The Planning Inspectorate

Appeal Decisions

Site visit made on 9 December 2014

by Simon Hand MA

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

Decision date: 17 December 2014

Appeal A: APP/D1780/C/14/2211492
Land at 9 Pointout Close, Southampton, SO16 7LS

- 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 M Charles Glanville against an enforcement notice issued by Southampton City Council.
- The Council's reference is 12/00314/Encon.
- The notice was issued on 26 November 2013.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land from a single dwellinghouse within Class C3 to a House in Multiple Occupation C4 use.
- The requirements of the notice are 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 with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/D1780/X/13/2202775
9 Pointout Close, Southampton, SO16 7LS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by M Charles Glanville against the decision of Southampton City Council.
- The application Ref 12/01540/ELDC, dated 2 October 2012, was refused by notice dated 26 April 2013.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is use of the property as a C4 house in multiple occupancy.

Decisions

Appeal A - 2211492

1. The enforcement notice is varied by deleting "6" from The Time for Compliance and replacing it with "9". Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B - 2202775

2. The appeal is dismissed.

Background to the Appeals

3. The change of use of a dwelling from C3 to C4 - a House in Multiple Occupation (HMO) – is usually permitted development. However, on 23 March 2012 the Council issued a Direction removing these permitted development rights, so from that date, such a change would require planning permission.

4. When the development of houses in which No 9 stands was granted planning permission in 1988 a condition was attached which sought to restrict the use of the car parking on the site. This condition will be the subject of discussion later. In May 2012 the appellant applied for planning permission to make a material change of use from C3 to C4. This was refused by the Council and by a decision on appeal[1] issued in August 2013. In November 2012 the appellant also applied for planning permission to convert the integral garage in the property to habitable accommodation. This application was necessitated by the condition referred to above. This was eventually allowed on appeal[2] in October 2013.

5. The appellant also applied for a lawful development certificate (LDC) on 2 October 2012 that the house was lawfully at that date an HMO. To this end he attempted to demonstrate that on 23 March 2012 the house had been occupied by 3 persons as an HMO and so its use was lawful thereafter. This was refused because the occupation by the third person relied on using the garage. At that date such domestic occupation was rendered unlawful by the condition and so the LDC could not be granted. That refusal is the subject of this appeal. On 26 November 2013 the Council issued the enforcement notice requiring the unlawful use of the property as an HMO to cease, this is also subject to this appeal.

Appeal B – the LDC

6. The main issue in this case is the impact of the condition on the garage and on the subsequent use as an HMO.

7. The condition states "Before any dwelling hereby approved is occupied, both the on-site car parking and a proper vehicular access relating to it shall be provided to the satisfaction of the local planning authority. The car parking shall thereafter be retained and not used for any trade, business or industrial use".

8. I have barristers' opinions from the appellant and from the Pointout Resident's Group (PRG) that reach exactly opposite conclusions. Bearing in mind that conditions should be read purposively and should be given, where possible, their simple plain English meaning I have no doubt as to the meaning of the condition. The site layout and house detail plans show that each house had an outside parking space and an integral garage. Two car spaces were required for each house. So much is not in dispute. Given that, I can see no reason why the condition should be read to exclude the integral garages. They were for "car parking" and they were "on-site". There is nothing to suggest the condition should be limited only to external parking. Similarly, the second part of the condition says the "car parking shall thereafter be retained". This is self explanatory. If an integral garage is converted into a bedroom it has not been retained as car parking.

[1] APP/D1780/A/13/2193861 Issued 27 August 2013
[2] APP/D1780/A/13/2200290 Issued 22 October 2013

9. The condition goes on to say "and not used for any trade, business or industrial use". This short list of uses is clearly not comprehensive nor is it intended to be. It would not make sense to attempt to retain the car parking but only by restricting a certain number of uses as that would suggest the car parking could be lost to other uses not on the list. This is made clear by the reason attached to the condition which was to "…..avoid congestion in the adjoining area and to protect the amenities of the area". The appellant argues that the reference to amenities refers back to the list of proscribed uses. Use for one of those uses would harm amenity, whereas use for residential purposes would not, but this ignores the reference to congestion, which would seem to be directed at ensuring cars are parked outside or inside the houses and not scattered across the estate roads.

10. I conclude the condition precludes the use of the integral garage at No 9 from use as a bedroom. The appellant further argues that this conclusion notwithstanding the LDC could still be issued for the remainder of the building. However, the evidence to support the use as an HMO relied on only three occupants, the minimum needed to demonstrate an HMO use. The third occupant, Alex Walker, according to his statutory declaration, was in the ground floor bedroom (ie the converted garage). This occupation was in breach of the condition and so unlawful in terms of the LDC. If that bedroom is removed from the scope of the LDC then the remainder of the property was not being occupied as an HMO. The appellant says there would be room in the house for 3 people without the garage being used but whether that is true or not it remains the case the rest of the house, at the time of the application, was not being used by 3 people, only 2. I also agree with the Council that the LDC application sought a lawful use for the whole house, which is a single planning unit. It would not make sense to divide the house up into different uses. In this case either No 9 was an HMO or it was not. I agree with the Council that it was not.

11. A number of other issues have been raised. The subsequent permission to convert the garage to a bedroom overrides the condition, but that is irrelevant for the LDC, as that is a question as to what is lawful on a specific date. On 2 October 2012 the condition was in force. It is also irrelevant that the Inspector in that appeal accepted that 2 spaces outside the house could still be found for No 9 and they were still subject to the car parking condition. That may be true, but it says nothing about the integral garage. The condition does not refer to any specific number of parking spaces so it must refer to all the parking spaces provided "on-site". It seems that No 9 may have had room for 3 spaces, but even so one of them was an integral garage and covered by the condition. The Inspector also makes it clear in her decision at paragraph 12 that conversion of the garage to habitable accommodation was contrary to the condition. A considerable amount of evidence has been provided by the PRG disputing the house was occupied by 3 persons in the first place, but given my conclusion on the condition I do not need to consider this.

Conclusions

12. I find that on the date the LDC application was made the condition was still operative and precluded the lawful use of the garage as habitable accommodation. As the use of the garage as a bedroom was important to demonstrate the use as an HMO, then the property at No 9 was not being used

lawfully as an HMO on that date and the Council were correct not to issue the certificate. I shall dismiss the appeal.

Appeal A – Ground (c)

13. This ground is that the breach, as alleged has not occurred. This relies on success in the LDC appeal which has not happened. The fact that the condition may be 26 years old and has not been enforced by the Council at any time is of little consequence. The fact that the condition still covers the two external spaces is also irrelevant. The change of use to C4 requires planning permission because permitted development rights to make such a change from C3 were withdrawn in March 2012 and at that date the dwelling was not occupied lawfully as an HMO. The appeal on ground (c) fails.

Appeal A – Ground (a)

14. The issue as to whether on its merits the dwelling should be allowed to become an HMO has already been decided by the Inspector's decision in 2013. The appellant seeks to re-open this debate by providing new evidence that was not before the previous Inspector.

15. The previous Inspector found against the proposal for a number of reasons. She found that the area was an "enclave of well maintained and attractive dwellings [that] benefit from a relatively tranquil environment". Occupation by 5 persons as an HMO would be of a greater intensity to other dwellings in the area. This would lead to problems caused by comings and goings on foot and in cars of occupants, friends and relatives. It would lead to an increase in on-street car parking and a potential for poor management of waste and of the garden. There would also be a generally more intrusive and harmful noise environment, all of which would harm residential amenities.

16. The appellant argues that the Inspector was not given evidence as to the density of HMOs in the area, nor appeared to give much weight to the Council's Houses in Multiple Occupation Supplementary Planning Document (2012). In fact the Inspector was fully aware that there were no other HMOs within 40m of the site and she says that "The appellant states that the 10% threshold was not breached when the radius based assessment (40m) was applied to the appeal site, but even so, the SPG goes on to state that other material considerations (such as intensification of use and the residential amenity of future and existing occupiers) arising from the impact of the proposal will be assessed in accordance with the Council's relevant development management policies and guidance".

17. I agree that the lack of other HMOs in the area is not decisive and that other material considerations as described above should be taken into account. The only difference between that appeal and now is that the appellant claims to have restricted the number of cars that can be on the property to 2 through the tenancy agreement. In fact it seems the tenancy agreement states that cars should only be parked in the property's designated parking bays and not on the pavement or in front of dropped kerbs. This is all well and good but it does not deal with the issue of a proliferation of cars or other vehicles which can be parked anywhere in the estate. This cannot be controlled by condition, as suggested by the appellant, as a condition cannot control the ownership of cars or their parking elsewhere than on the property. Nothing has been put before me to suggest the issues identified by the previous Inspector have now

changed. The use would still be an over-intensification of the property which would be likely to lead to the problems indentified in the previous appeal decision.

18. I note the current occupants of the HMO are mature students and appear to have a harmonious relationship with their neighbours. However, it is not possible to control the identity or nature of the occupation of the house by conditions and so there is no guarantee this would not change in the future. For all these reasons I consider the property should not be allowed to remain as an HMO and the appeal on ground (a) fails.

Appeal A – Ground (f)

19. This ground relied on the imposition of a condition to control car parking to make the use acceptable. Had this been possible it would have been dealt with under ground (a). In the event I do not think a condition would overcome the problems for the reasons given above. The appeal on ground (f) fails.

Appeal A – Ground (g)

20. The Council have given 6 months to cease the unauthorised use. I agree with the appellant that the current occupiers are causing no problems. The issue is with a long term unrestricted HMO use in this location. The appellant argues that 12 months would enable his son, who is one of the occupiers, as well as the other residents to complete their studies before the use is ceased. I have been given no evidence as to when these studies would be completed, but 9 months would extend the occupancy to September of 2015, by which time a new academic year would have begun. It seems reasonable to me to allow the current residents to stay up until then.

Conclusions

21. I shall vary the notice to extend the compliance period to 9 months. Subject to that variance the appeal fails and the notice will be upheld.

Simon Hand

Inspector