



Appeal Decision

Site visit made on 8 August 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/R5510/C/22/3300627

39 Sipson Road, West Drayton, Middlesex UB7 9DQ

- 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 against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The notice was issued on 29 April 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of a single family dwellinghouse into seven (7) separate self-contained flats at 39 Sipson Road, West Drayton, Middlesex, UB7 9DQ.
- The requirements of the notice are:
 - i) Cease the use of the dwellinghouse as seven (7) separate flats.
 - ii) Remove all internal partitions, lockable doors used to divide the dwellinghouse into seven (7) separate flats to allow free internal passage to all areas.
 - iii) Remove all but one kitchen from the dwellinghouse, to include oven, hob, extractor unit, sink, worksurfaces and kitchen style cupboards.
 - iv) Disconnect from source hot and cold water supply, gas and foul waste drainage and remove all redundant pipework to all but one kitchen.
 - 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 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed, and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mr Danial Collison against the Council of the London Borough of Hillingdon. This application is the subject of a separate Decision.

The Enforcement Notice

3. For the purposes of my assessment, I refer to the accommodation as 'units', this is intentionally neutral and does not imply either a self-contained flat or a room in a House in Multiple Occupation (HMO).
4. The allegation refers to seven separate flats however, it was evident from my visit and the Council acknowledge, that there are only six units. However, this could have been corrected accordingly, without injustice to the appellant, since such a correction would not enlarge the scope of the breach or requirements.

The appeal on ground (b)

5. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.' Therefore, the onus is on the appellant to demonstrate that the alleged material change of use has not occurred.
6. The appellant's case is that the material change of use that has occurred is to a Class C4 HMO as defined by the Town and Country Planning (Use Classes) Order 1987, as amended. In support of this they submitted floor plans and a draft HMO license, albeit there is no evidence nor suggestion by the Council that this was not completed. Moreover, reliance is placed on an appeal decision¹ where the matter of whether a property was an HMO or had been divided into flats was considered.
7. For the purposes of Class C4, house in multiple occupation has the same meaning as in the Housing Act 2004. The definition of an HMO contained in the Housing Act 2004 states that a building or a part of a building meets the standard test (and is therefore an HMO), subject to a number of criteria including - if the living accommodation is occupied by persons who do not form a single household and two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. The 'basic amenities' are a toilet, personal washing facilities and cooking facilities.
8. A self-contained flat is a dwellinghouse for the purposes of the 1990 Act. It was held in *Gravesham*² 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.
9. As the Inspector in the submitted decision stated *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. Moreover, that Gravesham is concerned with what would generally be considered by reasonable people to comprise the test for a dwelling, not the bare minimum that it is actually possible to survive on.*
10. In determining what has occurred within the property, it is necessary to consider both the physical attributes of the individual units and identify how they are actually used, with suitability being relevant to the question of the use of the units.

Observations of the facilities and use

11. Photographs taken by the Council of some of the units, prior to their occupation, show them to consist of a multi-purpose space furnished with a bed and wardrobe, with an en-suite shower room and toilet. They each had a worktop, including kitchen sink with tiled splashback, and at least one kitchen style cupboard. Under the worktops in each unit was a fridge and washing machine and each had a countertop grill oven with hob. Each had its own lockable door, and the appellant stated they are served by a single electricity

¹ APP/Y5420/C/20/3256707

² *Gravesham BC v SSE & O'Brien* [1983] JPL 306

- supply. This is consistent with my observations, and I saw all units had the same facilities. I have no reason to doubt that was not the case at the time the notice was issued.
12. The en-suite and toilet evidently constitute two of the basic amenities, being a toilet and personal washing facilities, and are facilities that most *reasonable people* [my emphasis] would expect to find in a dwelling.
 13. In terms of 'cooking facilities' the worktops, which are reasonably generous, together with the sink, storage space, refrigerator and grill oven with hobs, afford the occupiers the ability to store food and prepare and cook meals such that they would not need to eat elsewhere. As such, they can be reasonably considered cooking facilities.
 14. Outside of these individual units, within the land identified in the notice, the communal space consists of a kitchen and rear garden. The kitchen is reasonably sized and includes kitchen cupboards, a sink and built in cooker with hobs and extractor. There was no fridge, but this is not unusual given that there are fridges in each of the units. This space is available for use by all, and thus two or more of the households who occupy the living accommodation can share the cooking facilities, although it is not essential to do so given cooking facilities exist in the individual units. The kitchen is nevertheless functionally and physically related to the individual units.
 15. However, whilst there is no doubt that the communal kitchen is available for use by the occupiers, there is no evidence of actual use. Based on the Council's photographs and my observations, the kitchen does not appear to be used for either food storage, preparation or cooking and I saw that there were labels still attached to some of the cooking appliances.
 16. I acknowledge not all occupants in shared accommodation would necessarily regularly use shared facilities. However, given that the units have been occupied since early 2022, the lack of evidence of any apparent use is an indication that the level of facilities in the units means that there has been no need to use the communal kitchen.
 17. However, *Gravesham* is concerned with what generally would be considered to comprise a dwelling, not the bare minimum that it is possible to survive on. The units are modest in size and clearly lacking in some amenities generally found in most dwellings and thought to be desirable, such as an area to sit and relax. Moreover, whilst the cooking facilities are not as basic as those in the referenced appeal decision, reliance on plug-in cookers does not, in my judgement, pass the *Gravesham* test of providing a facility for day-to-day domestic existence and, importantly, the communal kitchen remains available to all the occupiers.
 18. Overall, as a matter of fact and degree, the evidence suggests that the material change of use that has occurred is not one to six (6) separate flats but rather, on the balance of probabilities, to six (6) self-contained units and a communal kitchen.
 19. I acknowledge that an HMO license has been granted by the Council however, licensing operates under a different legislative regime. Moreover, the license merely confirms the suitability for occupation by not more than six persons,

occupying as six households, and is based on the information supplied in the application, which I do not have.

20. I have considered whether the notice could be corrected to reflect my findings. However, I cannot be certain that the appellant would make his appeal on other grounds if the allegation was corrected on that basis. Furthermore, I cannot be certain that the Council would consider it expedient to pursue its objection to the development if the allegation was changed or, if so, what its case against the development would be.
21. For these reasons, I consider that correcting the notice to allege a material change of use to six self-contained units and a communal kitchen would cause injustice. Therefore, it should be quashed as inaccurate and incapable of correction without injustice to the appellant or other relevant occupiers as defined in section 174(6).

Conclusion

22. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
23. In these circumstances, the appeal on the grounds set out in section 174(2)(c) and (g) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Felicity Thompson

INSPECTOR