The Planning Inspectorate

Appeal Decisions

Site visit made on 28 September 2021

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17 January 2022

Appeal Refs: APP/B0230/C/20/3249669 & 3249670
236 High Town Road, Luton LU2 0DN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeals are by Mr M Kurek (3249669) and Mrs H Kurek (3249670) against an enforcement notice issued by Luton Council.
- The enforcement notice, ref. 17/00039/UBO, was issued on 12 March 2020.
- The breach of planning control alleged in the notice is:

  The change of use of the Land from a single dwellinghouse to eight self-contained flats.
- The requirements of the notice are to:

  (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 from compliance with step (ii) above from the Land.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(d), (e), (f), and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeal Refs: APP/B0230/C/20/3249669 & 3249670

1. Both appeals are allowed on ground (g), and I direct that the enforcement notice be varied by:

   DELETION of *6 months*; and,

   SUBSTITUTION of *9 months* as the period for compliance.

   Subject to this variation the enforcement notice is upheld.

Procedural matters

2. In appeals made on any of the 'legal' grounds, such as (d) and (e) in this case, it is long standing law that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify allowing it on the balance of probabilities.

3. The appellant makes clear that the appeals have not been made on ground (a) and that planning permission is not sought on the associated deemed planning applications.

Background

4. The appeal property was originally a two-storey house within a terrace of similar houses on the north-western side of High Town Road. It now has a converted and extended attic, and the building has been sub-divided into 8 self-contained flats.

5. In 2013 the Council granted a Lawful Development Certificate for a loft conversion with a rear dormer[1]. A drawing submitted with that application shows the proposed attic floor with two bedrooms. These are not shown with shower rooms, or kitchenettes.

6. An application for retrospective planning permission for conversion of the premises to 8 studio flats and a one-bedroom detached annex was refused in 2017[2]. The subsequent appeal was dismissed[3].

7. A Completion Certificate issued by the Council's Building Control Department confirms that the building works comprising the loft conversion were inspected on 3 March 2016 and found to satisfy the requirements of the Building Regulations.

8. I saw that the building now has 8 self-contained flats – 3 on the ground floor, 3 on the first floor, and 2 on the attic floor. Each flat has a shower/wash-basin/wc enclosure, and a kitchenette having a 2-ring electric hob, oven, fridge, sink, a worktop and storage cupboard. The flats are generally furnished with sofa beds. Other furniture varies but I noted there is generally little storage provision or space for any but the smallest tables and chairs. A washing machine for communal use is provided in the ground floor understair cupboard.

9. I also saw that the detached building in the back garden is currently used for storage. This building is not subject of the notice.

The appeals on ground (e)

10. This ground is that copies of the enforcement notice were not served as required by s.172 of the Act. S.172(2) says that a copy of an enforcement notice shall be served:

    (a) on the owner and on the occupier of the land to which it relates; and

    (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

11. The appellant says the Council should have known the appellants' home address of *29 Southampton Gardens, Luton*, and a copy of the notice should have been served there. I understand the Council had wrongly believed the appellants' address to have been *29 Southampton Road*, *Luton,* which is non-existent. Nevertheless, I note that this latter address was used in the 2019 planning and LDC applications.

12. While the Council might have taken greater steps to discover the appellants' correct home address, to my mind they were not at fault by using the High Town Road address, which is that recorded on the Land Registry title document of 30 April 2018. Also, it can reasonably be expected that owners letting their

[1] Application ref. 13/01474/LAWP.
[2] Decision notice ref. 17/01311/FUL, dated 26 September 2017.
[3] Appeal decision ref. APP/B0230/W/18/3198118, dated 15 May 2019.

property would be aware of documents sent to that address. Furthermore, it is apparent the Council served the notice on the owners and occupiers of the property as a whole, as well as of the individual flats. Indeed it is very clear that Mr and Mrs Kurek received their copies of the notice and have been able to make these appeals.

13. I conclude that on the balance of probabilities the notice was properly served on the owners and occupiers of the property as required by s.172 of the Act. The appeals on ground (e) therefore fail.

The appeals on ground (d)

14. This ground is that the alleged change of use is immune from enforcement action as a result of the passage of time. S.171B(2) of the Act sets out the time limits that apply, and states that:

'Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach'.

In this context, a 'dwellinghouse' includes a flat, and a 'building' includes part of a building.

15. The enforcement notice was issued on 12 March 2020. In order to be immune the alleged change of use must have been continuous for at least four years before that.

16. The appellants' principal evidence is that 6 of the flats existed at the time of the 2013 LDC application, as shown on the drawing submitted with that application, and that the Building Regulations Completion Certificate then indicates the proposed loft conversion with 2 additional units had been completed by the date of inspection on 3 March 2016.

17. Looking at that drawing, both existing and proposed plans show six bedrooms on ground and first floors with en-suite shower rooms, and what may be kitchenettes in 5 of the rooms – they are indicated as no more than a rectangle and are not annotated as such. None is shown in the ground floor back room. The two proposed attic rooms do not indicate shower rooms or kitchenette installations. I also bear in mind that this application was for a loft conversion/extension and was not for conversion or alteration of the entire building. Furthermore, the Building Regulations certificate does not actually define what works had been completed, notably in terms of what then existed in terms of shower room and kitchen installations – matters that are highly germane to building control.

18. The appellants had bought the property in August 2015. At that time estate agent's particulars described the property as a 6-bedroom dwelling, which had 3 ground floor bedrooms with kitchenettes and shower rooms, 2 first floor bedrooms with kitchenettes and shower rooms, and a first floor kitchen serving the ground floor bedrooms. On the second floor is a 6th bedroom, also with a kitchenette and shower room. However, the second floor is described as unfinished, with plans for studio/self-contained units. Some of the particulars put forward are incomplete, and the description of the number and type of self-contained units planned for the attic is not clear.

19. The agent's description does not tie in with plan submitted with LDC application – notably, the plan shows 3 first floor bedrooms rather than 2 bedrooms and a kitchen as described. Mr Kurek states this kitchen was very small and was for use by the landlord and goes on to say the kitchen was separated from Flat 6 by a wall, which he removed. This does not correlate with the agent's description of 2 first floor units and a first floor kitchen.

20. I concur with the Council's view that the Building Regulations certificate does not relate to the use of the building in any way, but only to works of loft conversion - the details of which are not spelt out.

21. A number of extracts from tenancy agreements have been put in for the period from 2013 to 2016. While they identify tenants, they are not specific as to which units were occupied – in most cases merely stating the unit was a 'studio flat'. These extracts do not demonstrate continuous occupation of 8 flats for the necessary period.

22. In my opinion the evidence put forward is by no means precise and unambiguous as to the use of the property – notably the somewhat vague description of works in the Building Regulations Certificate, and the lack of correspondence between the 2013 application drawing, the agent's particulars and Mr Kurek's statement. Furthermore, 4 years continuous use before issue of the notice has not been adequately demonstrated. I do not consider, on the balance of probabilities, it has been shown that the change of use took place four or more years prior to issue of the enforcement notice. The appeals on ground (d) therefore fail.

The appeals on ground (f)

23. This ground is that the steps required by the notice exceed what is necessary to remedy the breach of planning control, and that lesser steps would overcome the Council's objections.

24. The appellant argues that it is unnecessary and excessive to require removal of all but one kitchen. Not all kitchenettes need be removed. It would be adequate to provide a communal kitchen and common room, for instance by replacing one first floor flat as a communal kitchen. However, this would result in there being 7 self-contained units and what might well be a more or less redundant kitchen. I am not persuaded this would achieve the objective of returning the building to use as a single dwellinghouse.

25. I consider provision of one kitchen and removal of all others would be necessary in order to ensure the units would no longer be self-contained, and the building could return to use as a dwellinghouse. The appeals on ground (f) therefore fail.

The appeals on ground (g)

26. This ground is that the compliance period is too short and that a longer period should be allowed. It is argued on the basis that 6 months would not give adequate time for tenants to find other accommodation as well as to carry out the physical works needed. No period is proposed by the appellant.

27. I appreciate that removal of tenants may be a drawn-out process and accept that this may leave inadequate time to carry out the necessary works. In my opinion an additional 3 months should be allowed for the entire process. This would also enable the appellant to explore alternative schemes for use of the building that might be approved by the Council.

28. The appeals on ground (g) therefore succeed, and I will vary the enforcement notice accordingly.

Conclusions

29. For the reasons given above I conclude that the appeals should succeed to the limited extent on ground (g), and that a reasonable period for compliance would be 9 months. I shall vary the enforcement notice accordingly, prior to upholding it.

Stephen Brown

INSPECTOR