The Planning Inspectorate

Appeal Decision

Site Visit made on 20 September 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2021

Appeal Ref: APP/N5660/C/21/3274118
38 Morrish Road, London SW2 4EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Merle Cecilia Joseph against an enforcement notice issued by London Borough of Lambeth.
- The notice was issued on 5 March 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised material change of use of the premises from a House in Multiple Occupation (Use Class C4) to four self-contained one-bedroom flats and two self-contained bedsit/studio flats ('the six flats').
- The requirements of the notice are to:
  a) Cease the use of each of the six unauthorised flats and remove from the premises all internal partitions and divisions, kitchen units and appliances, which facilitate the unauthorised use of the premises; and
  b) Remove all associated waste and debris resulting from compliance with above steps, from the premises.
- The period for compliance with the requirement is: nine months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

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

Applications for costs

2. An application for costs was made by Ms Merle Cecilia Joseph against the Council of the London Borough of Lambeth. This application is the subject of a separate Decision.

Ground (b)

3. An appeal under ground (b) is made on the basis that those matters, the alleged breach of planning control, have not occurred. The onus of proof is firmly on the appellant to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities.

4. The main thrust of the appellant's case under ground (b) is that the property is in use as a 5 bedroom House in Multiple Occupation (HMO). The Town and Country Planning (Use Classes) Order (UCO) 1987 (as amended) sets out that for the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004. Consequently, a building converted into self-contained flats is excluded from the UCO definition of a HMO.

5. Section 254 (2) of the Housing Act sets out a building or part of a building meets the standard test if (f) 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 mean (i) a toilet, (ii) personal washing facilities, or (iii) cooking facilities.

6. It is not disputed that the accommodation is occupied by persons who do not form a single household as their only or main residence, that their occupation of the living accommodation constitutes the only use of that accommodation and rents are payable in respect of the living accommodation. What is in dispute is whether or not the building includes self-contained flats which would not meet the definition of an HMO for the purposes of the UCO.

7. A self-contained flat would not cease to be a self-contained flat just because communal facilities are available elsewhere within a building. If the unit in question contains the facilities required for day-to-day private existence and is used by an occupant as a dwelling, it can properly be regarded as a dwellinghouse for the purposes of the Act. It is a matter of fact and degree whether the units are self-contained flats or the property remains as an HMO.

8. Although one of the rooms was used for storage at the time of my site visit, an appeal under ground (b) is made on the basis that the matters stated in the notice have not occurred. Section 174(2)(b) is worded in the past tense, so even if the alleged activities have now ceased, for the appellant to succeed on this ground, she will need to show that the breach had not occurred by the date of the issue of the enforcement notice. So, if I find that the property comprised six self-contained units by the time the enforcement notice was issued, the fact that one has since been vacated and is used for storage would not enable the appeal under ground (b) to succeed.

9. I saw that there are six units of accommodation, each with a lockable door. Each of the rooms contains a cupboard with a sink, worktop and storage space. Although the cupboards contain a sink, there is very limited worktop space for food preparation and food storage. There is a reasonable sized kitchen on the first floor with a variety of appliances, including cooking and washing facilities.

10. The Council has drawn my attention to plans which were submitted to Building Control, which it is asserted confirm the appellants intention to create separate units of accommodation. The plans appear to show kitchens, with extractor fans or cooker hoods in a number of the units. However, the appellant advises that the proposal was amended to ensure that the building maintained its status as a HMO and from the photographs provided, and from my inspection of the site, it is clear that the plans have not been implemented as proposed.

11. It appears from the evidence submitted by the Council and the appellant's own evidence that the units have in the past, contained microwaves. Indeed, the witness statement, signed by an employee of My Metropolis, states that '*at the time of writing, the microwaves have been removed from each room*'. Since a microwave can be used to cook food sufficiently to prepare meals that would sustain the user without them having to eat elsewhere, a microwave could amount to a basic amenity. However, when considering whether the allegation is correct, it is important to consider how each of the units has been used.

12. The photographs taken by the Environmental Health Officer on 20 June 2019, show two cupboards which contain a microwave and a fridge. There are pans

stored in one of the cupboards, which would be unsuitable for use in a microwave and dried pasta, which is more likely to be cooked on a hob than in a microwave. There also appears to be a very limited range of food stuffs in the cupboards, which suggests food is stored elsewhere. The photographs of the communal kitchen show signs of use, with food stuffs such as dried pasta and rice stored in the cupboard which would typically be cooked using a hob, not a microwave.

13. The photographs taken by the planning enforcement officer on 19 October 2019, show the presence of fridges but not microwaves in each of the cupboards. While occupants may retain food items in their rooms and prepare and consume some food stuffs entirely within their rooms, it is not unusual for occupants of an HMO to store food in their rooms. The majority of occupants also stored pans with metallic parts in their rooms, which would be used in the communal kitchen. This indicates the occupants use the communal kitchen.

14. While I agree microwaves are easy to remove and reinstate, as asserted to have been found by the Inspector in APP/N5090/C/20/3247534[1], this in itself highlights the difficulty in relying on such items in determining whether self-containment has occurred. In some instances, such an appliance may indeed provide the necessary facilities for self-containment, particularly where there are no alternative facilities which an occupant can utilise. However, in this case, there is and was a fully equipped communal kitchen for which there is evidence of use.

15. Given the limited size of the cupboards within the units, and the modest size of some of the rooms, I consider it highly unlikely that occupants would choose to cook exclusively within their rooms, when there is a well-equipped kitchen available to use within the property.

16. The Council has provided me with information from the Council Tax Valuation List, which identifies the different units as flats 1-6. However, the property would have been assessed for the purposes of Council Tax valuation, not whether each unit comprises a separate dwelling house for the purposes of the Act. As such, the registration cannot, of itself, be determinative.

17. Tenancy agreements provided by the appellant identify the units as 'rooms' which suggests the property is an HMO. The documents also contain a clause stating that the property is not let as a House in Multiple Occupation within the meaning of the Housing Act 2004. The appellant suggests that the documents used are a standard template agreement and this is a mistake and is not reflective of use. In my experience, standard tenancy agreements are often used by landlords and so this is not an entirely unreasonable explanation.

18. The Energy Performance Certificate (EPC), dated 16 August 2016, identifies the dwelling as a mid-terrace house. Where units comprise self-contained accommodation, it is usual for each unit of accommodation to have its own EPC. Although not determinative, this points towards the property being used as an HMO.

19. A Gas Safety Record, identifies the property as 38 Morrish Road and shows that the boiler, located in the kitchen, was assessed. I saw that there is a boiler in the kitchen, which is used by occupants of the property. Electrical installation

[1] A copy of the appeal decision has not been provided.

records, while they identify the units as flats, show that electrical hobs were only present in the kitchen. Whilst not definitive in terms of whether a unit is a dwellinghouse for the purposes of the Act, such evidence weighs in support of the appellant's contention that the property comprises an HMO.

20. The appellant has provided me with correspondence received from and issued to tenant/s of the property regarding the communal kitchen, dated July 2019, which details issues regarding residents using other residents' cupboards within the communal kitchen. I have no reason to doubt the authenticity of this document, which points towards occupants of the building using the communal kitchen.

21. The appellant has also provided me with recent electricity, water and telephone and broadband bills for the property, which show that there is one bill for each, for the entire property. Where units are self-contained, it is usual for each unit to be provided with its own services. This points towards the property being used as an HMO and not self-contained units, as alleged by the Council.

22. Taking into account the evidence put forward by both the appellant and the Council, I find on the balance of probabilities, the property is a C4 HMO and by the time the notice was issued, the unauthorised material change of use of the premises from a House in Multiple Occupation (Use Class C4) to four self-contained one-bedroom flats and two self-contained bedsit/studio flats ('the six flats') had not occurred.

Conclusion

23. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

24. In these circumstances, the appeals on grounds (c) and (f) do not fall to be considered.

M Savage

INSPECTOR