The Planning Inspectorate

Appeal Decision

Site visit made on 25 April 2014

by Wendy McKay LLB (Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 May 2014

Appeal Ref: APP/F5540/C/13/2207061
542 Great West Road, Hounslow, TW5 0TQ

- 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 Tarsem Takhar against an enforcement notice issued by the London Borough Council of Hounslow.
- The Council's reference is CURE/2012/00493.
- The notice was issued on 11 September 2013.
- The breach of planning control as alleged in the notice is without planning permission, the conversion of the property into twelve (12) self-contained residential units and the use of the outbuilding as a non-incidental use.
- The requirements of the notice are: i. Cessation of the use of the property as twelve self-contained residential units; ii. Removal of all but one of the kitchens and kitchen related facilities within the premises; iii. Removal of all but one of the bathroom facilities to the ground floor within the premises; iv. Removal of all but one of the bathroom facilities to the first floor within the premises; v. Removal of all but one of the bathroom facilities to the loft floor within the premises; vi. Cessation of the use of the outbuilding as a non-incidental office; vii. Removal of all resultant debris from the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since there is no appeal on ground (a), the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Procedural Matters

1. The Planning Practice Guidance was issued on 6 March 2014. However, in the light of the particular facts of this case, I am satisfied that the issue of this policy guidance does not alter my conclusions and has no bearing upon my decision in this appeal.

2. The Appellant did not originally appeal on ground (b), that the breach of planning control alleged in the notice has not occurred as a matter of fact. Nonetheless, this issue was raised by the Appellant in his appeal statement. Since an appeal on this ground had not been included at the time of submission of the original grounds of appeal, The Planning Inspectorate specifically sought the views of the Council on this topic. The Council's response is set out in an e-mail to The Planning Inspectorate dated 27 February 2014. Given that the Council has had an opportunity to respond in this way, I am satisfied that,

despite its late introduction, no injustice would be caused by my consideration of this ground of appeal.

The appeal on ground (b)

3. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred, as a matter of fact. The burden of proof in such matters is on the Appellant and the relevant standard is on the '*balance of probabilities'*.

4. The Appellant points out that, although the notice alleges the conversion of the property into 12 self-contained residential units, the enforcement officer's committee report states that the property has 11 self-contained flats with kitchen and bathroom facilities in addition to a bedroom that has access to a kitchen and bathroom, but which is not self-contained. He therefore contends that what has been alleged in the notice has not occurred, as a matter of fact.

5. The Council submits that there are, in fact, 12 self-contained residential units within the premises. It acknowledges that only 11 of the units have within them a bedroom, kitchen and bathroom and one unit on the first floor has access to a kitchen and bathroom down the hall, but contends that this is for their primary use. These facilities are only a short distance from the bedroom. The Council asserts that it is not feasible that the tenants of the other residential units would use these facilities when they already have access to their own. Alternatively, the Council suggests that the notice could be amended to reflect this arrangement without any injustice being caused.

6. It is clear that the Council had good reason to believe that the flat in dispute could be regarded as self-contained notwithstanding the separation of the facilities from the main room. Nevertheless, having observed the internal physical layout of the property at the time of my site visit, I consider that it is more accurately described as providing 11 self-contained residential units and one non-self contained residential unit with shared kitchen and bathroom facilities.

7. It is clear that the Appellant not been misled by the Council's error. This is a matter that is capable of correction using the powers to amend the notice under section 176 of the 1990 Act. I consider that it would be in everyone's interests to have the alleged breach of planning control correctly defined. I do not believe that to correct the allegation with a corresponding variation of the requirements would not cause any injustice to the parties.

8. I am entirely satisfied from the Appellant's own admissions, the evidence submitted by the Council and my observations at the time of my site visit that the development alleged by the corrected notice has taken place, as a matter of fact. The appeal on ground (b) must therefore fail.

The appeal on ground (f)

9. On ground (f), it is clear from considering what is said in paragraphs 3, 4 and 5 of the notice, read as a whole, that the remedial requirement follows from paragraph (a) of section 173(4) of the 1990 Act. The notice is directed at remedying the breach of planning control and what must be considered is whether the requirement exceeds what is necessary to achieve that objective.

10. The Appellant does not dispute the need for requirement 5 i, which relates to the cessation of the unauthorised use, nor does he take issue with requirement 5 ii, to remove all but one of the kitchens, or requirement 5 vii, which requires the removal of all resultant debris. As regards the outbuilding, the Appellant indicates a possible intention to use this structure for office purposes. He also outlines a plan to use the office for communal storage incidental to his proposed HMO use of the main building. However, he accepts that either of those scenarios would require planning permission and that the requirement to cease the present use of the outbuilding as an office is not excessive.

11. His concern primarily relates to requirements 5 iii, iv and v which require the removal of all but one of the bathrooms from each of the various floors of the building. He submits that this is not necessary and that the removal of the cooking facilities would be sufficient to overcome the reasons for issuing the notice. He contends that it was the provision of the kitchens that resulted in the material change of use of the property. He intends to seek to regularise a new use of the premises as an HMO and allowing the bathrooms to remain would make the transition to that new use a lot easier.

12. The Council submits that the installation of a bathroom in each of the self-contained units has, along with the installation of kitchens in the rooms, facilitated the unauthorised change of use of the house. The presence of twelve bathrooms is considered to be excessive for a normal single family dwellinghouse.

13. It seems to me that the additional bathrooms have undoubtedly played an important role in facilitating the unauthorised use and enabling the flats to be occupied as self-contained residential units. It is not simply the kitchens which have enabled this to be achieved. The HMO use is a prospective use for which no planning permission has yet been granted, and does not represent a lawful use of the land. The balance of the evidence indicates that the extra bathrooms were not installed for some other lawful use prior to the material change of use the subject of the notice. I find, as a matter of fact, that the additional bathrooms were installed as part of the process of flat conversion. The notice alleges the making of a material change of use of the land. The installation of the additional bathrooms has been part and parcel of the making of that material change of use. It must therefore be considered whether their removal is necessary to prevent the unauthorised use of the building.

14. The building has been the subject of significant physical changes to accommodate the unauthorised use and to provide the facilities required for day-to-day private domestic existence within the various residential units. The installation of the bathrooms has been an integral part of that process. The resulting units are, with one exception, capable of being occupied independently of other parts of the property. I conclude, as a matter of fact and degree, that the removal of only the kitchens would not be sufficient to remedy the breach of planning control.

15. A two storey side extension has been added to the property which was granted planning permission in 2012. The approved plans showed that there was to be one bathroom on the ground floor, two bathrooms on the first floor (one en-suite within the new bedroom) and one bathroom within the roof space. Given that this previous scheme approved a greater number of bathrooms than the notice seeks to retain, and my own assessment as to what would be reasonable

for a single family dwellinghouse of this size, I consider that the requirements are excessive in this respect. I therefore propose to vary requirement 5 iv, to permit the retention of two bathrooms on the first floor. To my mind, this level of provision represents the least onerous requirement that can be imposed to prevent the use of the property as alleged by the corrected notice.

16. The Council acknowledges that the Appellant's planning application for the conversion of the property into three residential units which was subsequently withdrawn showed eight bathrooms within the property. It indicates that, if a planning application were to be made in the future then consideration would be given to an increase in the number of bathrooms. The Appellant no longer desires to progress the three flat scheme, but to seek permission for the property to be used as an HMO. However, that is a matter for future consideration by the Council, as and when any such application is submitted. I do not regard the prospect of such an application being made as a strong argument in support of this appeal on ground (f).

17. I conclude that the requirements exceed what is necessary to remedy the breach of planning control, but only to the extent identified above. The notice will be varied to reflect this and it would not be disproportionate to require the Appellant to carry out the steps required by the varied notice. The appeal succeeds on ground (f) to this limited extent.

The appeal on ground (g)

18. On ground (g), the Appellant requests that the three month compliance period be extended to seven months to allow for the existing tenancies to be satisfied and then for the works to be undertaken. He also seeks time to progress his planning application for the use of the building as an HMO.

19. The Appellant has provided a copy of a tenancy agreement in respect of 542K Great Western Road, Hounslow, for a fixed term of 12 months which expires on 16 June 2014. However, it might well then be necessary for the landlord to take steps to recover the flat as set out in the agreement. At the time of submission of the Appellant's 'Final Comments', the planning application for the HMO had been prepared but had not been submitted to the Council. The comments received from the Council suggested that anything other than the three flat proposal would be looked upon unfavourably. The Appellant therefore sought sufficient time to pursue the application.

20. It is necessary to balance the planning harm caused by the unauthorised development against the effect that compliance would have on the Appellant, and his tenants. Having regard to these various factors, I consider that the time for compliance with the notice falls short of what should reasonably be allowed. The Appellant was entitled to await the outcome of this appeal before taking steps to comply with the requirements of the notice. In my opinion, an extension of the compliance period to six months would give the Appellant the time reasonably needed to comply with all the requirements of the notice.

21. In the light of the continuing harm identified by the reasons for issuing the notice, to extend the compliance period beyond six months would be excessive. Furthermore, section 173A gives power to the local planning authority to extend the compliance period after the notice has taken effect should further time genuinely be needed. The compliance period, as proposed to be varied, represents a proportionate response that strikes a fair balance between the

competing interests of the wider public interest and the individual in this case. The appeal on ground (g) succeeds to this limited extent.

Formal Conclusions

22. For the reasons given above, I conclude that the alleged breach of planning control requires correction; that the requirements are excessive and that a reasonable period for compliance would be six months. I am therefore correcting and varying the enforcement notice, prior to upholding it. The appeal under grounds (f) and (g) succeeds to that extent.

Formal Decision

23. The notice is corrected by deleting the alleged breach of planning control set out in clause 3 in its entirety and substituting therefor the words: "Without planning permission, the conversion of the property into eleven (11) self-contained residential units and one non-self contained residential unit with shared kitchen and bathroom facilities and the use of the outbuilding as a non-incidental use."

24. The appeal is allowed on grounds (f) and (g), and the enforcement notice is varied by deleting requirement 5 i, in its entirety and substituting therefor the words: "Cessation of the use of the property as eleven self-contained residential units and one non-self contained residential unit with shared kitchen and bathroom facilities"; by deleting requirement 5 iv, in its entirety and substituting therefor the words: "Removal of all but two of the bathroom facilities to the first floor within the premises" and by the deletion of "3 months" and the substitution of "6 months" as the period for compliance. Subject to these corrections and variations the enforcement notice is upheld.

Wendy McKay

INSPECTOR