The Planning Inspectorate

Appeal Decisions

Site Inspection on 20 February 2014

by Graham Self MA MSc FRTPI

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

Decision date: 26 February 2014

Appeal Reference: APP/D1780/C/13/2203830 ("Appeal A")
Site at: 5 Crofton Close, Southampton SO17 1XB

- The appeal is made by Mr Kultar Singh Roath under Section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Southampton City Council Council.
- The notice was dated 19 July 2013.
- The breach of planning control alleged in the notice is: "Without planning permission, change of use of the Land from a single family dwelling (C3 use) to a sui generis (large) house in multiple occupation".
- The requirements of the notice are:
- (i) Cease occupation of the dwellinghouse situated on the Land by unrelated persons not forming a single household within the meaning of section 258 of the Housing Act 2004".
- The period for compliance is 28 days.
- The appeal was made on grounds (a), (c), (e) and (g) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The enforcement notice is varied to extend the period for compliance. The notice as varied is upheld; except for the variation, the appeal fails.

Appeal Reference: APP/D1780/A/13/2200453 ("Appeal B")
Site at: 5 Crofton Close, Southampton SO17 1XB

- This appeal is also by Mr Kultar Singh Roath. It is made under Section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal of planning permission by Southampton City Council.
- The development was described in the application as: "Use of lounge to changed *[sic]* to be used as a bedroom for student accommodation from a seven bedroom to eight bedroom accommodation".
- The refusal notice was dated 21 December 2012.

Summary of Decision: The appeal fails.

Procedural Matters

1. I have labelled the appeals A and B as above for ease of reference. The appeals partly overlap. The Section 174 appeal on ground (a) against the enforcement

notice and the related application for planning permission which is deemed to be made under Section 177(5) of the 1990 Act were "fee exempt" because they are similar to the application subject to the Section 78 appeal. I consider these overlapping aspects together below. The other grounds of appeal are taken in logical, rather than alphabetical, order. (It is logical to consider grounds (e) and (c) of the enforcement appeal first because if either of them succeed the enforcement notice would be quashed and the other grounds of appeal become superfluous.)

2. The application now subject to the Section 78 appeal was rather oddly worded, with its reference to "use of lounge". Be that as it may, it is fairly clear that the purpose of the application was to seek permission for the use of the property as an eight-person HMO, and that is how I am treating it.

3. I abbreviate "house in multiple occupation" to "HMO". References below to a class or classes refer to the Town and Country Planning (Use Classes) Order 1987 (as later amended), abbreviated to "UCO".

Section 174 Appeal, Ground (e)

4. The appellant's case on this ground is that the notice was not properly served on everyone with an interest in the land, as the notice was served on only seven of the occupiers; an eighth occupier was absent due to illness but is a signatory to the tenancy agreement and therefore has an interest.

5. The appellant recognizes that "this omission will probably not prejudice the outcome of the appeal". In my judgement that is indeed so. There is no evidence to suggest that any person with a legal interest in the property was prejudiced by not being aware of the enforcement action. Ground (e) fails.

Section 174 Appeal, Ground (c)

6. Under this ground it is argued that the matters alleged in the enforcement notice do not constitute a breach of planning control. The main basis of the appellant's case is that the change of use to a large HMO did not amount to development, because the character of use did not change and there was no material change of use. The appellant contends that the house has been used as an HMO for five or seven people prior to a change in the UCO and that the character of the appeal property and its use is not distinguishable from any similar neighbouring family house or from any other HMO in the new Class C4 (HMOs for three to six persons). In the appellant's view, if seven occupants can live in a Class C3 dwellinghouse then so can eight if there is no material change to the character of the property or its use.

7. The appellant's case is flawed. The lawful use of the appeal property is use as a single dwellinghouse (Class C3). The appellant's suggestion that use as an HMO was "established" using permitted development rights before the UCO was amended[1] and before the council issued an Article 4 direction is incorrect. There is no ground (d) appeal, no attempt has been made to argue that the unauthorised use has been carried on continuously for the necessary ten year period to become "immune" and so lawful, and there is no evidence of any such possibility.

[1] The UCO was amended in 2010 to split Class C3 into three parts.

8. As has been confirmed by the Court of Appeal[2], judging whether there is a material change of use in the circumstances applying to this case has to be a two-stage process. Where under planning legislation no specific permission is needed to move from an existing use to a notional use permitted by the legislation and a change from the notional use to the proposed use is not a material change, it is not permissible to ignore the middle step. The court held that: "The accretion may be gradual but the difference between the beginning and the end is highly significant". That statement is apt in the present case.

9. The appellant is also wrong in claiming that the property could be used as a Class 4 HMO for three to six occupiers. The use as a seven-person HMO in 2007 was unauthorised and similarly there is no planning permission for a Class 4 HMO.

10. It is abundantly clear from the evidence before me that the use of this property as an HMO has been materially different to normal use as a single dwellinghouse, having regard to such factors as the way the house and garden has been used, the intensity of occupation, and the pattern of coming and going by occupiers. In summary, a material change of use has occurred, which amounted to development as defined in Section 55 of the 1990 Act. No planning permission was obtained, so the development was a breach of planning control. Therefore the appeal on ground (c) fails.

Ground (a) of Section 174 Appeal, the Deemed Application, and the Section 78 Appeal

11. The main issue raised by these aspects of the appeals is whether the impact of the development on the amenities of neighbouring residents is acceptable, having regard to relevant planning policy.

12. Crofton Close is a cul-de-sac in a residential area. The house at No 5 is reached along a private access way which leads off Crofton Close from a point towards the end of the cul-de-sac. Three other houses stand quite close to the access way. The garden of No 5 shares a boundary with the gardens of other houses in the close.

13. The pattern of development in this area means that there is no through traffic. As was apparent from my site inspection, this is a quiet residential neighbourhood. The estate has a generally "open plan" layout, so any unusual intensity of activity or traffic is likely to be noticeable by residents, more so than, for example, in situations where houses are set well back from the street and screened by enclosing front boundary structures.

14. In my judgement the appeal property is in a wholly unsuitable location for an HMO. By its nature, this type of use is likely to cause disturbance to neighbouring residents, and in this instance there is a considerable volume of evidence that disturbance has been caused, to the extent which has made the immediate area a less pleasant place to live. The evidence suggests that for several years, there have been numerous incidences when neighbours have had to make complaints to the council or the owner, or have called at the house to try to get noise reduced or to get cars causing obstruction to be moved. There is strong evidence that the problems caused to neighbours have been frequent and more than mere inconvenience. At least one local resident evidently moved house from Crofton Close to get away from No 5, and I have no reason to disbelieve this evidence. The situation would be bad enough if No 5 were located next to the main cul-de-sac: it is made even worse by the location at the end of

[2] In the case of *Secretary of State for the Environment Transport and the Regions v Waltham Forest LBC* [2002] EWCA Civ 330.`

the shared access way, which passes near living room and bedroom windows of other houses.

15. The house has apparently been let to students or other young adults, whose lifestyle has understandably been different from that typical in this area of family housing. Some tenants may have been more considerate than others, but the level of activity in and around a "large" HMO here is bound to be significantly different to what might normally be expected in a typical family house, not only because of the number of occupiers, but also the number of visitors. To accommodate eight unrelated people in the house, ground floor rooms are used as bed-sits, leaving only the kitchen, conservatory and garden as communal areas. In these circumstances the garden is fairly likely to be used as a communal area in ways causing noise and disturbance to neighbours.

16. The amount of on-street car parking generated by eight adults is also likely to be greater than would occur with normal family occupation, and such parking has evidently been a source of annoyance and disturbance for neighbours, perhaps partly because the layout of Crofton Close does not allow much space for on-street parking. Some occupiers may not own cars, but it is not practicable for the planning authority to control the type of occupier or their means of personal transport in such detail. As the council point out, if planning permission were granted the next tenancy could be to eight individuals all of whom could be car owners.

17. The council's case is supported by planning policies. Policy H4 of the development plan for this area provides that planning permission for HMOs will only be granted where the proposal would not be detrimental to the overall character and amenity of the surrounding area. The council have also adopted a supplementary planning document following public consultation, with which the use of the appeal property conflicts because it is within a 40 metre radius of another HMO in Oakmount Avenue and the adopted policy provides that in this part of Southampton, no more than ten per cent of houses within this radius can be HMOs. The 40 metre and percentage measures seem to me to be a rather crude policy instrument, especially as only a small corner of the garden of the Oakmount Avenue HMO falls within the 40 metre radius; but even setting aside such policy detail, I consider that there are compelling objections to this proposal, primarily because of the harm caused to the amenities of nearby residents.

18. In reaching my decision I have taken into account the submissions by all parties about matters on which I have not specifically commented, including housing demand, the benefits of mixed communities, and other appeal decisions. They do not outweigh the considerations discussed above. I conclude that planning permission should not be granted. Therefore the appeal on ground (a) against the enforcement notice, the related deemed application, and the Section 78 appeal against the refusal of planning permission do not succeed.

Section 174 Appeal, Implied Ground (f)

19. Ground (f) of Section 174(2) is a claim that the requirements of the enforcement notice are excessive. Although this ground has not been pleaded, the appellant has stated in part of his representations (through his agent) that the requirements of the notice go too far in trying to return the use to a Class C3(a) dwellinghouse when it has lawfully been used as an HMO. Out of fairness to the appellant, I am treating this argument as if ground (f) had been pleaded.

20. There is no basis for this claim. As explained above, the lawful use of the appeal property is use as a single dwellinghouse. The requirements of the enforcement

notice are not unreasonable or excessive. There is no good reason to vary the notice in response to the implied ground (f) appeal.

Section 174 Appeal, Ground (g)

21. This ground relates to the compliance period. The appellant maintains that 28 days is too short a time for the existing tenants to find alternative accommodation. A compliance period until at least the end of the academic year and the end of the current tenancy agreement on 30 June 2014[3] is sought. The council disagree and maintain that 28 days is sufficient, taking into account that occupiers have had since July 2013 when the enforcement notice was issued, or since December 2012 when planning permission was refused, to find alternative accommodation.

22. The numerous letters from local residents show that the unauthorised development has been causing problems for people living nearby for far too long, and I do not want to prolong this situation. However, the appellant and the current tenants have been entitled to await the outcome of the appeals before taking steps to comply with the enforcement notice, which has in effect been suspended during the appeal process. Neither side has provided any real evidence about the likely availability of alternative accommodation, so I am left to make assumptions. On balance, I judge that 28 days is an unreasonably short period for the tenants to find somewhere else to live. A limited extension of time by perhaps a few weeks might normally be appropriate. In this case, I think it reasonable to take account of the particular circumstances whereby if the compliance period were to end in April or May, the tenants would have to find alternative homes (if that were possible) shortly before the end of the academic year, and this could cause them considerable difficulty.

23. I have therefore decided to extend the compliance period so that it coincides with the end of the academic year, which is also the end of the current rental period. Ground (g) succeeds to that extent. The extra time for compliance, which I am allowing with hesitation, does not mean that the continuation of the unauthorised use is acceptable - the variation is aimed at achieving an end to the problems caused by the development whilst allowing for humanitarian considerations relating to the current tenants, not the appellant.

Formal Decisions

Appeal A

24. I direct that the enforcement notice be varied by deleting "28 days" from the text specifying the period for compliance and substituting "The period ending on 30 June 2014". Subject to that variation, the appeal is dismissed, the enforcement notice as varied is upheld, and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

Appeal B

25. The appeal is dismissed.

G F Self

Inspector

[3] Both main parties agree that there is a typing error in the appellant's statement, which refers to June 2013.