



Appeal Decision

Site visit made on 18 January 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/D1780/C/23/3313994

Land at 79 Westridge Road, Southampton SO17 2HN

- 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 H Singh of Denzil Properties (Singh and Kaur) Limited against an enforcement notice issued by Southampton City Council.
 - The enforcement notice was issued on 30 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land to four self-contained flats.
 - The requirements of the notice are: (i) Cease the use of the Land as self-contained flats; (ii) Remove the fixtures and fittings that solely facilitate the use of the Land as self-contained flats; and (iii) Remove all resulting material from the Land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

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

Applications for Costs

2. An application for costs was made by Mr H Singh of Denzil Properties (Singh and Kaur) Limited against Southampton City Council and by Southampton City Council against Mr H Singh of Denzil Properties (Singh and Kaur) Limited. These applications will be the subject of a separate Decision.

The ground (b) appeal

3. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the material change of use to four self-contained flats, has not occurred as a matter of fact.
4. The appellant asserts that there are 5 flats. That being so, the alleged breach of planning control relating to four flats is incorrect and has thus not occurred as a matter of fact.
5. There is little evidence before me to demonstrate that the Council undertook a full internal inspection of the building or for example that a planning contravention notice was issued. Two visits were however undertaken by the Council, the first where it was observed there were 5 locked doors. The second yielded evidence from discussions with occupants which identified a number of flats. During my site visit I undertook a full inspection of the building where it

was readily apparent at this time there were 5 flats that were fully equipped for day-to-day private domestic existence.

6. As means of evidence, the appellant has submitted four statements of truth. These outline the use of the site since 1988 including works that have been undertaken, and that since 2020 prompted by the pandemic, the property has been let to individuals on separate tenancy contracts as 5 flats as opposed a house in multiple occupation (HMO).
7. The Council contends that these are not sworn statements and are vague and unspecific. Whilst I can indeed only afford these limited weight as they are not sworn statements, I do not find them to be contradictory as they all demonstrate the use of the building as 5 flats and that works were undertaken.
8. Whether the works undertaken facilitated the use of the building as 5 flats is not determinative. Indeed, the earlier date of works, such as the bathrooms in 2018, did not, as the evidence is there has only been 5 flats, as opposed an HMO use, since 2020. I therefore do not find the statements vague in this regard. Whether the occupation of the flats was then continuous is also not determinative for the purposes of a ground (b) appeal.
9. There is then no contradictory evidence before me and very little evidence as to what satisfied the Council there were only 4 flats, given it identified there were a number of flats in the building, even referring to 5 flats in its statement and 5 locked doors. I accept there are no utility bills or tenancy agreements before me. However, together with the site visits, there is a body of evidence that demonstrates as a matter of fact and degree there were 5 flats and on the balance of probabilities this would have been the case when the notice was issued.
10. The Council considers that it is within my gift to then correct the notice. The notice would therefore have to be corrected to make it more onerous to target the 5 flats in light of my above findings and because otherwise it would be incompatible with the actual breach of planning control, which could lead to uncertainty or under-enforcement.
11. However, the appellant contends that correcting the notice to target the 5 flats would lead to injustice as the fee and deemed planning application which flows from this would only relate to 4 flats, because that is all that has been alleged. The Council also accepted in correspondence that I would only be able to consider granting planning permission for 4 flats.
12. This would then have significant implications for the deemed planning application as it is likely to affect the amount of amenity space and cycle provision required as well as calculations pursuant to nutrient neutrality and recreational pressures. This in turn could result in a planning void or failure of the deemed planning application in its entirety which would be outside of the control of the appellant, given these matters are predicated on there being only 4 flats.
13. This would clearly create an unsatisfactory situation that could lead to injustice to both main parties arising from a more onerous notice that would likely carry amplified planning effects.
14. Moreover, in correspondence the Council has acknowledged that if it is demonstrated there are 5 flats the ground (b) appeal may succeed and the

notice would be quashed. Whilst a material change of use to flats has occurred as a matter of fact, the Council has only targeted 4 of the flats, when the evidence demonstrates on the balance of probabilities that there were 5 flats as a matter of fact when the notice was issued.

15. Correcting the notice would then lead to injustice to the parties for the aforementioned reasons, although it would be open to the Council to consider the matter afresh and issue a notice in respect of the 5 flats, albeit this is a matter that is entirely for them in the first instance.

16. The appeal on ground (b) therefore succeeds.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to 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 need to be considered.

Formal Decision

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

Paul T Hocking

INSPECTOR