



Appeal Decisions

Site visit made on 26 June 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 28TH JULY 2023

Appeal A Ref: APP/Y1945/C/22/3298956

Appeal B Ref: APP/Y1945/C/22/3298957

Land at 78 Wiggshall Road, Watford, WD18 0AL

- 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 James Hurst (Appeal A) and Mrs Hayley Hurst (Appeal B) against an enforcement notice issued by Watford Borough Council.
- The enforcement notice was issued on 14 April 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the residential property to a mixed use HMO and self-contained dwelling (*sui generis*). The erection of a rear single storey dwelling to the host dwellinghouse materially departs from the details approved under 19/00187/HPD for the erection of a single storey rear extension and facilitates the unauthorised material change of use of the property.
- The requirements of the notice are: 1. Cease the use of the property as a mixed HMO and self-contained use (*sui generis*); 2. Permanently remove all kitchen units, fridge, sink, splashback and microwave from the ground floor rear addition and maintain no more than one kitchen in the property; 3. Demolish the ground floor rear dwelling OR cease the use of the single storey rear addition as residential accommodation unless plan H/6280 approved under 19/000187/HPD is fully implemented (Labelled 'B' attached to this Notice); 4. Remove from the land and dispose of all rubble, waste materials and debris arising in relation to compliance with steps 2 – 3 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), (c), (f) and (g) 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.

Summary Decisions: The appeals are allowed and the enforcement notice is quashed

Preliminary Matters

1. Two reference numbers have been allocated as per my banner heading above as the appeal was made by two parties. These are though in effect identical appeals and both numbers were notified to the parties in the validation letter.
2. Both parties were given the opportunity to comment upon the definition of a house in multiple occupation ('HMO') as contained in s254 of the Housing Act 2004 ('Housing Act') and on related case law¹. No comments were made by

¹ *Brent LBC v SSHCLG & Chaim Reiner* [2020] EWHC 3620 (Admin) ('Brent judgment'); *Welwyn Hatfield BC v SSLUHC & Anor* [2022] EWHC 3175 (Admin) which refer to *Gravesham BC v SSE & O'Brien* [1983] JPL 307 ('Gravesham' judgment)

the appellant but those made by the Council have been taken into consideration.

The appeals on ground (b) and ground (c)

3. The appeals on ground (b) are that the matters alleged in the notice had not occurred as at the date the notice was issued. The onus is on the appellants to make their case on the balance of probability. The ground (c) appeals then are whether the matters alleged represent a breach of planning control. Given the overlap between these grounds here, I shall deal with them together as regards the alleged material change of use ('MCU'). I shall then separately deal with the operational development referred to in the notice.
4. Whilst I note the concerns raised by neighbouring residents including in relation to character and appearance, living conditions and security, planning merits are not relevant to my considerations on these grounds; my assessment must be made on the relevant facts of the case and legal authority.

Alleged MCU

5. The appeal property is a mid-terraced building which the Council accepts as having previously been in use as a house in multiple occupation ('HMO'). The property benefits from a prior approval² for a single storey rear extension dating from 2019. The plans submitted with the prior approval application internally showed a bedroom with an ensuite bathroom which had an interconnecting internal door to the kitchen and an external door giving direct access to the garden from the rear extension.
6. The appellant's argument is that the alleged MCU has not occurred on the basis that the rear extension is used as part of the HMO and is not a separate self-contained dwelling. The Council argues that the single storey rear extension was erected for use as a self-contained dwelling and has since been used as such. I use the term 'room' below as a neutral term to describe the accommodation in the extension.
7. At my site visit, at ground floor level there was a sleeping accommodation room which adjoined a living area with seating and dining furniture. This lounge area then adjoined a kitchen containing full facilities including a full-sized cooker with hob and oven, fridge/freezer, dishwasher, breakfast bar and washing machine. The external door to the kitchen led through the outside space to an external door to the side extension room in question. This had an ensuite bathroom, microwave, sink, fridge and very small number of kitchen units. The door to the side extension room, along with the main external kitchen door both provide access to the property's rear garden. Both of these doors also enable access to the street via a side alley. At first floor level then, there was a shower room and bathroom along with the remaining sleeping accommodation rooms. The parties are agreed that all sleeping accommodation rooms save for the rear extension room are in use as part of a HMO use.

² Pursuant to Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('GDPO')

Legislation

8. Section 55 of the Town and Country Planning Act 1990 as amended ('1990 Act') defines development requiring planning permission as including a material change of use ('MCU').
9. Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 as amended ('UCO') set out various categories of uses. A change from one use to another falling within the same use class is not development requiring planning permission³. The GPDO also grants deemed planning permission for changes between certain different use classes. One such change granted deemed permission is between use class C3 single dwelling houses and use class c4 small HMOs.
10. Use class C3 relates to use as a dwellinghouse by people either forming a single household or living together as a single household. Use class C4 is for use of a dwellinghouse as a house in multiple occupation ('HMO') by not more than six people. The definition of HMO is then cross referenced to s254 of the Housing Act, which I return to below.
11. I firstly therefore need to assess whether the extension room is in use as a separate self-contained dwelling house. If I find that the extension room is not in use as a self-contained dwelling house, but that it is part of a single dwellinghouse which is in use in accordance with use class C4, there would be no breach of planning control (on the basis that a use class c4 HMO use is the accepted lawful use of the appeal property⁴). If then the extension room is not in use as a self-contained dwellinghouse and the use of the appeal property does not fall within use class c4, I would then need to consider as a matter of fact and degree whether a MCU has occurred.

Whether or not the extension room is in use as a self-contained dwellinghouse

12. The leading *Gravesham* judgment sets out that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Whether or not a particular building is a dwellinghouse is a question of fact and may require consideration of the nature of the use.
13. As to the facilities available within the single storey extension room, these include an ensuite bathroom along with some very basic cooking facilities in the form of a built-in microwave⁵, sink, fridge, very limited number of kitchen units and extremely small workspace. The room itself has adequate space for a bed and desk but there is no space available for either living room or dining room furniture.
14. The appellant has produced evidence in the form of a copy Tenancy Agreement dated 2 April 2022 indicating that the occupant of the rear extension room is entitled to use the communal facilities in the property and that the letting is for

³ Per s55(2)(f) of the 1990 Act

⁴ Having previously lawfully changed from a use class c3 use per the deemed planning permission in the GPDO

⁵ The Council has stated that the appellant indicated this had previously been 'decommissioned' by virtue of applying duct tape to the appliance albeit that the Council did not consider this to be sufficient to render it decommissioned

- a room in a shared house⁶. I consider it very unlikely that the occupant would use the communal bathroom facilities whilst having the benefit of an ensuite.
15. However, the kitchen facilities within the extension room are very limited, with an extremely small amount of worktop space and no cooking hob. Although I note some evidence of meal preparation seen at the Council's site visit, it is probable that these limited facilities would only be used for occasional cooking of simple meals; there is an identified need to use the primary cooking facilities in the main part of the house. Indeed, as explained in the *Brent* judgment, *Gravesham* does not refer to the bare minimum facilities that are survivable but rather those usually reasonably required for day-to-day private domestic existence.
 16. I therefore consider it probable that an occupant of the extension room would make regular use of the communal cooking facilities in view of the significantly larger worktop area and hob available in the communal kitchen which would enable cooking a greater quantity/variety of food. The provision of a dishwasher and washing machine in the communal kitchen would also likely encourage the extension room occupant to make use of this facility.
 17. As outlined, the extension room also lacks space for living room or dining room furniture and so again the communal living area offers a facility not available within the extension room. Based upon the present layout of the outside space, it currently seems that the occupant of the extension room and of the other living accommodation would all likely make use of the rear garden as this is accessible to all.
 18. In order to use the internal communal facilities available, the extension room occupant would need to step outside before stepping into the communal kitchen. It is likely that this occupant would sometimes need to use a key to do so when the kitchen door is locked. It is not uncommon though for back doors to be left unlocked when residents are inside and so it is very unlikely that use of a key would always be required. Further, the extension room is physically closer to the communal kitchen than any other sleeping accommodation room.
 19. In any event, given the very short distance from the external door of the extension room to the external kitchen door, and the significant difference in the kitchen facilities available as between the communal kitchen and the extension room, I find as a matter of fact and degree that it is probable that such use would be made. The Council references impracticalities in relation to waste disposal for the occupier of the extension room, but awkward waste disposal arrangements are not uncommon in terraced dwellings.
 20. The extension room can presently be accessed without going through the house via the side access referred to above. However, it has no separate post box or postal address and indeed the rest of the house can also be accessed from the side alley. Equally, the side extension can be accessed by going through the house, albeit that it would likely be simpler to use the side access. I note the Council's comment that there is no evidence that the internal door between the extension room and rest of the house was ever installed but this does not alter my assessment based upon the present arrangement.

⁶ The appellant has indicated that this document is in identical form for the tenants of the other rooms, save as to the identity of the letting room in question

21. The Council draws my attention to a query made by the appellant via the Council's website as to whether if a room were to be built 'not connected' to the HMO' this would invalidate his licence. However, use of the word 'connected' could have meant in the physical sense, and this does not in any event provide substantive evidence as to the eventual arrangement that was reached. Indeed, there would be an obvious motivation to the appellant to not physically connect the side extension room by an internal door as this would have avoided having to undertake many of the internal works referred to in the ground (g) appeal.
22. The Council argues that the extension has formed a separate building and essentially that the claimed association with the HMO use is contrived. However, in my view, whilst there is no internal connection between the extension room and the main part of the house, I have found that the occupant of the extension room would be likely to use the facilities in the main house for the reasons explained.
23. Further, an extension to a dwelling would not necessarily be described as a separate building just because it is not internally connected – this is not uncommon with an adjoining garage. Indeed, the appellant has produced documents relating to insurance for the property and its HMO licence indicating a single property with five rooms. It seems unlikely that the appellant would provide incorrect information as to the presence of a separate self-contained dwelling at risk of invalidating these. A shared boiler and fire alarm system also point towards a functional interrelationship between the extension room and main part of the house. The rear extension is not therefore a separate building in functional terms and as it forms an extension to the main house, I do not consider it to be a separate building⁷.
24. Drawing all of these matters together, I find that the facilities in the extension room do not represent those usually reasonably required for day-to-day private domestic existence in view of the very basic nature of the cooking facilities provided. Further, the limited size of the extension room and minimal cooking facilities offered therein as compared to those available in the main part of the house, along with the living and dining space and shared garden points to a functional integration between the use of the extension room and main part of the house through communal living. On the evidence before me, I find as a matter of fact and degree that the extension room is not in use as a self-contained dwellinghouse.
25. I now turn to consider whether the use of the appeal property falls within use class c4, in which case there would be no breach of planning control.

Whether or not the appeal property falls within use class c4

Legislation

26. As outlined, use class C4 of the UCO relates to use of a dwellinghouse as a HMO and cross references to s254 of the Housing Act. Section 254(1) sets out five categories for qualification as a HMO.
27. Reference is made within these categories to a 'self-contained flat'. This is defined in s254(8) 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

⁷ It follows that it is therefore capable of falling within use class c4 as a single dwellinghouse

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 ('SCF'). 'Basic amenities' are defined as toilet, personal washing facilities or cooking facilities.

28. As to the five categories then, the fifth category block of flats⁸ is specifically excluded by class C4. There is no suggestion that a HMO declaration⁹ is in force here, and so the fourth category is not relevant. This leaves the 'standard test', 'self-contained flat test' and 'converted building' test¹⁰. The 'self-contained flat test' is not relevant since the appeal premises is not a SCF as defined in s254 as it is a whole building rather than part of a building.
29. The 'standard test' and 'converted building test' then both contain certain stipulations in common, essentially that: (i) occupation is by persons not forming a single household; (ii) occupation is as their main residence; (iii) occupation as living accommodation is the sole use; and (iv) rent/other consideration is payable. There appears to be no suggestion that any of these conditions are not complied with as regards the appeal property.
30. The additional stipulations specific to the standard test are that: (i) two or more of the units of living accommodation either share 'basic amenities', or that the living accommodation lacks one or more of those basic amenities; and (ii) the building consists of one or more units of living accommodation not consisting of a SCF/SCFs. The additional stipulations specific to the 'converted building test' are that: (i) the building is a 'converted building'¹¹; and (ii) that it contains one or more units of living accommodation that do not consist of SCFs (whether or not it also contains any such SCFs).

Analysis

31. A unit of living accommodation will only fall within the definition of a SCF as above if it meets with all three conditions at (a) to (c) above. In this case the room within the single storey extension does not lie above or below some other part of the building. As such, it cannot fall within the definition of a SCF.
32. The effect of this is that there is compliance with the first additional stipulation of the standard test being that none of the units of living accommodation in question are SCFs. In my view there is compliance also with the second stipulation since it is agreed that at least some of the units in the appeal property share the communal bathroom and kitchen facilities, and indeed I have found above that the extension room occupant also likely shares the main kitchen facilities.
33. However, even if the use of the appeal property did not comply with the standard test, it would in any event comply with both additional stipulations in the 'converted building test'. It is appropriate for the purposes of this test to consider the appeal property building as a whole since I have found that the extension room is not a separate building and is used in conjunction with the remainder of the house. In this regard, per the s254(8) definition, one or more units of accommodation (i.e. those in the main part of the house) have been

⁸ Per s254(1)(e)

⁹ Per s254(1)(d)

¹⁰ At s254(1)(a), (b) and (c) respectively

¹¹ Per s254(8) this is defined as a building or part of a building consisting of living accommodation in which one or more of those units of accommodation has been created since the building was constructed

created since the building was constructed. The arrangement also complies with the second additional stipulation as it includes living accommodation units that are not SCFs.

34. I find then as a matter of fact and degree on the available evidence that the property is in use as a class C4 HMO. There is thus no breach of planning control as the use is in accordance with the accepted lawful class c4 use.
35. It follows that it is not necessary for me to assess whether the present use amounts to a MCU. However, even if the use of the property had not met with the strict terms of s254, most likely the present use would be so similar to use permissible under class c4, that it would be very unlikely to amount to a definable change in character as compared to the pre-existing lawful use.

Alleged operational development

36. The notice alleges erection of a rear single storey dwelling that 'materially departs from' details approved under application 19/00187/HPD. The Council indicated in final comments that the external appearance of the extension is not considered to substantially depart from the details approved, and I have no reason to take a different view. Rather, it appears that the notice attacks this extension on the basis that its internal arrangements differ from those approved, resulting in the creation of a new dwelling, and that it facilitates the MCU alleged.
37. I found above as a matter of fact on the evidence before me that the use of the rear extension is not as a self-contained dwelling. As such, the operational development is not a new dwelling, but rather an extension that functions as part of the c4 HMO use of the premises. The Council appears to accept also that when the extension was built, the main part of the house was lawfully in class c4 use, and so by definition it was a dwellinghouse benefitting from the relevant permitted development rights under the GPDO.
38. As to whether it has been built in accordance with approved plans, I note that internal arrangements are different to those shown in the application plans. However, the differences are fairly minor and are internal, amounting to the absence of a doorway, different positioning of the ensuite bathroom and installation of a small number of kitchen units. I therefore find as a matter of fact and degree on the available evidence that the rear extension has been built in accordance with the approved plans. I also found above that no MCU has occurred and so the extension has not facilitated a MCU.
39. Reference is made in representations to the installation of a microwave antenna in breach of the limitation in Schedule 2, Part 1, Class A of the GPDO but there is no substantive evidence that this was included as part of the development, rather than postdating this and so potentially benefitting from deemed permission itself under the GPDO.
40. The rear extension is thus on the evidence before me, not in breach of planning control. The appeals on grounds (b) and (c) therefore succeed for the reasons explained.

Conclusion

41. For the reasons given above, I conclude that the appeals should succeed on grounds (b) and (c). The enforcement notice will be quashed.

42. In these circumstances, the appeals on grounds (f) and (g) and do not fall to be considered.

Formal Decisions

43. The appeals are allowed and the enforcement notice is quashed.

V Bond
INSPECTOR