



Appeal Decision

Site visit made on 23 October 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2024

Appeal Ref: APP/C2741/C/23/3334349

Land known as 40 Russell Street, York YO23 1NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Yasin Karbani against an enforcement notice issued by City of York Council.
 - The notice was issued on 13 November 2023.
 - The breach of planning control as alleged in the notice is "Without planning permission, a material change of use of the Property from a single dwelling house (use class C3) to use as four separate flats."
 - The requirements of the notice are:
 - (i) Cease the unauthorised use of the Property as 4 flats
 - (ii) Return the property to its authorised use as a single dwellinghouse and
 - (iii) Remove all fixtures and fittings associated with the change of use.
 - The period for compliance with the requirements is 4 months from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) 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.
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Decision

1. It is directed that the enforcement notice is corrected by:

In section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of the words "from a single dwelling house (use class C3)".

2. Subject to the correction, the appeal is allowed, and the enforcement notice is quashed.

Procedural Matters

3. From 25 April 2024, in accordance with s115 of the Levelling-up and Regeneration Act 2023 (the 2023 Act), the time limit within which enforcement action must be taken against any alleged breach of planning control is 10 years. Transitional arrangements set out in s5(b) of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 affirm that the 2023 Act amendment is not to be applied retrospectively. The relevant time limit in respect of the ground (d) appeal therefore remains four years.

Preliminary Matters

4. The Council claim the property was formerly in use as a single dwellinghouse. The appellant however claims the property was in use as a 10 bedroomed house in multiple occupation. Given this dispute, and as there is no

requirement for the allegation to include the former use of the property, I shall delete the words "*from a single dwellinghouse (use class C3)*" from the allegation.

5. The corrected allegation to be considered is therefore "*a material change of use to use as four flats.*" While there is no planning definition of a flat, it is generally accepted that, when defining the use of a building or part thereof, a flat is a single dwellinghouse, which forms its own planning unit.
6. There is no planning definition of a dwellinghouse. In *Gravesham*¹, it was held that "*whether a building is a dwelling-house...was a question of fact; that a distinctive characteristic of a dwellinghouse was its ability to afford those who used it the facilities for day-to-day private domestic existence...*". S254 of the 2004 Housing Act includes three tests and two other alternative criteria for identifying and defining a house in multiple occupation (HMO). The standard test includes that '*two or more households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.*'² Basic amenities are identified as (i) a toilet, (ii) personal washing facilities, and (iii) cooking facilities. The provision of all three basic amenities does not necessarily define something as a dwellinghouse.

Appeal on Ground (b)

7. An appeal on this ground is that the matter alleged has not occurred. The onus of proof is on the appellant to show that a material change of use to use as four flats has not occurred. The relevant test is the balance of probability.
8. The appellant claims the property consists of four bedsits benefitting from shared facilities. They have however acknowledged "*The LPA are already collecting large payments of council tax from the appellant and tenants inside the dwelling as a single occupancy discount per room every month.*" While this statement is not clear as to the basis of council tax payments, such payments are not demonstrative of how a property is occupied in any event. Although, I recognise it would be unusual for someone to pay council tax for four single dwellinghouses if they only considered there to be one dwellinghouse.
9. The Council claim their Planning Enforcement Officer (PEO) visited the site after 7 November 2019 and found the building had been converted into flats. The Council states the PEO was not permitted to take photographs during that visit and their Statement of Case (SOC) is therefore '*prepared on the basis of site notes*'. A copy of the site notes has not been provided, nor has their content been alluded to in the SOC. No details of how the building was divided into four flats or of what accommodation and facilities existed at the time of the PEO's visit have been provided. While the onus of proof rests with the appellant, it would have been helpful to know the basis upon which the Council found the property to be in use as four flats.
10. The submitted floor plans show the ground floor accommodation to include 'Room 1' and 'Room 2', both of which have ensuite shower rooms and kitchenettes. The ground floor plan also shows a communal hallway, providing access to the front and rear of the building, and off of which there are storage cupboards. The first-floor plan shows a storage room with a toilet/shower

¹ *Gravesham BC v SSE* (1982) 47 P & CR 142

² S254 (2)(f) of the Housing Act 2004

room, and 'Room 3' which has an ensuite shower room and kitchenette. The second-floor plan shows the accommodation to comprise 'Room 4' (an ensuite bedroom), a shared kitchenette and a separate study/living area. While the plans show that each Room has its own toilet, sink and shower, it is not clear from the plans whether Rooms 1 to 4 all have cooking facilities or if each Room provides the facilities for day-to-day private domestic existence.

11. During my site visit I saw that the submitted floor plans provide an accurate representation of the building's internal layout. In addition, I saw that Room 1 contains a bed/sitting room from which a corridor leads to the ensuite and kitchenette. The kitchenette contains a range of base and wall units, providing storage for groceries, crockery, etc, along with an under-worktop fridge/freezer and an oven. On the worktop were several electrical appliances, a sink and crockery. The bed/sitting room contains sleeping, sitting and clothes storage facilities. Room 1 therefore contains all three basic amenities as well as providing facilities for day-to-day private domestic existence.
12. Room 2 contains an open plan kitchen/living/sleeping area. The ensuite is accessed from the kitchenette area. The kitchenette has a range of base and wall units, providing storage for groceries, crockery, etc, along with an under-worktop fridge/freezer and an oven. On the worktop were several electrical appliances, a sink and crockery. A table and chairs, bed and wardrobe occupied the living/sleeping area. Room 2 therefore contains all three basic amenities as well as providing facilities for day-to-day private domestic existence.
13. Room 3 contains a bed/sitting room from which a corridor leads to the ensuite shower room and 'kitchenette'. The bed/sitting room contains a double bed, storage unit, a table with seating and a wardrobe. While the size of the ensuite is like those on the ground floor, the kitchenette is significantly smaller. While there is a sink, only limited storage and worktop space is available. Cooking facilities were rudimentary, including a microwave and two ring hot plate. There was no room in the kitchenette for the under-counter fridge/freezer, which I saw located in a cubbyhole between the ensuite and living/sleeping area. In the absence of an oven and given the limited food preparation space, I find it more likely than not that the occupier of Room 3 would utilise the shared kitchenette to prepare anything but the most simplistic of meals. While Room 3 contains the three basic amenities, as a matter of fact and degree, I find that it does not contain all the facilities required for day-to-day private domestic existence.
14. Room 4 contains a bed/sitting room with ensuite. This room has restricted head room being in the roof space. It benefits from built-in storage above the staircase, and I saw that there was a bed, a table and a dressing table. This Room does not however contain facilities for food preparation, refrigerated food storage or cooking. In the absence of these facilities, I find that Room 4 does not contain all the basic amenities nor, as a matter of fact and degree, does it contain facilities for day-to-day private domestic existence.
15. In terms of shared facilities, the second-floor landing provides access to a study/living room and a shared kitchenette. The study/living area contains two tub chairs, a coffee table and tv with stand. I saw no personal or other items in this room to suggest that it was only used by a single resident.

16. The shared kitchenette contains significantly more storage units and worktop space than Rooms 1, 2 and 3. It has an oven, microwave, under-counter fridge/freezer, 3 ring hob, and a variety of other kitchen appliances. While most of the cupboards were empty or contained little in the way of food stuffs, this may be because each room has some storage capacity of its own.
17. I acknowledge that there is a lockable door at the foot of the staircase providing access to the second-floor accommodation. However, I have not been provided with any evidence to show that residents do not share the use of these facilities. Given the limited and lack of cooking facilities in Rooms 3 and 4 and the limited living space in Room 4, I find the appellant's version of events regarding the shared use of the second-floor accommodation to be credible.
18. The first-floor storage room contains shelving for residents to use. I was told that residents can store bicycles here and that electric charging points are available for residents' use. Shared storage facilities and the shared washing machine are also located on the ground floor. These types of shared facilities are equally likely to be present in buildings containing flats as they are in HMOs.
19. Where a property has been converted into flats, it would not be unusual for each flat to have its own doorbell adjacent to the main entrance and perhaps a mailbox in the entrance hall. Within the building, each flat would normally be numbered to be identifiable to other residents and visitors. The appeal property contains no such facilities or markers.
20. I saw that the internal doors serving Rooms 1 to 4 had locks, although none were locked or contained keys at the time of my visit. The presence of locks on internal doors could be seen as a sign that the property has been converted into flats. However, the rooms providing shared facilities have locks too. It would also not be uncommon for bedrooms in houses in multiple occupation to have locks on their doors. For these reasons, I do not find the presence of locks to be determinative in respect of the use of the building.
21. Various signage in the corridors and shared rooms provides advice to residents. In particular, the 'House Rules' refers to residents as "*Lodgers*", imposes time constraints on the presence of visitors, requires Lodgers to "*keep the kitchen, hallway, stairwell and all shared areas clean and tidy*", lodgers are responsible for the security of their own items, and must not move or damage furniture, pictures or wall hangings, amongst other things. Other signage identifies that the collection, storage and disposal of rubbish in accordance with the house rules is the responsibility of all members of the 'household'. Information relating to the deactivation of the burglar alarm shows that there is only one system serving the building, whereas it would not be uncommon for flats to have their own system.
22. Having regard to the above, while the residents of Rooms 1 and 2 have access to the shared facilities, including the washing machine, I find these Rooms are, more likely than not, occupied as single dwellinghouses. However, given the deficiencies of the facilities available to occupiers of Rooms 3 and 4, I find it more likely than not that they would make use of the shared cooking and living facilities available. In my judgement, Rooms 3 and 4 do not contain all the facilities required for day-to-day private domestic existence and are not single dwellinghouses. I therefore find that Rooms 3 and 4 are not flats.

Conclusion

23. From the evidence before me and what I saw during my site visit, I find that a material change of use to use as four flats has not occurred as a matter of fact. It is not necessary for me to determine what alternative use the appeal site is being put to. The appellant has therefore demonstrated, on the balance of probability, that the corrected matter alleged has not occurred.
24. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
25. In these circumstances, the appeal on grounds (d), (a) and (f), 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.

M Madge

INSPECTOR