing details supplied by the Council does it expressly refer to the property as self-contained flats; the details only refer to the number of bedrooms and bathrooms available and the maximum number of tenants. Whilst the property has been rated for Council Tax as three separate units since September 2019, that is under separate legislation and is not determinative of the use for planning purposes. Therefore, these matters do not materially affect the weight given to the appellant's evidence.
10. Drawing the above matters together and applying the tests set out in relevant case law<sup>1</sup>, the available evidence shows that, as a matter of fact and degree, both physically and in terms of its function the property is not composed of more than one residential planning unit. This is because there are no individual parts of the property that can clearly be identified as being separate, both physically and functionally, from the rest.
11. Therefore, on the balance of probability the appellant has shown that the property has not been used as three self-contained flats and the ground (b) appeal succeeds.

### **Conclusion**

12. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice will be quashed and the appeal on grounds (f) and (g) does not need to be considered.

### **Formal Decision**

13. It is directed that the enforcement notice be varied by the deletion of the word "three" in step (i) of the requirements at paragraph 5. Subject to this variation the appeal is allowed and the enforcement notice is quashed.

*Stephen Hawkins*

INSPECTOR

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<sup>1</sup> *Burdle & Williams v SSE & New Forest RDC* [1972] WLR 1207.