



Appeal Decision

Site visit made on 12 July 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Appeal Ref: APP/N1540/C/21/3273395

108 Greygoose Park, Harlow, CM19 4JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jon Aitchison against an enforcement notice issued by Harlow District Council.
 - The notice was issued on 24 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised creation of a self-contained flat within the dwelling (HMO)
 - The requirements of the notice are to: Remove all unauthorised fixtures and fittings associated with the self-contained unit including but not limited to kitchen units, sink, white goods and cooker and return the property to its original state as an HMO.
 - The period for compliance with the requirement is: 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matters

2. The site visit was organised on the basis that both parties would attend an Accompanied Site Visit (ASV). However, the Council did not attend and did not respond to any contact from the Planning Inspectorate on the day. I considered that it would be appropriate for me to continue to carry out the site visit as an Access Required Site Visit (ARSV) without prejudice to the Council as the appellant was able to provide access to the site and understood that he could not engage in discussion about the merits of his case. The Council has been advised of the change in procedure from an ASV to an ARSV.
3. The appellant advised that the reference to 'The Roll of Distinguished Philatelists' on his Appeal Form was in error. I have corrected this in the banner heading.
4. The appeal has not been made under ground (a) therefore the merits of the appeal scheme and any benefits arising from the development are not before me.

Main Issues

Ground (c)

5. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently

precise and unambiguous, and the standard of proof is the balance of probabilities.

6. In order to achieve success on ground (c) the appellant must show that either there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.
7. The appellant contends that the flat which is the subject of the notice could not function as a self-contained unit. He also argues that even if it is a self-contained unit, it would be permitted under legislation relating to Houses in Multiple Occupation (HMO).
8. The plans show a new hall inside the building which affords access to the ground floor unit. Access to a ground floor bedroom has been reconfigured so that it is entered from the new hall space which also provides access to a shower room and the converted garage space.
9. During my site visit I observed that the internal hall is secured by a door and that the residents of the first floor bedrooms do not have access to the ground floor accommodation behind it. This accommodation which is the subject of the notice affords to all who use it the facilities required for day to day private domestic existence, including a hob, cooker, fridge, freezer, washing machine and dryer. Contrary to the view of the appellant the space can function as a self-contained unit.
10. The Housing Act 2004 at section 254 deals with HMOs and creates a number of tests, including that those who occupy the building must share one or more basic amenities (or their accommodation must lack one or more basic amenities). Basic amenities are defined as a toilet, personal washing facilities and cooking facilities.
11. The appellant argues that the unit could be regarded as not being self-contained on the basis that it has shared services with the rest of the building, is accessed via a communal hallway and the resident also uses the lounge, kitchen, garden, and access associated with the main house. However, the unit does not lack one or more basic amenities and there is no need for its occupant to access the rest of the property.
12. There is no evidence before me to counter the appellant's argument that there are no separate services serving the unit. However, this is not a determinative factor in terms of assessing whether or not the occupier of the unit has access to shared amenities. Similarly, a shared parking area, hall and garden are common features of both HMOs and buildings occupied by flats, therefore the use of these facilities cannot be regarded as indicating the unit forms an integral part of the HMO.
13. Drawing all of these points together whilst there appears to be nothing to prevent the occupier of the unit from using the HMO facilities, the fact is that they do not need to do so to access any basic facilities or facilities required for day to day private existence. Consequently, the unit does not meet the criteria specified in section 254 of the Housing Act 2004 and cannot be regarded as forming part of the HMO.

14. For the reasons set out above, it has not been shown, on the balance of probabilities, that the matters alleged in the notice do not constitute a breach of planning control and the appeal fails on ground (c).

Ground (f)

15. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
16. The appellant considers that the requirements of the notice are excessive and that removal of locks from the kitchen and lockable doors to allow all tenants to use the new kitchen would be an alternative which would address the Council's objections.
17. On the basis of the plans and my observations during the site visit, it is unlikely that other tenants would use the new kitchen facilities even if they were available to them. In order to access the new kitchen, the first floor tenants would have to go through the hall and the internal hallway negotiating a number of doors to bring any food or drink to the lounge or their rooms. By contrast the kitchen to which they currently have access is directly off the shared lounge and stairs.
18. The new kitchen is readily accessible from the ground floor bedroom. Even without the lock on the new kitchen the default position would be likely to be that it would be solely used by the occupier of the ground floor bedroom.
19. Furthermore, the internal layout of the space is such that the use of the self-contained unit could be easily resumed. Regular monitoring of the situation by the Council to check ongoing compliance with the notice would be unreasonable and wasteful of resources.
20. For the reasons given above, I conclude that the requirements of the notice are not excessive to remedy the breach of planning control and the appeal fails on ground (f).

Conclusion

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

Sarah Dyer

Inspector