



Appeal Decision

Site visit made on 30 September 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH October 2020

Appeal Ref: APP/N5090/C/19/3239881

Land at Rowdean Residential Home, 99 Northumberland Road, Barnet, Herts EN5 1EB

- 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 & Mrs C H Mistry, Trymax Investments Limited, against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 23 September 2019.
 - The breach of planning control as alleged in the notice is Without planning permission the change of use of the property to a large House in Multiple Occupation (Sui Generis).
 - The requirements of the notice are 1 Cease the use of the property as a House in Multiple Occupation; 2 The permanent removal from the property of all but one kitchen including kitchen units, sinks, cookers and food preparation areas; 3 Permanently remove all constituent materials resulting from the works required above from the property.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (d) of the Town and Country Planning Act 1990 as amended.
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Formal Decision

1. The appeal is allowed and the enforcement notice is quashed.

The appeal on ground (b)

2. The appeal on ground (b) is that the matter alleged in the Notice has not occurred. The relevant date is that of the issue of the notice. The Council has alleged the use of the premises as a House in Multiple Occupation (HMO), whereas the appellants' position is that the premises are in use as independent self-contained flats. The burden of proof rests with the appellants, with the standard of proof being the balance of probability. In order to succeed the appellants would need to demonstrate that on the balance of probability the property is not in use as an HMO, or indeed that it is divided into individual units of residential accommodation.
3. Section 254 of the Housing Act 2004 sets out the criteria to be met if a building or a part of a building is an HMO. The criteria include that it must consist of one or more units of living accommodation not consisting of a self-contained flat or flats and 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 basic amenities. "Basic amenities" is defined as a toilet, personal washing facilities or cooking facilities.

4. The property is a large two-storey building with accommodation situated in the roof space. It essentially comprises 11 units, all with lockable entrance doors and en-suite toilet and personal washing facilities. Each of the units incorporate a small kitchenette, including a fridge and either two or four electric hot plates. There is a communal kitchen on the ground floor, the facilities within which include a conventional oven, washing machines and food storage and preparation space. The Council has also referred to the presence of a communal toilet and sink on the ground floor.
5. Notwithstanding the aforementioned communal toilet, I have not been provided with any information to suggest that this ever extended to a communal bathroom or shower room facility. This leads me to conclude, on the balance of probability, that the en-suite toilet and personal washing facilities currently in place in each of the units would have been present when the notice was issued, as indicated by the appellants' statement regarding self-containment at that time.
6. In view of the presence of toilet and personal washing facilities in each of the respective units, the decision turns on whether it can be said that it was more likely than not that cooking was taking place within the individual units, such that they should be regarded as independent self-contained flats rather than rooms within a large HMO.
7. It seems to me that the presence of hot plate facilities in each of the rooms would be sufficient to heat food in order to sustain the occupiers without having to eat elsewhere, whilst allowing sufficient convenience and flexibility on a day to day basis, such that occupiers would not necessarily need to resort to the additional cooking facilities in the communal kitchen area.
8. Whilst the Council has referred to 'cookers' only being present in some of the rooms, I would interpret the term 'cooker' as typically including a conventional oven. Indeed from what I saw during my visit I would concur that conventional ovens were present in only some of the rooms. However, there has been no information or evidence provided to suggest that the aforementioned hot plate facilities were not in place at the time the notice was issued, and which would otherwise serve to contradict the appellants' position that the property was used as 11 self-contained units at that time. Therefore, on the balance of probability, I consider that cooking facilities, in the form of hot plates would have been in place at the time the notice was issued.
9. I acknowledge that the communal kitchen area would facilitate the storage, preparation and cooking of food. However a shared kitchen would not prevent a unit with its own cooking facilities from being a flat because there would be no dependency on that shared accommodation. The same point is made with regard to any communal toilet and sink facility, in the context of personal toilet and washing facilities being available to each unit. It was also apparent from my visit that in one of the first-floor units only a single washing sink was available. However, again, I consider that whilst this might be indicative of the quality of accommodation, it does not prevent the unit from being regarded as a flat when applying the aforementioned criteria.
10. I therefore concur with the appellants' view that, on the balance of probability, the communal kitchen facilities and toilet have a supplementary role that extend beyond the use of the aforementioned basic amenities, which do not need to be shared by individual occupiers of each of the units.

11. I am persuaded that, irrespective of scale, each of the units provide the facilities for day-to-day living including living and sleeping accommodation. Accordingly for the aforementioned reasons, on the balance of probability, the property is not a large HMO but does consist of self-contained residential units.
12. I note that according to the Council the appellants sought to obtain a licence for a large HMO at the property. However this would fall under a separate regime of control and is not relevant to my considerations in this case.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under ground (d) as set out in section 174(2) to the 1990 Act as amended does not fall to be considered.

Roy Merrett

INSPECTOR