



Appeal Decision

Site visit made on 7 February 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal Ref: APP/A5270/C/21/3285205

37 Wolsey Close, Southall UB2 4NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr D Collison of Stef & Philips Ltd against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 10 September 2021.
 - The breach of planning control as alleged in the notice is the erection of a single storey extension and the material change of use of the property to six self-contained flats.
 - The requirements of the notice are: A. Cease the use of the property as self-contained flats; B. Remove the cooking facilities, kitchen sink and associated drainage connection and water supply from each of the flats; C. Demolish the single storey rear extension (in the approximate location shown hatched in black on the plan attached to the notice); and D. Remove all resulting rubbish, materials and debris from the land.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be varied by deleting at paragraph 5 ('what you are required to do') in step B '...kitchen sink and associated drainage connection and water supply'. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (b) appeal

2. The ground of appeal is that the matters alleged in the notice have not occurred.
3. The appeal property contains an enlarged semi-detached residential building. As a single storey extension has been erected at the rear of the building, the first part of the allegation has occurred. Therefore, the appeal on this ground cannot fully succeed in any event.
4. As far as the second limb of the allegation is concerned, the appellant's case is that the property has been used as a small House in Multiple Occupation (HMO) within Class C4¹. The onus is on the appellant to show that the alleged use as six self-contained flats has not occurred, the relevant test of the evidence being on the balance of probability.
5. Living accommodation at the property is arranged over two floors. On the ground floor are three bedrooms, one of which is in the single storey rear

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended).

extension. These bedrooms have been adapted for occupation by persons with disabilities. On the first floor are a further three bedrooms. All bedrooms have an ensuite toilet/shower. The bedrooms are also fitted with a worktop, together with a sink-some combined with a drainer, as well as cupboard space and a wardrobe. Each bedroom contains household electrical appliances including a minimum of a washing machine and a fridge. One ground floor bedroom also has an oven, hob and extractor, whilst a first floor bedroom has a microwave. Additionally, there is a ground floor kitchen accessible by all tenants. The shared kitchen is fitted with dual ovens, hobs and extractors, a sink and drainer, as well as cupboard space.

6. An HMO is generally understood as meaning a building occupied by persons who do not form a single household and who share basic amenities such as a toilet, personal washing and cooking facilities. This reflects the more detailed definition set out in s254 of the Housing Act 2004. The Council supplied photographs taken on 1 September 2021 which show that together with the facilities described above each bedroom also contained a small oven/hob, enabling the tenants to prepare, cook and consume food separately. One of the bedrooms also contained a microwave. Consequently, at the time the notice was issued the bedrooms each had the ability to afford to those who used it the facilities required for day-to-day private existence, this being the distinctive characteristic of a dwelling according to established case law².
7. The appellant explained that cooking facilities had been provided in the bedrooms for a period of around two to three weeks whilst the shared kitchen was not fully functional and an oven was faulty. However, the Council's photographs show that both ovens were in largely 'as new' condition and still contained packaging on 1 September 2021, suggesting that they had not seen any use. Also, according to an electrical installation certificate (EIC) dated 19 May 2021, the electrical installations including the ovens had met the relevant regulatory requirements only a few months prior to the Council's visit. Such evidence makes the likelihood of the shared cooking facilities being faulty when the Council visited questionable. Also, although the ovens/hobs witnessed by the Council have since been removed, the continued presence of individual cooking facilities in at least two bedrooms implies that such facilities could have been at the property for longer than the appellant claimed.
8. Whilst the appellant's general terms and conditions for tenants advise that cooking in bedrooms is not permitted and could lead to eviction, there is little to indicate that enforcement is a likely proposition. In any event, that does not account for the presence of some individual cooking facilities in bedrooms when I visited. There is also uncertainty over whether the tenants make other than occasional use of the shared kitchen; the facilities therein exhibit few obvious signs of having been in day-to-day use by a number of individuals over a sustained period. The available evidence therefore makes the appellant's explanation for the presence of the individual ovens/hobs unconvincing and accordingly, it can only be given limited weight.
9. The bedroom worktop areas provide facilities for preparing meals as well as for the washing of crockery, pots and utensils, whilst the cupboards allow for the storage of such items as well as food. There are power outlets for household kitchen appliances in the vicinity of these worktops. The EIC indicates that electrical sockets in the vicinity of the worktops can power electrical appliances including a hob. An HMO Licence application form indicates that the bedrooms also contain heat alarms, thus implying that food will be cooked there. The bedroom worktop areas have the appearance of kitchens and possess most of their fundamental functions. The relatively modest dimensions and extent of the facilities available in the shared kitchen make it awkward for more than

² *Gravesham BC v SSE* [1984] 47 P&CR 143.

perhaps two or three people to prepare and cook food at any one time, whilst there is little space for dining and no table or chairs are provided. With an oven/hob, tenants are able to prepare, cook and consume food separately in their bedrooms with greater convenience and privacy when compared to using the shared kitchen. Therefore, where tenants are provided with individual cooking facilities, it is entirely possible that they would meet much of their day-to-day food needs without using the shared kitchen.

10. The mere presence of individual cooking facilities in the bedrooms would not necessarily equate to a use as self-contained flats. Even so, on the basis of the evidence set out above and as a matter of fact and degree, it is entirely possible that at the time the notice was issued the bedrooms were in use as separate dwellings, in which case the alleged use has also occurred. Whilst an HMO licence was issued for the property in August 2021 that is not definitive of the use for planning purposes, as different legislative provisions apply. In any event, there is little that points towards the tenants using shared facilities at the property such as might characterise a use as an HMO.
11. For the above reasons, the appellant has been unable to show to the required standard that the use as six self-contained flats has not occurred. The ground (b) appeal must fail.

Ground (a) appeal

12. The appellant did not seek to obtain planning permission for the material change of use to six self-contained flats in the deemed planning application arising from the ground (a) appeal. As a result, the planning merits of such use do not fall to be considered.
13. At s177(1)(a), the Act provides for the granting of planning permission for the whole or part of the matters alleged in the notice. The single storey rear extension is part of the allegation. The notice does not allege that the extension facilitates the material change of use. At s75(2), the Act provides for specifying in a grant of planning permission the purpose for which a building may be used. As a result, it would be possible to ensure that the extension could only be used for purposes associated with the lawful use of the property. This means that the extension is capable of being considered on its individual planning merits.

Main Issue

14. The main issue in this ground of appeal is therefore the effect of the extension on the character and appearance of the area.

Reasons

Character and appearance

15. The property is located in a residential cul-de-sac. Development in the vicinity generally consists of dwellings that are similar in terms of their architectural style and external materials. The dwellings are arranged in regularly spaced pairs and they occupy generously sized plots. These factors make an appreciable contribution to the pleasantly spacious and cohesive character and appearance of the surrounding area.
16. The extension is at the rear of the building, adjacent to the boundary with neighbouring property. About 9 m in depth, 4 m wide and approaching 3 m in height, the extension is significant in scale and protrudes beyond a previous two storey enlargement up to the rear boundary. The extensive depth together with the flat roof give the extension an elongated, box-like profile, markedly dissimilar in terms of its form and appearance to that of the building. These factors also contribute to the extension having a distinctly horizontal emphasis

that does not sit easily alongside the more vertical proportions of the building. The external wall finish of white painted render, which differs appreciably from the darker hues of the pebbledash on adjacent walls and the red/brown coloured brickwork on the principal elevation, adds to the sense of awkwardness. As a result, the extension does not relate well visually to the building and it fails to appear as a subordinate addition.

17. Furthermore, the overall depth and corresponding expansive built footprint of the extension has meant that a considerable portion of land at the rear of the property is covered by or adjacent to substantial built form. This has had the effect of creating a more enclosed and built-up feel, appreciably eroding the impression of openness at the rear of the property and is entirely at odds with the greater sense of space at properties in the immediate and wider environs. Although there are limited public views of the extension, the visual harm caused is readily apparent from adjoining property.
18. I understand that the extension occupies a similar footprint and has a comparable built envelope to that of a previous residential outbuilding. However, this is a factor which can only be afforded limited weight. The previous structure was demolished due to its poor condition. Similarity with a structure no longer in situ is not a good reason for granting permission, as it could be repeated. Moreover, the previous structure appears to have been used for secondary or incidental purposes, whilst the extension has been constructed for use as additional primary living accommodation.
19. For the most part, other extensions in the locality do not protrude up to the rear boundary, whilst the portions of rear gardens occupied by built form are generally not so extensive as in this instance. Similarly, nearby residential outbuildings generally do not occupy so great a portion of the rear gardens. Reference was made to an outwardly similar extension at a nearby property. However, I am given to understand that this example is unauthorised and so can only be afforded limited weight. Consequently, the extension does not compare with local residential extensions and outbuildings.
20. Therefore, the extension fails to integrate satisfactorily with the building and is viewed as an obvious and unsympathetic further addition, appearing as an alien built feature in the environs and causing unacceptable harm to the character and appearance of the area. By not complementing the building pattern of the area, the extension does not accord with Policy 7.4 of the Ealing Development Management Development Plan Document (DPD), whilst by not ensuring high quality architecture with a coherent development of the site and appropriate levels of development with a positive visual impact, the extension does not accord with DPD Policy 7B. Furthermore, by not enhancing the local context through its scale, appearance and shape nor responding to the existing character of the area and respecting the features that contribute to that character, the extension does not accord with criteria in Policy D3 of the London Plan.

Conclusion-Ground (a) appeal

21. The extension does not accord with the Development Plan. The ground (a) appeal does not succeed.

Ground (f) appeal

22. The ground of appeal is that the notice requirements are excessive.
23. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place as provided by s173(4)(a) of the Act, or it can remedy any injury to amenity which has been caused by the breach as provided by

s173(4)(b). The notice requires the use as self-contained flats to cease and the removal of works which the Council consider facilitate that use, together with demolition of the extension. Compliance with the requirements would restore the property to its condition prior to the breach taking place. Therefore, as is made clear in paragraph 4 of the notice its purpose must be to remedy the breach.

24. Anything less than demolition of the extension would sustain part of the breach, thereby failing to achieve the purpose of the notice. There is no firm evidence of a realistic 'fallback' position in terms of the extension being substantially re-erected as 'permitted development' pursuant to Article 3, Schedule 2, Part 1 of the GPDO³ following compliance with the notice. There is no obvious alternative to demolishing the extension which would also remedy that part of the breach. Consequently, demolition of the extension is the minimum necessary to remedy that part of the breach and is a proportionate requirement.
25. In addition to requiring the unauthorised use as flats to cease, the notice requires removal of the cooking facilities, kitchen sink and associated drainage connection and water supply from each flat. An enforcement notice can properly require the removal of works integral to and solely for the purpose of facilitating a material change of use. However, as enforcement action is intended to be remedial it is necessary to consider whether the planning difficulties could be overcome at less cost and disruption.
26. There is a right to revert to the last lawful use where an enforcement notice has been issued, at s57(4) of the Act. From the available evidence, it is not unreasonable to infer that the lawful use of the property is as a single dwelling. It is entirely possible that, following reversion a change of use of the property from Class C3 to a small HMO within Class C4 would occur as 'permitted development' pursuant to the GPDO at Article 3, Schedule 2, Part 3, Class L. There is no sound reason to think that, as a firm specialising in providing rented accommodation, the appellant would not use the property accordingly. Moreover, as the appellant clearly aspires to provide good quality accommodation, it is eminently conceivable that they would fit kitchen sinks in the bedrooms. The associated water supply would also serve the washing machines currently fitted in each bedroom. In itself, the presence of kitchen sinks in individual bedrooms would not mean that the property amounted to more than a single residential planning unit. As a result, re-installing kitchen sinks together with their associated drainage and water supply in the bedrooms represents a realistic 'fallback' position.
27. Given the factors set out above, removing the kitchen sink, drainage and water supply from each bedroom would serve no useful purpose. Removing the individual cooking facilities would restore the property to its condition prior to the breach as a single residential planning unit and so would be a sufficient remedy. Consequently, that is a more proportionate requirement and represents an obvious alternative to step B. I shall vary the notice accordingly.
28. Therefore, the ground (f) appeal succeeds to the limited extent set out above.

Ground (g) appeal

29. The ground of appeal is that the period specified for complying with the notice requirements falls short of what should reasonably be allowed.
30. No details of the terms and length of any tenancy agreements or of any period of notice required to terminate those agreements was supplied. Nor was there

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

any firm evidence of any specific constraints on the availability of accommodation similar to that offered at the property. In my estimation, six months allows ample time to give any notice required to tenants and for them to search for and secure suitable alternative accommodation. Whilst at least some of the tenants may be classed as vulnerable due to disability, this also means that they are more likely to have access to support and assistance in finding alternative accommodation. There can be no certainty of Court action being an eventuality of any eviction proceedings required.

31. The remedial works involved in complying with the notice are small-scale and straightforward. No specialist plant or equipment would be involved and the works are unlikely to take more than a few weeks at most. Therefore, the works are well within the competency level of a small building contractor. Even if the appellant were unable to carry out the required tasks using existing in-house resources, there are likely to be a significant number of contractors who would be available to undertake the works given a reasonable period of notice, any continuing issues surrounding capacity and supply chains notwithstanding.
32. Therefore, six months strikes an appropriate balance between remedying the breach as soon as is possible without placing a disproportionate burden on the appellant or the tenants. Against that background, extending the compliance period to twelve months would perpetuate the breach and the associated planning harm.
33. Accordingly, the period for compliance is not unreasonably short and the ground (g) appeal fails.

Conclusion

34. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR