



Appeal Decision

Site visit made on 10 August 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Ref: APP/B0230/C/20/3265340

35 Dunraven Avenue, Luton, LU1 1TP

- 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 Kahled Ahmed against an enforcement notice issued by Luton Council.
 - The enforcement notice was issued on 13 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of the land from a single dwelling house to a mixed use as a single dwelling house and short term let accommodation (The Unlawful Use”).
 - The requirements of the notice are:
 - (i) Cease the unlawful use.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (d) 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.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - Deleting the wording “change of use” within the description of the alleged breach;
 - Replace the deleted wording with “the material change in the use” within the description of the alleged breach.
2. Subject to these corrections the appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matters

3. Section 55 of the 1990 Act states, amongst other things, that ‘development’, means the making of any material change in the use of any buildings or other land. To ensure that the description of the alleged breach reflects section 55 of the 1990 Act I consider that the wording “change of use” within the description of the alleged breach should be deleted and replaced with “the material change in the use”. The appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.

The appeal on ground (b)

4. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
5. The Council state that in addition to the appeal site being occupied by a full time tenant, it was also in use as a short term let accommodation and advertised on www.booking.com. The appellant states that this is not the case and claims that the photographs provided by the Council are of a different property at 234 Dallow Road, Luton. However, a screenshot¹ taken from the map function on booking.com, identifies the location of 35 Dunraven Avenue. Furthermore, the content of the 117 online reviews made between May 2019 and March 2021 features photographs showing bedrooms/ensuite facilities and the outside of the building which match the same bedroom/ensuite facilities and outside of the building photographed by the Council's Enforcement Officer during his site visit on the 2nd March 2020. Whilst some objects/furniture had been removed from some of the rooms, I also observed the same building and rooms/ensuite facilities during my own site visit at the appeal site.
6. The Council have also provided a photograph of the tenant's Council tax payment card which was taken during their site visit on 2 March 2020. This clearly states 35 Dunraven Avenue on the front of the card in addition to the tenant's name and provides further proof that their site visit and the photographs submitted are of the appeal site, 35 Dunraven Avenue.
7. The appellant's evidence also refers to an email received from the Fire Safety Inspection Officer, from Bedfordshire Fire and Safety Services, dated 6 November 2018, which states *"As you have identified that the premises has only temporary paying guests, which cannot be classed as residents, we would regard the premises as a guest house. As it is not a single private dwelling the FSO² does apply"*.
8. Therefore, based on all of the evidence submitted, the use of the premises for a mixed use as a single dwelling and short term let accommodation has occurred prior to the issuing of the notice as a matter of fact. Whether that use is a material change of use of the premises for which planning permission is required is a matter for the appeal on ground (c).
9. Therefore, on the balance of probabilities I consider that the matters as alleged in the notice have occurred as a matter of fact.
10. Accordingly, the appeal on ground (b) must fail.

The appeal on ground (c)

11. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. Like ground (b) the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
12. The appellant's case is that the premises for short term let accommodation does not amount to a material change of use and would like clarification as to

¹ Taken on 9 March 2021.

² Fire Safety Order 2005.

- why the notice has been served, when other properties in the area are in use as hotels and/or houses in multiple occupation.
13. The concept of material change of use is not defined in statute or statutory instrument and therefore it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously. Case Law³ has established that it was not correct to say either that using a dwelling for commercial holiday lettings would never amount to a material change of use or that it would always amount to a material change of use. It is a matter of fact and degree and would depend on the "particular characteristics of the use as holiday accommodation."
 14. The appeal property is a three-storey end of terrace property located in a cul-de-sac in a residential area. No 35 has a front garden with one off-street parking space. The residential use of the dwelling is a primary use taking place within the planning unit. In addition to the tenant residing at the appeal site, the property is advertised on Booking.com and stays at the property appear to be booked online based on the length of stay required by the occupants. I do not have specific figures on the number of lettings that have occurred at the property since the appellant has let it out. However, it appears that No 35 can be booked for a minimum of one night or a number of nights, and the screenshots submitted by the Council also highlights that there have been 117 online reviews made between May 2019 and March 2021. Given that not every paying guest would necessarily leave an online review, the actual total number of paying guests is likely to be greater than 117. This represents a significant number of paying guests in just over a 2 year period.
 15. The letting of the property for such a short-time period (for as little as one night) could lead to a significant turnover of occupants. Based on the evidence submitted, there appears to be a largely transient pattern and frequency of occupancy, compared to the more consistent pattern of occupancy that would normally be associated with that of a dwelling house. This means a greater turnover of different people arriving and leaving, and possibly with large luggage if making use of the nearby Luton Airport. Those arriving by car would need to find somewhere to park within the cul-de-sac. This could generate more vehicular comings and goings than a dwelling house, whose occupants would be more permanent and familiar with the area and hence would be more likely to use public transport, walking or cycling.
 16. It is acknowledged that a family living within a dwelling house is capable of generating a similar level of activity. However, the pattern of comings and goings by short term let users, is likely to be very different from the lifestyles pursued by the more settled long term residents and at times, in the evenings and late night, when most residents ought reasonably to be able to expect periods of relative peace and quiet. Furthermore, potential harm to neighbouring occupiers is accentuated by the fairly tight-knit pattern of housing in this residential cul-de-sac.
 17. In my opinion, from the evidence submitted, the use of the property for short term let accommodation would have substantially affected the character of the activities from what has gone on previously. As such, this has gone beyond the scope of what could reasonably be considered as being incidental or ancillary

³ Moore v SSCLG & Suffolk Coastal DC [2012] EWCA Civ 2101.

activities to the residential enjoyment of the property and has involved another primary use within this same planning unit.

18. I therefore conclude, as a matter of fact and degree, that a material change of use of the site had occurred from a single dwelling house to a mixed use as a single dwelling house and short term let accommodation. Planning permission is required for such a change of use and there is none in place. Furthermore, the change of use is not permitted development. As such, there has been a breach of planning control and the appellant has not discharged the onus on them to demonstrate otherwise.
19. Accordingly, the appeal fails on ground (c).

The appeal on ground (d)

20. The onus is on the appellant under ground (d) to make the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice.
21. The enforcement notice is directed at the alleged material change of use of the land from a single dwelling house to a mixed use as a single dwelling house and short term let accommodation. Consequently, the appellant needs to show that the matters alleged in the enforcement notice occurred at least 10 years prior to the issue of the enforcement notice (which was 13 November 2020), and that the use then continued without significant interruption for 10 years after the date of the change.
22. However, no precise and unambiguous evidence has been submitted by the appellant to demonstrate that the matters alleged in the notice occurred at least 10 years before the notice was issued. In these circumstances, I need not consider whether the use then continued for at least 10 years after the date of the change.
23. On the balance of probability, I therefore conclude that at the time the notice was issued it was not too late to take enforcement action against the alleged breach of planning control.
24. The ground (d) appeal therefore fails.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

R Satheesan

INSPECTOR