



Appeal Decision

Site visit made on 23 January 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Appeal Ref: APP/Y5420/C/22/3309456

13 St Pauls Road, London N17 0NB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Mr Kypros Kyprianou of Tottenham Estates Ltd against an enforcement notice issued by London Borough of Haringey.
- The notice was issued on 20 September 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use to eight self-contained flats.
- The requirements of the notice are to:
 1. Cease the use of the property as self-contained flats;
 2. Remove from the property all but one of the kitchens (a kitchen includes cooking appliances, sinks, kitchen worktops and cupboards);
 3. Remove from the property all but one supply of electricity, gas and water.
 4. Remove from the property all but one of the doorbells;
 5. Remove from the property any internal dividing doorways and partitions facilitating the use of the property as self-contained flats;
 6. Remove from the land all debris arising from compliance with the above steps.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld, with variation in the terms, as set out below in the Formal Decision.

Preliminary Matters

1. No appeal on ground (a) has been made with this appeal, so it is not open to me to grant planning permission. I am aware that an application was made (ref HGY/2022/4514) for the property, seeking planning permission for change of use to a House in Multiple Occupation (HMO) for up to 6 occupants (Class C4 Use). This was refused in March 2023. An appeal against the refusal has been made (ref APP/Y5420/W/23/3324866) but a decision has not yet been reached on that appeal.
2. The appellant has made reference to matters such as the property being well managed, affordable and car free. The Council say the accommodation is substandard and does not meet housing and design policy requirements. These matters would be material considerations under an appeal on ground (a), but as one has not been made, these matters are not relevant to this appeal.

The appeal property

3. 13 St Pauls Road is a semi-detached dwelling in a residential street. It has been extended, including into the roof space and rear dormer. At the time of my site visit, the property was set up with 6 rooms as bedrooms, each with its

own small en-suite toilet and shower. All of the rooms also had a bed, wardrobe, small table, a fridge, and a sink. Some but not all had a washing machine. Most had a kettle and some also had a microwave and/or toaster, but none had their own cooker.

4. To the rear of the ground floor there were two rooms set up as communal kitchen/dining/laundry areas. On the evidence of the content of the cupboards and fridge, and the condition of the cooker, the first room seemed to be actively used by residents. The second room seemed less used. The first floor also had a small communal living area with table and chairs and two small kitchens. These are evidently open and available to residents and while the living room seemed unused, both kitchens showed evidence of use.
5. The layout I observed during my site visit differs from the previous layout observed by the Council, which is detailed below.

The appeal on ground (b)

6. An appeal on ground (b) is that the matters stated in the notice have not occurred, as a matter of fact. The notice might not have been issued until sometime after the breach was detected and subsequent changes may have taken place on site. Regardless of any subsequent changes, the question is whether the breach *had* occurred, at some point, by the date of issue of the enforcement notice. The burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
7. The appellant contends that the property has not been divided into self-contained flats but that it is a small HMO, falling under use class C4. As such, this appeal on ground (b) turns on the question of what constitutes a self-contained flat.
8. In planning terms, a self-contained flat is a separate dwelling whereas an HMO is a single dwelling in use by people sharing (or having access to) at least one shared facility. *Gravesham*¹ is the lead case on defining a dwelling, which sets out that a dwelling ordinarily affords the 'facilities required for day-to-day private domestic existence'. Section 254 of The Housing Act 2004 deals with HMOs and creates several tests, including that those who occupy the building must share one or more basic amenities (or their accommodation must lack one or more basic amenities). Basic amenities are defined as a toilet, personal washing facilities and cooking facilities.
9. The starting point for consideration is the facilities in each of the rooms within the appeal property. The Council have provided a comprehensive set of photographs taken during a site visit conducted on 22nd May 2022. The photographs indicate which room they relate to and are supported by explanatory text. The photographs show 8 rooms (3 at ground floor, 3 at first floor and 2 at second floor), each set up with a bed, wardrobe, small table, an en-suite toilet and shower and a kitchen area. The kitchen area in each of the 8 rooms consisted of a sink with storage beneath, overhead storage, a work surface, a fridge, a washing machine and a full size free standing oven/cooker with hob. Some but not all had an extractor above the cooker. I consider these facilities to constitute a full kitchen, enabling occupants to cook, eat and clean up, all in their own room, without the need to share any facilities.

¹ *Gravesham BC v SSE* [1984] 47 P&CR 143

10. The appellant has also provided photographs but these are undated and unannotated, so it is not clear when they were taken or which rooms they relate to. In addition, the photographs of bedrooms show only part of the room and seem to omit the areas which contain kitchen facilities in the Council photographs. I can therefore give the appellant photographs minimal weight in my considerations. In addition, the appellant statement explicitly acknowledges that the *"property has been setup with 8 rooms (with cooking facilities) for a short period of time but was reverted into a standard 6 room HMO prior to issuing the enforcement notice"*.
11. On the evidence before me, it seems that at the time of the Council visit the property consisted of 8 units, each containing all of the facilities required for day-to-day private domestic existence. I have no substantive evidence that the occupants would have needed to, or in fact did, share one or more basic amenity. As a result, the 8 units each met the Gravesham test to be considered individual dwellings/self-contained flats, rather than the property being an HMO. Consequently, as of May 2022, the property was in use as 8 self-contained flats. Therefore, the matters stated in the notice had occurred by the time the notice was issued in September 2022.
12. The timing of when the appellant claims the property was changed to use as an HMO is unclear and not supported by substantive evidence. Observations made during my site visit show that the layout has changed since the Council visit and the current layout could indicate that the property is now in use as a C4 HMO. Notwithstanding this, it does not alter the fact that, as set out above, the change of use alleged in the notice had taken place by the time the notice was issued.
13. In addition, even if the property is currently in use as a C4 HMO, it is located in an area covered by an Article 4 direction. This removes the permitted development rights set out under Article 3(1) and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015. Consequently, a change of use from a C3 dwelling to a C4 HMO would require express planning permission. At the time of this decision, no such planning permission is in place.
14. The appellant states that the property has only one meter for gas, electricity and water. By contrast, both parties indicate there are separate Council tax registrations. In my opinion, neither of these factors is determinative on its own of how a property is used and in this case weigh in different directions. Letters from tenants are not dated or in any way certified so are of limited value as evidence. I acknowledge that the property has an HMO licence, but this is a separate matter, albeit related, to any necessary planning permission, and they sit under different legislation. Overall, I attach little weight to these factors and they do not impact significantly on the conclusion I have reached.
15. In reaching my conclusion I have had regard to the various appeal decisions referenced by the appellant, in so far as they are relevant. However, each case must be decided on its own merits and circumstances.
16. I conclude that the matters stated in the notice had occurred by the time the notice was issued, as a matter of fact, so the appeal on ground (b) fails.

The appeal on ground (g)

17. This ground of appeal is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of 6 months after the notice takes effect. The appellant sets out that more time would be needed to allow the tenants to move out and requests a period of 12 months.
18. I am aware that tenants would need to be given notice to vacate the property and that reasonable affordable housing can be difficult to find in London. In order to allow sufficient time for this to take place, without causing undue stress and harm to the current tenants who find themselves in this situation, 6 months may well not be sufficient. However, I need to balance this against the need to secure a prompt resolution to the breach. Consequently, a period of 9 months is, to my mind, reasonable.
19. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. It would be reasonable to extend the compliance period to 9 months and the appeal on ground (g) succeeds. I shall uphold the notice but exercise my powers under s176(1)(b) of the Act to vary the notice, accordingly, as set out below in the formal decision.

Conclusion

20. I conclude, on the balance of probabilities, that the change of use alleged in the notice had occurred by the date the notice was issued. Consequently, the appeal on ground (b) fails and the notice is upheld. However, I conclude that the period for compliance with the notice falls short of what is reasonable and the appeal on ground (g) succeeds to that extent. Therefore, I shall vary the period for compliance with the enforcement notice prior to upholding it.

Formal Decision

21. It is directed that the enforcement notice is varied as follows:
- In section 6, 'When this notice takes effect', delete the words 'Six (6)' and substitute the words 'Nine (9)'.
22. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

H Davies

INSPECTOR