Appeal Decisions

Site visit made on 13 December 2022

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH DECEMBER 2022

Appeal A Ref: APP/Y0435/C/21/3277675
13 Cambridge Street, Wolverton MK12 5AD

- 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 Clifford Nero against an enforcement notice issued by Milton Keynes Council.
- The enforcement notice was issued on 21 May 2021.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use of the premises to six self-contained flats.
- The requirements of the notice are: (i) Cease the use of the land as self-contained flats. (ii) Remove any fixtures and fittings including meters associated with the unauthorised change of use.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(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.

Appeal B Ref: APP/Y0435/X/21/3277674
13 Cambridge Street, Wolverton MK12 5AD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Clifford Nero against the decision of Milton Keynes Council.
- The application Ref 21/00329/CLUE, dated 3 February 2021, was refused by notice dated 21 May 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described as: "*The whole building 13 Cambridge Street, Wolverton was historically used as a single private dwelling, this use ceased in or around the middle 2016 when the property was converted into six self-contained flats. The property has been inhabited for the use of separate dwellings since January 2017 when the first tenants moved in. The local authority has been aware of this change since 2017 because each dwelling has its own Council Tax status*".

Decisions

1. Appeal A-The appeal is allowed and the enforcement notice is quashed.
2. Appeal B-The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matter

3. The description of the use for which an LDC is sought in the banner heading for Appeal B is taken from the application form. For the certificate I have taken the description from the appeal form, as that specifies what has been applied for in a more concise fashion. The Council used a similar description on their decision notice.

Appeal A

Ground (d) appeal

4. The ground of appeal is that it was too late to take enforcement action against the alleged breach of planning control.

5. The property contains an end of terrace building in which the residential accommodation is arranged over two floors. There are three units of accommodation on the ground floor, with a further three units on the first floor. The units are all self-contained, each having its own kitchenette and bathroom facilities.

6. At s171B(2), the Act provides that where there has been a breach of planning control consisting in the change of use of any building (including part of a building) to use as a single dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Any four-year period is relevant, not just the four years immediately preceding the date of the notice.

7. The onus is on the appellant to show that the use as six self-contained flats is immune from enforcement action. This is qualified by the Planning Practice Guidance (PPG) section 'Lawful Development Certificates', which advises that where a Council has no evidence itself, nor any from others, to contradict or otherwise make an applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous in order to justify the grant of a certificate on the balance of probability[1].

8. The appellant's evidence included details of Assured Shorthold Tenancy agreements (ASTs) relating to six individual units at the property. The ASTs were for fixed terms of six or twelve months. The earliest ASTs for three of the units were dated 31 December 2016, whilst the earliest ASTs for the other units were dated 27 January and 28 February 2017. Details of subsequent ASTs for individual units were also supplied, the most recent of which was dated 4 May 2021. Additionally, details were supplied of other tenancies in respect of the individual units where on the date of the notice the fixed term had either not yet expired or where the tenancy was continuing on a rolling basis. The total number and duration of tenancies for each individual unit were set out in a table.

9. Other evidence supplied included monthly schedules of rent paid in respect of the individual units from the end of December 2016 to May 2021. The rent schedules are consistent with the ASTs in terms of the identities of tenants. Whilst the existence of an AST does not, of itself, mean that a unit was occupied, the rent schedules provide clear evidence of the units having been

[1] Paragraph: 006 Reference ID: 17c-006-20140306.

tenanted throughout the terms of the ASTs, as well as subsequently. Consequently, the above information strongly suggests that the property had been let out under separate tenancies relating to six individual units between the end of December 2016 and the date of the notice.

10. The tenancy table, the rent schedules and some of the tenancy documentation refer to the units as 'rooms'. The units are also referred to as rooms in Council Tax information. Correspondence from the Valuation Office (VO) dating from February 2017 refers to the property as a House in Multiple Occupation (HMO) whilst in February 2021, the VO referred to rooms at the property in response to a Council Tax enquiry. Correspondence from February 2017 concerning the requirements of the Housing Act 2004 suggests that at that time, the Council's Housing service regarded the property as an HMO.

11. Be that as it may, the majority of the ASTs refer to the units as 'flats'. The use of that term is significant, as it suggests that each unit exhibits a high degree of self-containment not normally associated with shared accommodation. If the property had been in use as an HMO, it is not unreasonable to expect that there would have been some reference to that effect in the ASTs. For example, tenancy agreements relating to shared accommodation would normally refer to the communal facilities such as kitchens and/or bathrooms, as well as to areas that are occupied exclusively. Moreover, there are no communal kitchen or bathroom facilities at the property. Each unit has the characteristics of a dwellinghouse, being able to afford to those who use it the facilities required for day-to-day private domestic existence. How a property is referred to for Council Tax purposes is not necessarily an accurate reflection of its use in planning terms. In any event, each unit has been assessed as being liable separately for Council Tax since the end of December 2016. Therefore, on the basis of the available evidence and as a matter of fact and degree, the property has been used as six self-contained flats.

12. It is also necessary to examine whether the use as six self-contained flats has been continuous for the required four-year period. In this respect, the regular rent payments made between the end of December 2016 and May 2021 reflected in the rent schedules is consistent with the more or less continuous occupation of the units throughout that period. The tenancy table shows that any apparent 'gaps' between the expiry dates of ASTs and the start dates of subsequent ASTs can largely be explained by the tenancies having continued on a rolling basis following the end of the fixed terms and therefore do not represent long periods of non-occupation. The rent schedules show that the tenants continued to pay rent for units for periods extending well beyond the expiry dates of the fixed terms in their ASTs. It was clear on the face of the ASTs that tenancies could continue on a rolling basis once their fixed terms had ended. That is not unusual; fixed term tenancies often continue on a rolling basis following the expiry date. Tenants do not necessarily vacate accommodation on the expiry of the term specified in their tenancy agreement. The records of Council Tax payments provide further support in respect of continuing occupation by tenants well beyond the expiry of fixed term tenancies.

13. Consequently, it is highly likely that the units were occupied at most times, including in the periods between the expiry dates of ASTs and the start dates of subsequent ASTs. Short periods of non-occupation between tenancies do not

necessarily mean that the units were incapable of being physically occupied as such and so would not adversely affect the continuity of the use.

14. Council Tax information shows the appellant as being jointly liable with other parties for payments due in respect of one unit whilst it was let out to a tenant company in the period between the end of December 2016 and early to mid-2020. Furthermore, it shows the appellant being jointly liable for Council Tax in relation to other units at intervals, notably in short periods between tenants. However, that does not cast any appreciable doubt on the appellant's claim, as there is little to indicate that any Council Tax liability arose as a result of breaks in occupation that amounted to a significant interruption in the use.

15. According to the Council's records, consent was sought under the Building Regulations in September 2017 to convert the property to five flats. The available evidence, including ASTs, the tenancy table, the rent schedules and Council Tax information, all suggests that the application was made retrospectively following the carrying out of the conversion works to form the units and there is little which might indicate otherwise. Furthermore, given that the property was previously a single dwelling the number of additional flats in the application is not inconsistent with the six units currently at the property. Therefore, this matter has little bearing on the continuity of the use during the four-year period.

16. For the above reasons, on the balance of probability when taken as a whole the information supplied by the appellant represents sufficiently precise and unambiguous evidence in respect of the use of the property as six self-contained flats having commenced and then continued without substantial interruption for a period of more than four years before the date of the notice. None of the matters raised by the Council materially affect the weight that should be given to the appellant's evidence; those matters do not contradict the appellant's evidence or make their version of events less than probable. It follows that on the date of the notice it was too late for the Council to take enforcement action in respect of the use of the property as six self-contained flats.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed.

Appeal B

Main Issue

18. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded.

Reasons

19. Submission of the LDC application preceded the notice by around three months. The available evidence also shows however that on the balance of probability, the flats were already in residential occupation or were capable of being occupied and that such use has continued without substantial interruption for more than four years prior to the application date. Similar considerations therefore apply in this appeal to those set out above in relation

to the ground (d) appeal in Appeal A regarding the immunity of the use as six self-contained flats from enforcement action.

20. The effect of s191(2) of the Act is that the use as six self-contained flats is therefore lawful, as no enforcement action can be taken because the time for taking such action has expired.

Conclusion

21. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 13 Cambridge Street, Wolverton MK12 5AD as six self-contained flats was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR