



Appeal Decision

Site visit made on 2 September 2020

by Thomas Shields MA DipURP MRTPI

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

Decision date: 23 September 2020

Appeal Ref: APP/B0230/C/20/3248914

12 Beresford Road, Luton, LU4 8BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mr Hazmar Fauz against an enforcement notice issued by the Luton Borough Council.
 - The enforcement notice was issued on 5 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the land from one residential unit to four residential units.
 - The requirements of the notice are:
 - i. Cease the unlawful use
 - ii. Remove all but one kitchen including its facilities and fittings from the land
 - iii. Remove all resultant waste and debris resulting from compliance with step (ii) from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) and (f) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. Grounds (b) and (c) are amongst the legal grounds of appeal, and in which the burden of proof is upon the appellant. The standard of proof is on the balance of probabilities. Planning merits of the development are not relevant considerations in legal grounds of appeal.

The appeal on ground (b)

3. An appeal on ground (b) is that the matter alleged has not occurred as a matter of fact.
4. The rear extension to the house was in the process of being refurbished at the time of my visit to the appeal property. However, ground (b) concerns whether the use occurred at any time leading up to the date on which the enforcement notice was issued. The appellant must therefore demonstrate that the alleged use did not occur.

Summary of submitted evidence

5. The main house is used as a house in multiple occupation (HMO). The appellant states that the rear extension to it has not been used as three separate flats. He states he had previously given keys for the main house, and to one of the

three rooms in the extension, to a person (hereafter "Person A") living at another nearby property, so that she could visit, but not reside at the appeal property. In support he has submitted a tenancy agreement for Person A to live at the other property, a statement from one of the occupiers of the other property, pre-printed stationary he describes as rent receipts for Person A at the other property, and a statement from one of the occupiers of 12 Beresford Road.

6. The Council's evidence is that they inspected the appeal property on 14 August 2019. They noted that the extension was divided into three separate units, each having its own lockable entrance door. They inspected one of these units internally which were occupied at the time. They noted it had been fitted with a kitchen, shower and toilet facilities and photographic evidence taken at the time has also been submitted. They have also submitted a statement from Person A, dated 14 August 2019, who stated she occupied the unit. She also informed the officers that the other two units were also separate flats and that one was also occupied.

Assessment of evidence

7. The tenancy agreement for Person A at the other property is evidence only of that agreement being made at the relevant date. It is not evidence of her living there continuously. Moreover, it is not evidence that she was not living at the appeal property. The submitted receipts are hand-written notes on pre-printed stationary which are headed "Invoices", and not receipts as claimed. They are not convincing evidence of transfer of monies for payment of rent. The two witness statements submitted by the appellant do not provide clear evidence of where Person A was permanently living. Additionally, all of this evidence is directly contradicted by Person A's own signed statement to the Council. This statement sets out her occupation at the appeal property on that date, that she first moved into the "ground floor rear flat" in March 2019, and that she intended to leave in September 2019.
8. The appellant's evidence is also contradicted by the Council officers' direct observations and photographs when they internally inspected the unit occupied by Person A. They noted it was fitted out with all the necessary facilities for day to day living (cooking, toilet and washing facilities). Moreover, at the time of my own visit to the appeal site, and notwithstanding more recent works were in progress, I saw that some of the kitchen, shower and toilet facilities in all three units remained in place and thus is consistent with the Council's description and photographs.
9. In weighing the two parties' conflicting evidence I find the appellant's evidence is outweighed by the Council's. It cannot be reconciled with the Council's written and photographic evidence which I find to be more credible. I also find no inconsistency with the Council's evidence with my own observations. I therefore conclude, on the balance of probability, that prior to the issue of the enforcement notice the extension had been fitted out and occupied as three separate independent flats. Hence, a change of use from one residential unit (the HMO) to four residential units occurred.
10. The appeal on ground (b) must therefore fail.

The appeal on ground (c)

11. I have already found under ground (b) that the alleged change of use occurred. An appeal on ground (c) is a claim that the change of use does not constitute a breach of planning control.
12. A breach of planning control (s171A of the Act) comprises the carrying out of development without planning permission, and "development" is defined at s55(1) to include the making of a "material change of use".
13. The appellant essentially relies on his ground (b) arguments that the change of use did not occur. Hence his evidence does not address why the change of use was not a "material" one.
14. S55(3(a) of the Act defines the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse as a material change in the use of the building and of each part of it which is so used. It is clear to me that the circumstances of this case fall entirely within this definition. Each of the three flats created in the extension to the main house resulted in three separate dwellinghouses in addition to the HMO.
15. Hence, the change of use to four residential units was a material change of use, and therefore comprised "development" for which no planning permission has been granted. Since no planning permission has been granted it constitutes a breach of planning control. The appeal on ground (c) therefore fails.

The appeal on ground (f)

16. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. In this regard the notice requires the use as four residential units to cease and the removal of all but one kitchen. It is clear therefore that the purpose of the notice is to fully *remedy the breach of planning control*.
17. The appellant argues that removal of all but one kitchen is excessive and has provide an indicative layout plan. However, I see no reason why more than one kitchen would be necessary for the property given that compliance with the notice requirements would restore its occupation and use back to a single HMO, as it was previously. The indicative layout, works carried out more recently and proposed occupation may in any event require planning permission, and there is no appeal on ground (a) before me. Any future proposals for the property would be a matter between the appellant and the Council in the first instance.
18. The provision of the extra kitchens in part facilitated the change of use and hence were integral to the breach of planning control. Requiring anything less than their removal would not be sufficient to fully remedy the breach. Consequently, given that the purpose of the notice is to fully remedy the breach of planning control the requirements cannot be excessive.
19. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR