



Appeal Decision

Site visit made on 25 April 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2023

Appeal Ref: APP/J0405/C/22/3296040

Land at 60 Stoke Road, Aylesbury, Buckinghamshire HP21 8BX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Dave Garricks against an enforcement notice issued by Buckinghamshire Council - North Area (Aylesbury).
 - The notice was issued on 4 February 2022.
 - The breach of planning control as alleged in the notice is
 1. Subdivision of a dwellinghouse into four separate units of accommodation without planning permission.
 2. The erection of a building containing two flats without planning permission, shown hatched black on the attached plan.
 - The requirements of the notice are to:
 1. Permanently cease the unauthorised use of the original dwelling as more than one separate unit of residential accommodation.
 2. Permanently remove all kitchens, bathrooms, toilets, doors, walls, stairs and partitions that have facilitated the unauthorised change of use of the original dwelling.
 3. Demolish the residential building built in 2015 (hatched black on the attached plan).
 4. Remove all resultant debris from the demolition and conversion works, from the site.
 - The period for compliance with the requirements is: 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended (the Act). 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 notice be corrected by deleting:
 - i. "The erection of a building containing two flats without planning permission, shown hatched black on the attached plan" from the section 3 of the notice 'The matters which appear to constitute the breach of planning control'; and
 - ii. "Demolish the residential building built in 2015 (hatched black on the attached plan)" from section 5 of the notice 'What you are required to do'.
2. Subject to these corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the development already carried out, namely the subdivision of a dwellinghouse into four separate units of accommodation on Land at 60 Stoke Road, Aylesbury, Buckinghamshire HP21 8BX, as shown on the plan attached to the notice and subject to the following conditions:

- 1) Within three months of the date of this decision, details of both hard and soft landscaping shall be submitted to the Local Planning Authority for their written approval. For hard landscape works, these details shall include; means of enclosure; amenity space; pedestrian access; hard surfacing materials. For soft landscape works, these details shall include schedules of plants, noting species, plant sizes and proposed numbers/densities. The approved works shall be carried out within the first planting season following the date of approval.
- 2) Within three months of the date of this decision details of a scheme for parking shall be submitted to the Local Planning Authority for their written approval. The approved works shall be carried out within twelve months of the date of approval. The space shall thereafter be kept available for parking.

Matters concerning the notice

3. The notice is a hybrid notice whereby there are two limbs to the allegation. The first limb attacks the material change of use of the original dwellinghouse through its subdivision into four flats. The second limb attacks the operational development which has taken place on the land, namely the erection of the single storey building which contains two flats. There is no dispute between the parties that this building was substantially complete at some point in 2016. Therefore, the building is technically immune from enforcement action under s171B(1) of the 1990 Act.
4. However, that is not to say that its *use* is immune. But that does not form part of the allegation. Consequently, as the allegation does not refer to a material change of use of the land, I cannot address that point and the Council cannot seek the removal of the building. I note the Council suggested that I correct the notice to include the alleged change of use of the land, but such a change would likely be prejudicial to the appellant and cause injustice. Accordingly, it would not be within my powers to make such a correction. However, it is important for me to get the notice right where I can. In this case, the second limb of the enforcement notice and the requirement to demolish the building shall be deleted from the notice. In doing so, I do not consider that there is any injustice to either party and it remains open to the Council in any case to take appropriate enforcement action.

Preliminary Matters

5. The following definitions are provided for clarity.
6. Single dwellinghouse - There is no definition of the term 'dwellinghouse' in the Act but established caselaw¹ accepted in *Gravesham* that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. A self-contained flat is normally a single dwellinghouse for the purposes of the Act.
7. House in Multiple Occupation (HMO) - Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) describes HMOs as use of a dwellinghouse by not more than six residents as a "house in multiple occupation". Section 254 (2)(f) of the Housing Act 2004 states that a building, or part of a building, is an HMO if basic amenities are shared. Basic amenities

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

in Section 254 (8) are deemed to be a toilet, personal washing facilities and cooking facilities.

8. The standard test for an HMO does allow flats to be HMOs. To qualify as an HMO a flat should contain two or more households who share basic amenities and the flat to be separate from other accommodation in the building.
9. Section 254 (8) the Housing Act defines a self-contained flat as a separate set of premises (whether or not on the same floor): (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.

The appeal on ground (d)

10. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control.
11. The time limits for taking enforcement action are set out in s171B of the Act.
 - (1) where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which operations are substantially completed.
 - (2) in respect of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
 - (3) in respect of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
12. Following the correction of the notice, my findings on the ground (d) appeal will only refer to the case for the former dwellinghouse that is alleged to have been sub-divided into four separate units of accommodation. The appeal site is described by the appellant as being currently let as bedsits each with its own kitchen area and bathroom but there is also reference to one being a small apartment.
13. S55(3)(a) of the Act provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building as a whole and each part of it which is so used. In other words, the provision of self-contained flats within what was a single dwellinghouse represents a material change of use of the whole building and each individual flat within.
14. When visiting the site, I observed that the building was subdivided into four self-contained units of accommodation over two floors. On the ground floor, the entrance doorway led into a shared hallway where there was access to two units of accommodation. A communal staircase led to the first floor where there were two further units of accommodation. Each of these four units identified had a separate lockable entrance door.

15. Each unit provided all the necessary facilities for independent day-to-day living such as cooking, washing and sleeping, and therefore satisfied the *Gravesham* test. The appellant has provided detailed plans of the internal layout of the property. These plans show the layout of the building in accordance with what I observed at the time of my visit.
16. Hence, the four units are self-contained dwellings and fall within Class C3(a)² of the Town and Country Planning (Use Classes) Order 1987 (as amended). There is no communal living space, such as a shared bathroom, kitchen or living room, and as such none of the accommodation could be described as being an HMO in planning terms.

To determine whether the development is immune from enforcement action, it is necessary to understand when the use began.

17. The appellant bought the property in 1999 and their affidavit dated 21 June 2022 states that the property has been used as an HMO since 1999. There is no mention of the property being sub-divided into self-contained units. Nevertheless, the appellant states in Para 4.1.2 of their statement that from 2010 the property was divided up into three bedsits and one small apartment.
18. The Council's delegated officer report notes that an enforcement case was opened for an 'alleged unauthorised conversion of property into 4 flats' and given the reference 11/00638/CON3 which indicates that the year of the case was likely to be 2011. The case was considered not expedient to pursue. There is no information as to why that decision was taken and when it was taken. Furthermore, I note a report to Committee dated 20 December 2012 concerning a planning application³ for an attached two storey dwelling at the appeal site reports that the building was said to be in use as an HMO.
19. Correspondence with the Council in December 2012 discusses HMO accommodation, but this makes no reference to the appeal property. A letter from the Council's Environmental Health and Licensing Team dated 31 October 2016 states, amongst other things, that the property has been rated as individual flats for council tax purposes. There is obvious confusion in the definition of HMO accommodation, and this arises because of the different ways in which such accommodation is described for planning purposes and for Environment Health and Licensing purposes.
20. Nevertheless, the evidence before me is scant and confused and therefore I am not able to determine when the use began. In the absence of cogent evidence such as tenancy agreements, tenancy equipment audits, proof of works, invoices or letting adverts which detail the level of accommodation, I am unable to conclude on the balance of probabilities that the four self-contained units of accommodation have existed for more than 10 years beginning with the date of the breach.

Conclusion on Ground (d)

21. The appellant has not shown on the balance of probabilities that the matters alleged in the notice have occurred for a continuous period of ten years or

² Class C3 is defined as the use as a dwellinghouse (whether or not as a sole or main residence) by—
(a) a single person or by people to be regarded as forming a single household

³ Ref 12/02172/APP refused by notice dated 17 January 2013

more, beginning with the date of the breach, such that it is too late for the Council to take enforcement action. The appeal on ground (d) therefore fails.

Ground (a) and the deemed planning application

Main Issues

22. These are the effect of the appeal development on i.) the character of the area in terms of the density in comparison to the surrounding area; and ii.) living conditions of the occupants in terms of size, amenity space, parking provision and accessibility.

Reasons

Character of the area

23. The two-storey property to which this appeal relates is semi-detached and located on the edge of the residential area of Southcourt, in Aylesbury. Numbers 60 through to 80 Stoke Road and Court Close lie within a triangular piece of land formed by the railway line to the west, railway sidings and depot to the east, and to the south the B4443. The property occupies a corner plot which fronts onto Stoke Road. Court Close, a narrow 'no through road', wraps around its side and rear. Vehicular access is from Court Close onto an expanse of gravelled driveway which occupies the entire front area. To the rear of the property, the space is divided to provide small areas of outdoor space.
24. The creation of the flats is said not to reflect the housing density in the surrounding area and thus in conflict with Policy BE4 of the Vale of Aylesbury Local Plan 2013-2033 (2021) (the AVLPL) and paragraphs 124 and 125 of the National Planning Policy Framework (the Framework). The appeal site is located close to the town centre where densities are naturally higher. During my visit I noted that the predominant surrounding land use was residential and that this was mainly in the form of two-storey terraced housing. This style of housing provides compact smaller units which provide a higher density than many other types of development. In this respect it is reasonable to consider that the appeal property would reflect the surrounding housing density and thus would not stand out as an anomaly in the area. Accordingly, I find that there is no conflict with Policy BE4 which aims to make effective use of land and reflect the densities of their surroundings, appraised on a site-by-site basis to ensure satisfactory residential amenity.

Living conditions in terms of size, amenity space, parking provision and accessibility

25. The Council refer to the Technical Housing Standards, which set out a nationally described space standard for new dwellings. National Planning Practice Guidance states that "where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan to the nationally described space standard"⁴. These standards are not adopted in the AVLPL and so cannot be given full weight in this case, albeit they can be a useful point of reference.
26. I have therefore considered the case on its individual merits in accordance with the relevant adopted local plan policy. While the gross internal area (GIA) is

⁴ Paragraph: 018 Reference ID: 56-018-20150327

relatively confined, all have dual aspect (east and west facing) with good levels of natural light, outlook and privacy. The units are bright and airy, and the layout of the accommodation and furnishings provide the occupants with a functional living space, notwithstanding the shortfall in GIA.

27. There is also comparable outdoor space to the rear for the ground floor units. Although the external space is limited in size, and non-existent for the two upper floor flats, the units are not likely to be family homes where gardens and external private space are usually necessary. I have had regard to the level of outdoor private space for some of the other properties in the area and the publicly available outdoor space, such as the large informal green space to the front of the appeal property and its neighbours. There are also formal and informal recreation areas within walking distance of the appeal site. While I acknowledge that the level of external open space may not achieve a satisfactory level of amenity for those on the upper floor, this is not an uncommon arrangement for first floor accommodation. Nevertheless, I consider that this is sufficiently mitigated by the presence of nearby public open space.
28. Notwithstanding the above, Policy BE3 of the AVLP aims to ensure that new development would not unreasonably harm any aspect of the amenity of existing residents and will achieve a satisfactory level of amenity for future residents. The pre-text of the policy explains that amenity can be harmed in a number of ways, for example by privacy, noise, light pollution, fumes or odours, excessive or speeding traffic, loss of light, and/or the overbearing nature of a new structure which would impact on the character of outlook. In this respect, there is no conflict with BE3 of the AVLP.
29. Policy T6 of the AVLP requires that all development must provide an appropriate level of car parking, in accordance with the standards set out in Appendix B. I have not been provided with Appendix B, but the Council's statement provides that 6 flats require 9 parking spaces and room to turn round and exit the site safely. A comparable ratio is likely to be that 4 flats would require 6 spaces. Parking on the highway is very limited in the vicinity with many roads having parking restrictions, therefore on-site parking is deemed of importance.
30. The space to the front of the property is sizeable and according to the plans provides 177sqm of available space to park. Furthermore, the appeal property is centrally positioned and is close to Aylesbury station and bus stops and is thus in an accessible location which may reduce any independence on private vehicles. From what I saw at my visit, I have no reason to doubt that the area could provide adequate space for both parking and turning in compliance with Policy T6 of the AVLP.
31. The Council's concern regarding accessibility standards are not enlarged upon within its statement, even though it was cited as one of the reasons for issuing the notice. Policy H6c of the AVLP requires all development to meet and maintain high standards of accessibility for all users, including through the conversion of buildings. It goes on to say that development will need to meet at least category 2 accessible and adaptable dwellings standards unless it is unviable to do so which will need to be demonstrated by the applicant and independently assessed. The appellant has had regard to accessibility matters in their submissions, although I cannot be sure whether this relates to the appeal building. Nevertheless, I am not provided with any explanation from the

Council as to why the development is considered to be in conflict with the policy. As such, I am unable to conclude whether there is indeed any conflict.

32. Overall, I find no harm to the character of the area or the living conditions of the occupants and no conflict with Policies BE3, BE4, H6c, S1 and T6 of the AVLP. The ground (a) appeal therefore succeeds.

Conditions

33. I have considered the suggested conditions in light of advice in both the Framework and the Government's Planning Practice Guidance. The conditions and wording set out in the schedule below reflect these considerations.
34. As the development has been implemented, I have not included a time limit on the commencement of development. In order to ensure that the appeal scheme enhances the living conditions of the occupants and the appearance of the appeal site, I have imposed a condition requiring the submission of a landscaping scheme. Although I consider that sufficient space is provided to park within the appeal site in association with the appeal development, a condition to secure the permanence of the use is reasonable to ensure highway safety is not compromised in this location.

Overall conclusion

35. For the reasons given above, I conclude that the appeal on ground (d) fails. I further conclude that the appeal on ground (a) and the deemed planning application for planning permission succeeds. Consequently, the enforcement notice as corrected is quashed, and planning permission is granted on the deemed application subject to conditions.

S A Hanson

INSPECTOR