



Appeal Decision

Site visit made on 5 July 2022

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2022

Appeal Ref: APP/Y1945/C/21/3289629

12 Monica Close, Watford, Hertfordshire, WD24 4GZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr SK Siddiqui against an enforcement notice issued by Watford Borough Council.
 - The notice, numbered EN21/00184/UD, was issued on 26 November 2021.
 - The breach of planning control as alleged in the notice is the development of seven self-contained units to facilitate the material change of use of the property from a single dwellinghouse to multiple short term visitor accommodation (*sui generis*).
 - The requirements of the notice are to: (1) Permanently cease the use of the property for short term accommodation; (2) Permanently remove all but one kitchen from the property; (3) Permanently remove all but two bathroom facilities from the property; (4) Permanently remove the internal doors and internal walls that have enabled the separation of the ground floor from the first and second floors of the property, as shown in red on Site Plan B attached to this notice; (5) Permanently remove the entry code systems on all but the front door to the property; (6) Permanently remove the numbers on all internal doors within the property; (7) Remove the resultant materials, rubbish and debris from complying with steps 2-6.
 - The periods for compliance with the requirements are: 28 days for Step 1 and 3 months for Steps 2-7.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Appeal on Ground (b)

2. The appeal made on ground (b) is that the matters stated in the allegation of the notice have not occurred. The burden of proof falls on the Appellant and the standard of proof is the balance of probabilities.
3. The allegation in the notice relates to "the development of seven self-contained units to facilitate the material change of use of the property from a single dwellinghouse to multiple short term visitor accommodation". There is no dispute that seven rooms have been formed. The dispute relates to the use of the building. The Council has not confirmed in detail as to what constitutes "short term" but it is apparent from the Council's written evidence and screenshots of a booking website, that the concern is that the rooms can be booked for periods which could be measured in days, resulting in a use materially different to a dwelling occupied on a more permanent basis.
4. The Appellant maintains that the property is a house in multiple occupation (HMO) and that only two rooms on the ground floor were ever used as short-term lets.

5. I understand that rooms were still being advertised as short-term accommodation after the enforcement notice was served. In addition, the Council says that it has spoken to neighbours which have alleged that the premises is subject of a frequent turnover of occupants. However, whilst the Council has provided screenshots from booking websites, these screenshots do not confirm that all the rooms were used as short-term accommodation because it appears that not all 7 of them feature in the photographs and the websites do not identify the number of rooms available.
6. More importantly, the Appellant has provided three shorthold tenancy agreements that are dated before the enforcement notice was served. Five shorthold tenancy agreements were submitted and only two of them were dated after the enforcement notice was served. Therefore, not all of them post-date the enforcement notice. This is relevant to the use of the building at the time of the serving of the enforcement notice.
7. Moreover, whilst I acknowledge that plans accompanying an application for the building to be re-numbered from Number 12 to Numbers 12 and 12A showed a total of 7 rooms, I am not persuaded that the rooms are self-contained. The seven bedrooms, each have an en-suite shower room and food preparation/storage facilities including a sink, fridge and previously, a microwave. The microwaves had been removed from the rooms by the time of my visit. There were also locks on each bedroom door. Photographic evidence has also been provided which shows numbers on each bedroom door and external key entry boxes.
8. Nevertheless, whilst the rooms display some features of being self-contained, The Housing Act 2004 at section 254(8) refers to self-contained flats as meaning a separate set of premises (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants. Basic amenities are defined as a toilet, personal washing facilities and cooking facilities.
9. I consider that a microwave does not constitute cooking facilities because a microwave can easily be unplugged and removed from a room which means that the room could cease to be a flat and then turned back into one within a day. Furthermore, a microwave is very limited in the number of cooking functions it can perform. The hobs and ovens available to the occupants are contained in shared kitchens.
10. Given the lack of cooking facilities in the rooms, and the availability of shared cooking facilities, I do not consider the building to be used as 7 self-contained units. I appreciate that there is currently no HMO licence for the property but this factor is not determinative of its actual use.
11. As a matter of fact and degree and on the balance of probabilities, I consider that the building was not being used entirely as short term visitor accommodation on the date that the enforcement notice was served and neither had seven self-contained units been formed. The evidence indicates that the allegation was incorrect.
12. I have considered whether the notice can be corrected, having regard to the appellant's claim that it is used as a 7-bedroom HMO. I have the power to correct any defect in the notice, but only if doing so would not cause injustice

to the Appellant or the Local Planning Authority. However, the use the Appellant states would be a very substantial change to the notice. Such a notice could raise different planning issues. The appellant might well wish to pursue different grounds of appeal in the face of such a notice, perhaps including ground (a). Consequently, even if the breach of planning control outlined by the Appellant is correct, I am not satisfied that the notice could be corrected without causing injustice to the Appellant or the Council. No other potential breach of planning control has been raised and I have already concluded that the breach stated in the notice is incorrect.

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 the grounds (f) and (g) of section 174(2) of the Act do not need to be considered.

Ms Watson

INSPECTOR