



Appeal Decision

Site visit made on 24 April 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd August 2023

Appeal Ref: APP/Y0435/C/22/3308319

144 Newport Road, Broughton, Milton Keynes MK10 7AP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Francisco Javier Cacaes-Fernandez against an enforcement notice issued by Milton Keynes Council.
- The notice was issued on 16 September 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the single residential dwelling (use class C3) to a House in Multiple Occupation (HMO) (use class C4), as refused in retrospective planning permission 22/00910/FUL. There is an Article 4 direction which removed the permitted development rights for development consisting of the material change of use from Class C3 to Class C4 in the Milton Keynes Council area.
- The requirement of the notice is to cease the use of the property as a house-in-multiple occupation (HMO) (C4).
- The period for compliance with the requirement is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Decision

1. It is directed that the enforcement notice be corrected by:
 - In section 3 of the notice, delete the words '*as refused in retrospective planning permission 22/00910/FUL. There is an Article 4 direction which removed the permitted development rights for development consisting of the material change of use from Class C3 to Class C4 in the Milton Keynes Council area*'.
 - In section 3 of the notice, replace the comma after the words '(use class C4)' with a full stop.
2. Subject to this correction, 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 1990 Act, as amended, for the development already carried out, namely the material change of use of the single residential dwelling (use class C3) to a House in Multiple Occupation (HMO) (use class C4) at 144 Newport Road, Broughton, Milton Keynes MK10 7AP, as shown on the plan attached to the notice, and subject to the conditions set out in the attached schedule.

Preliminary Matters

3. The allegation set out in section 3 of the enforcement notice includes superfluous wording that does not describe breaches of planning control or acts of

development. Therefore, I shall correct the notice by omitting this irrelevant wording. This is also reflected in my formal decision and grant of planning permission. In doing so, I am satisfied that no injustice would occur.

4. I am dealing with an appeal at the adjoining property, 146 Newport Road, which raises comparable issues. While there is some similarity in my reasoning, I have dealt with each appeal on its own merits and on the basis of the evidence as presented in each case.
5. The Council adopted a new Parking Standards Supplementary Planning Document on 31 January 2023. During the course of the appeal the parties were provided with an opportunity to comment on the implications of this for the appeal. I have therefore had due regard to this in reaching my decision.

The appeal on ground (a)

6. The appeal on ground (a) seeks that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Therefore, permission is sought for a material change of use of the single residential dwelling to a house in multiple occupation (HMO) (use class C4). The plans accompanying the ground (a) appeal show six bedrooms over three floors of accommodation.
7. I have considered the reasons for issuing the notice and, in this context, the main issue is the effect of the development on off-site car parking, with particular regard to highway safety and the living conditions of nearby residents.
8. Policy HN7 of the Milton Keynes Council Plan: MK 2016-2021 (MKCP) states that to maintain mixed, balanced, sustainable and inclusive communities, proposals for Houses in Multiple Occupation will be approved where they would not create an over concentration of such accommodation resulting in an imbalance within local communities or other significant adverse impacts. In addition, Policy CT10 of the MKCP requires that all development should meet the Council's full parking standards, unless mitigating circumstances dictate otherwise. It also states that on-site parking should not be reduced below the Council's full expectations if this would increase additional pressure in off-site parking that could not be resolved by on-street parking controls.
9. The Council's parking standards are set out in its Parking Standards Supplementary Planning Document, adopted in January 2023, (the SPD). With regard to a HMO at this location, Table 3 on page 17 of the SPD requires the provision of 0.66 car parking spaces per lettable room. In this case, there are six bedrooms and so the requirement would be 3.96 spaces, with the guidance advising that where a part space is required this should be rounded up. Therefore, this equates to a parking requirement of 4 spaces. This appears reasonable on the basis that a six-bedroom HMO occupied by unrelated people is likely to generate a greater parking demand than a single family dwelling of a similar size.
10. The plans accompanying the ground (a) appeal indicate that the proposal would provide 3 car parking spaces to the rear of the property, a shortfall of a single space when assessed against the standard set out in the SPD. However, at paragraph 2.27, the SPD advocates for flexibility in the application of the parking standards for HMOs and that where parking is proposed below the standard in

areas of high on-street parking pressure or limited on-street space, a parking beat survey is required to support the application.

11. The proposal is supported by a Parking Survey which shows that a minimum of 4 and a maximum of 9 on-street car parking spaces were available within a short distance from the site, and during peak monitoring times. The survey was conducted over a seven-day period from 7am to 8pm each day, including over a weekend. Therefore, I am satisfied that this would cover periods of peak demand for parking spaces.
12. It is also of note that these levels of parking occupancy were observed while the property was in use as a six bedroomed HMO. Therefore, the proposal does not appear to be exacerbating parking demand in the area. The appellant has also provided tracking diagrams that demonstrate the ability of vehicles to safely manoeuvre into and out of the 3 parking spaces that are proposed to serve the proposal.
13. Accordingly, the Local Highway Authority offer no objection to the proposal, subject to conditions that would secure the proposed car parking arrangements and details of cycle parking. This attracts significant weight in favour of the appeal.
14. The Council has presented little, if any, evidence to support its supposition that the area is suffering from parking pressures to an extent that the proposal would exacerbate this to an unacceptable degree. Nor have I been provided with any evidence to suggest that the parking provision would result in any adverse effects on highway safety or the living conditions of neighbouring residents.
15. Drawing all these points together, the proposal would not provide car parking in accordance with the standards set out in the SPD. However, the appellant has demonstrated that there is sufficient capacity in on-street parking in the area immediately surrounding the appeal site to adequately accommodate the additional parking demand arising from the proposal. In this case, I am satisfied that this amounts to mitigating circumstances that justify a departure from the Council's parking standards. Therefore, the proposal would not harm the safety of the surrounding highway network and it would not give rise to unacceptable levels of parking demand to an extent that this would be an inconvenience, nuisance or in any other way harm the amenity of local residents.
16. Furthermore, and for the avoidance of doubt, my decision on the appeal at the neighbouring property does not alter my findings in this case, as I have considered the cumulative impact of both decisions.
17. Consequently, I conclude that the development does not adversely affect off-site car parking, with particular regard to highway safety and the living conditions of nearby residents. Therefore, in these regards, I find no conflict with Policies HN7 or CT10 of the MKCP, the aims of which are set out above.

Other Matters

18. An interested party has raised concerns with parking capacity in the surrounding area. They are also concerned that the proposal would result in increased levels of rubbish, vermin and anti-social behaviour. However, there is very little evidence before me to substantiate these concerns. Therefore, these matters do not detract from my findings in relation to the main issue in this case, and so they do not lead me away from my overall conclusion.

Conditions

19. I have carefully considered the list of conditions recommended as part of the Council's Senior Planning Officer's Report in relation to refused planning application 22/00910/FUL for similar development at the site. Conditions are suggested to limit the number of letting rooms to 6, to provide details of cycle parking, bin storage and noise mitigation measures, and to secure the proposed car parking provision.
20. A condition to limit the number of lettable rooms is both reasonable and necessary in order to ensure parking pressures are not increased to an unacceptable level and to avoid overcrowding that could result in a detriment to the living conditions of future occupants (Condition 1). I have imposed a condition (Condition 2) to secure the proposed parking provision as detailed on the approved block plan. This is necessary to ensure that the proposed parking provision is made available to both existing and future occupiers of the property.
21. Some locations for the cycle and bin storage are indicated on the accompanying block plan but these annotations are inadequate as they lack any precise detail and dimensions. After seeking the views of the parties, in the interest of clarity and concision, I have modified the suggested conditions into a single condition (Condition 3) to secure these details.
22. The Council's Environmental Health Officers have made no objection to the proposed development or suggested any conditions in relation to noise mitigation. In fact, they point out that there is no record of any noise complaints associated with the current use as a 6 bedroom HMO. Nor have I been provided with any policy basis to support the imposition of a condition to secure noise mitigation measures. Therefore, it has not been demonstrated that the imposition of such a condition is necessary and reasonable in planning terms.
23. The form of wording for Conditions 2 and 3 is imposed to ensure that the required details, where necessary, are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion

24. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice. Consequently, the appeal on ground (g) does not fall to be considered.

J M Tweddle

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall not be operated with more than six lettable rooms at any time.
- 2) Within **3 months** of the date of this decision, the car parking spaces shown on the approved Block Plan, drawing no. 002 Rev C, shall be provided and made available for use. Thereafter, these parking spaces shall be maintained and retained for use by occupiers of the property. The use hereby permitted shall cease and all alterations, fixtures and fittings that facilitate the use shall be removed and the property restored to its condition before the development took place, within **28 days** of the date of failure to meet the aforementioned timescale.

In the event of a legal challenge to this decision the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The use hereby permitted shall cease and all alterations, fixtures and fittings that facilitate the use shall be removed and the property restored to its condition before the development took place within **28 days** of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Within **3 months** of the date of this decision a scheme with details for:

- (a) secure bicycle parking facilities; and,
- (b) secure bin storage facilities;

(hereafter referred to as the 'site development scheme') shall have been submitted for the written approval of the local planning authority along with timetable for its implementation.

(ii) If within **11 months** of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

(iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.