The Planning Inspectorate

Appeal Decision

Site visit made on 11 May 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3RD JULY 2023

Appeal Ref: APP/R5510/C/22/3297486
57 Newdigate Road, Harefield, Uxbridge UB9 6EL

- 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 Hillingdon.
- The notice, numbered HS/ENF/020043 (B), was issued on 22 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the sub-division and material change of use of the dwellinghouse known as 57 Newdigate Road, Harefield into six (6) self-contained flats.
- The requirements of the notice are:
  (i) Cease the use of the dwellinghouse as six separate flats.
  (ii) Remove all partitions and walls which facilitate the use of the dwelling house as six separate flats.
  (iii) Remove the kitchenettes to include microwave oven, fridge, washing machine, kitchen sink worksurfaces, kitchen style cupboards, hot and cold water supply and foul waste drainage pipework from each of the six units
  (iv) Remove all but one bathroom suite to include all fixtures and fittings, shower basin, WC, hot and cold water service pipes and foul waste drainage pipes
  (v) Remove from the land all debris, items, appliances, fixtures and fittings, building materials plant and machinery resulting from compliance with points (ii) to (iv) above.
- The period for compliance with the requirements is three (3) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed, and the Enforcement Notice is quashed.

Preliminary Matters

2. This Enforcement Notice (Notice) relates only to the material change of use of the building. The operational development, in the form of raising the roof height, a rear dormer, a rooflight and pipework to the front of the property as well as a single storey rear extension are considered under a separate Enforcement Notice, numbered HS/ENF/20043 (A). The operational development works also form part of the development subject to a Section 78 appeal against the refusal of planning permission. For simplicity, the operational development and planning appeal are dealt with in a separate Decision Notice.[1]

3. The Council considered the material change of use and the operational development in an Officer Committee Report and submitted an Appeal Statement with the Section 78 appeal and linked Section 174 appeal. I have considered the case set out by the Council in these statements for the change of use. The report

[1] Appeal reference APP/R5510/C/22/3297482 & APP/R5510/W/22/3293671

and statements have been seen by all interested parties, and it would not prejudice any party by me having regard to them in this instance.

4. Reference has been made to issues such as noise and disturbance to neighbours, a lack of storage for waste and poor living conditions for occupiers, the impact on character of area due to loss of family homes as well as a lack of parking and implications to highway safety. These issues would be material considerations in a ground (a) appeal, which has not been made in this case. These matters are not before me for consideration.

5. Furthermore, several of the other matters raised are with respect to the operational development carried out on the site (raising of the roof, dormer, and rear extension). However, this is not relevant to the allegation in this Notice and these matters have been considered as part of a separate Decision Notice[2].

The Appeal on Ground (b)

6. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the Notice, those matters have not occurred as a matter of fact. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the Notice have not occurred. The appellant contends that the property has not been divided into six self-contained flats but altered to a House in Multiple Occupation (HMO) under permitted development. (e.g. for six persons sharing as a small HMO). As such, this appeal, and the ground (b), turns on the question of what is a flat.

7. In planning terms, a self-contained flat is a separate dwelling whereas an HMO is a single dwelling in use by people sharing (or having access to) at least one shared facility. *Gravesham*[3] is the lead case on defining a dwelling, which indicates that a dwelling is a building that ordinarily affords the facilities required for day-to-day private domestic existence. Section 254 of The Housing Act 2004 deals with HMOs and creates several 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.

8. The starting point for consideration must be the facilities in each of the rooms within the appeal property. At the time of my site visit, six rooms had a numbered door with a lock. All had a bed and cupboard storage. They also had an ensuite with a toilet, shower and sink as well as a kitchenette, which included a sink, kitchen cupboards, a washing machine and a fridge. Some rooms had saucepans, frying pans, plates as well as toasters, but none had cooking equipment as permanent fixtures. The first floor included a communal kitchen open to all occupiers. Although not much food was being stored in the kitchen, it included two fitted hobs and two cookers, including extraction equipment, which from inspection appeared to have been used.

9. In addition to my visit, the Council has provided evidence as part of their Statement of Case, which shows that two rooms have contained plug in cooking facilities. A photograph taken by the Council on 22 March 2022 shows a countertop travel type hob. A photograph taken by a complainant on 25 August

[2] Appeal reference APP/R5510/C/22/3297482 & APP/R5510/W/22/3293671
[3] Gravesham BC v SSE [1984] 47 P&CR 143

2021 shows a microwave in the ground floor front room. None of the photographs taken show conventional ovens or built-in hob appliances.

10. I refer to the appeal highlighted by the appellant[4], which in my view correctly stresses that *'A problem has arisen in many flat/HMO cases because the idea of 'basic amenities' has been confused with the Gravesham test of 'facilities required for day to day private existence'. The two are not necessarily the same. A room in an HMO might well consist of a bed, table and chairs and a small en-suite, with a fridge, worktop and cupboards. If a microwave is added, it is often argued that you then have a self-contained flat*.'

11. With the above in mind, it is possible to use the kitchenettes and small countertop plug appliances on a day-to-day basis, and some people can survive in this manner. However, *Gravesham* is concerned with what would generally be considered to comprise the test for a dwelling, not the bare minimum. Otherwise in a case such as this where a travel type hob or a microwave is added to a room, it turns from a room to a flat in an instant, which in my view would be illogical. In this case, the small to medium size bedrooms, the ensuite and small kitchenette with plug in cooking equipment might be adequate for occasional use, but it is too small and basic for normal, everyday residential use. In other words, reliance on a microwave or a travel type hob does not pass the test of providing a facility for day-to-day domestic existence.

12. Furthermore, it is apparent that the occupiers are not solely dependent upon equipment in their room to cook food. They have the option of using the communal kitchen to cook a greater range and quantity of food should that be desired or required. In this instance, the availability and use of the communal kitchen is essential to the existence of a dwellinghouse in *Gravesham* terms. Irrespective of whether all or some of the rooms were equipped with microwaves and countertop hobs or not, as a matter of fact and degree I consider that on the date the Notice was issued the appeal property was not six separate flats.

13. I have considered whether the Notice could be corrected to allege a material change of use to an HMO. However, I cannot discount the possibility that the change is permitted, or that the appellant could have appealed on other grounds if the allegation was corrected in this manner. Also, whether the Council would have considered it expedient to pursue the allegation corrected in this manner. For these reasons, I consider that correcting the Notice to allege an HMO would cause injustice.

14. Accordingly, the appeal on ground (b) succeeds, and the Notice shall be quashed. The appeal on ground (c) does not therefore fall to be considered.

Conclusion

15. When taken as a whole, the way the property is being used, the facilities in the rooms and the presence of the communal kitchen leads me to conclude that the property has not been subdivided to flats. I conclude that the appeal should succeed on ground (b).

M. P. Howell

INSPECTOR

[4] Appeal reference APP/Y5420/C/20/3256707