



Appeal Decision

Site visit made on 25 July 2013

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

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

Decision date: 20 August 2013

Appeal Ref: APP/C1950/C/13/2191693

Land at 2 De Havilland Close, Hatfield AL10 0DR

- 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 S Al Sawan against an enforcement notice issued by Welwyn Hatfield Borough Council.
 - The notice was issued on 20 December 2012.
 - The breach of planning control as alleged in the notice is without planning permission the use of the building as self contained units.
 - The requirements of the notice are to:
 - a) Cease the use of the property for the provision of self contained units capable of independent use.
 - b) Return the use of the property to either a C3 family dwelling or a House in Multiple Occupation for not more than 6 occupants.
 - c) Remove all kitchenette facilities including all kitchen sinks, worktops and tiled splash backs with the exception of one which is to be used as the communal kitchen.
 - d) Remove locks and all locking mechanisms from the internal door to the communal kitchen and lounge (shown coloured on the plan to accompany the notice).
 - e) Cease the use of the former garage as a self contained self contained unit.
 - The period for compliance with the requirements is six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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DECISION

1. It is directed that the notice be corrected:

- In paragraph 3 by deletion of the wording of the alleged breach of planning control and the substitution of "Without planning permission the making of a material change in the use of the building to use as self contained units."
- In paragraph 4 by the insertion of a new first sentence "It appears to the Local Planning Authority that the above breach of planning control has occurred within the last four years."

2. It is directed that the notice be varied in paragraph 5:

- By deleting requirements (b) and (e). Requirements (c) and (d) shall be renumbered as (b) and (c) respectively.
- Eight months shall be substituted as the time for compliance.

3. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

REASONS

The enforcement notice

4. The notice is against a material change of use, as set out in the heading but this form of development has not been stated in the description of the alleged breach of planning control. In addition, the time limit for taking action against the alleged breach is not given in the reasons for issuing the notice. These omissions were drawn to the attention of the Appellant and the Council by the Planning Inspectorate early in the appeal process. For the avoidance of doubt the notice should be corrected as part of my decision, as the corrections may be done without injustice to any party.

The ground (a) appeal

The development

5. The Appellant has submitted a plan of an internal layout of the building for which planning permission is being sought (Drawing E01 rev A). The accommodation is described as 8 bedsits with varying degrees of self containment. All rooms would include basic cooking facilities and shower rooms. In addition there would be a communal lounge and communal kitchen. Communal washing and drying areas would be provided.
6. An appeal under ground (a) is 'that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted....'. Therefore the deemed planning application is for the material change of use of the building to use as self contained units. No appeal was made on ground (b). Consequently the Appellant has not disputed as part of the appeal that the property changed to use as self contained units, notwithstanding any comments made to Council officers in November 2012. I will determine the ground (a) appeal on the basis of self contained units and I will not rely on the submitted internal layout plan, which is for a materially different form of development.
7. The layout plan of the building and garden areas submitted by the Council indicate the form of self containment that had occurred and the ability of the property to provide 8 self contained units. The layout was similar to the conditions I observed on the site visit. In view of the unchallenged description of the use as self contained units Area 0 will be considered as part of Unit 2 rather than as a communal lounge and kitchen.

Main issues

8. The main issues are the effects of the change of use on: the character and the appearance of the surrounding area, the amenity of neighbours, the quality of the living accommodation within the property and the adequacy of parking provision.
9. I agree with the Council and the Appellant that the relevant comparison is between the effects of the unauthorised use and the lawful use of the property as a single dwelling (Class C3) or a small house in multiple occupation with not

more than 6 residents (Class C4). The Appellant has indicated a willingness to accept a planning condition to restrict the use of the rooms to one person and on that basis has argued that the use of the property by 8 rather than 6 people would have no material effects. In my experience to restrict the numbers of occupiers of the self-contained units as suggested would be unreasonable and unenforceable. Furthermore, no reliance is able to be placed on the Appellant only letting the units to single people because any permission would run with the land. The way to control the numbers of residents would be through the number of self contained units or through the type of living accommodation (Class C3 or C4). No alternative layout for a smaller number of self contained units has been proposed. Therefore in assessing the main issues I will take into account that there would be 8 separate households, which may well result in more than 8 residents living at the property.

Planning Policy

10. A design objective of the Welwyn Hatfield District Plan 2005 is to ensure the highest quality of design in all new development to promote sustainable development. This objective is reflected in Policy D1. The supplementary design guidance on amenity space is relevant to this appeal. In view of the pressure for residential accommodation in the district, the conversion of large units to smaller units of residential accommodation is looked on favourably provided that the proposal meets the criteria of Policy H4. The supplementary planning document Houses in Multiple Occupation provides helpful background information but the space standards and other related guidance are not directly applicable to self contained units. Policy M14 requires parking provision to be in accordance with the standards set out in the supplementary guidance on parking.
11. The National Planning Policy Framework states that pursuing sustainable development involves seeking positive improvements in the quality of the built environment and people's quality of life, including the conditions in which people live and widening the choice of high quality homes. A core planning principle is to seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
12. The relevant policies in the District Plan, in so far as they promote sustainable development, are generally consistent with the Framework and have substantial weight.

Character and appearance

13. The appeal site is in a residential area near to the shops and leisure facilities in the town centre and at The Galleria. De Havilland Close and adjoining streets are formed of quite tightly developed blocks of primarily two storey terrace houses, grouped around culs-de-sac and amenity spaces. Garage courts are interspersed between the residential blocks and footways add to the permeability of the area. Purpose built flats also form part of the local dwelling mix, such as Gloucester Court to the south west of the site.
14. The Council has explained that the appeal property is in a residential area of the Borough where the conversion of residential accommodation into smaller units of accommodation has been widely carried out. It recognises that the property has contributed to this change in character because it was previously in Class C4 use. The Appellant links the conversion to bedsits to the proximity

to the main campus of Hertfordshire University and the demand for small affordable units. However, according to Council records only around 10% of properties in a 50m radius of the site are currently in Class C4 use. Reference is also made to the dwellings in De Havilland Close retaining their original form and function. The probability is that the majority of properties in the immediate vicinity are single family dwellings.

15. Number 2 is on a corner plot and the original dwelling has a two storey extension to the side and a single storey extension at the rear. The garage attached to the front of the dwelling has also been converted to living accommodation. The property is now larger than the other dwellings in the terrace. Each of the 8 self contained units could accommodate more than 1 resident, especially the slightly larger units on the ground floor. As a result of the conversion the number of residents would be significantly more and the intensity of use would be significantly greater than typically found in the surrounding terrace houses.
16. An Article 4 Direction came into effect on 12 January 2012 removing permitted development rights to change the use of a Class C3 dwelling to a use within Class C4. The use of this power was in response to the adverse effect the high concentrations of houses in multiple occupation were having on the character of residential areas and the balance of local communities. This indicates that the appeal site is in an area already under pressure from an imbalance in converted properties to smaller units of accommodation. The use of the property for 8 self contained units would add to this pressure and weaken attempts to maintain a mixed and balanced community. I conclude that the change of use has an adverse effect on the character of the surrounding area. Criterion (i) of Policy H4 is not met.
17. The physical changes to the external appearance of the extended property have been limited and the Council accepts that the appearance of the building has not and would be unlikely to change. There are signs of greater intensity of use such as the four separate gates in the boundary fence, the sub-division of the garden and the various storage and utility sheds. However no significant harm is caused to the appearance of the locality. The corner location at the entrance to De Havilland Close helps in this respect because the property has slightly more private amenity space and the side boundary is adjacent to a footway and garage court. The use of the property by a greater number of occupiers suggests an increase in the number of wheelie bins in the front garden. The Appellant has advised that he has arranged for refuse, including recyclable waste, to be collected on a weekly basis by a private company. However, there is no certainty that would continue in the future or if there was a change in ownership. The Appellant has not put forward a planning condition in respect of refuse storage. There is a possibility that bin and refuse storage would be an unsightly feature close to the front entrance to the property. To this extent criterion (i) of Policy H4 on visual appearance is not fully met.

Amenity of neighbours

18. Policy H4 requires that residential conversions do not adversely affect the amenity of neighbours by overlooking or loss of privacy and do not lead to increased disturbance from extra vehicular movements and car parking.
19. In this development no additional upper floor windows have been formed and overlooking would not be an issue. The front door and entrance area is

adjacent to the projecting garage block of the neighbouring property. The entrance to units 1 and 3 is from the side footway. The three car parking spaces on the frontage would be similar to the former use. These arrangements would help to reduce loss of privacy and to reduce disturbance to neighbours from comings and goings by residents of number 2. Even so, the increase in the number of separate households would be likely to generate increased activity in the external spaces adjoining the neighbouring property. I would anticipate some degree of disturbance to neighbouring occupiers, particularly because of the narrow frontages and the terrace form of accommodation. The Appellant has made no reference to carrying out any form of sound proofing to reduce noise transfer through internal party walls. The relationship of units 5 and 7 on the upper floor to bedroom accommodation in the adjacent dwelling is of particular concern.

20. The neighbour at number 4 has commented that the number of tenants has not caused him concern in respect of noise and disturbance, especially as very few have their own car and that he has no cause to complain about the general appearance of the site. However, the experience of a single neighbour is not conclusive, especially when future changes in ownership and occupation are taken into account. I do not rule out some adverse effects in view of the number of households and the internal layout.
21. In conclusion, the development complies with the specific criteria of Policy H4 on neighbour amenity. Nevertheless, the layout for the self contained units would not achieve the quality of design expected by Policy D1.

Standard of accommodation

22. The conversion has provided each unit with basic kitchen and personal washing facilities, although the standards of space and level of facilities varies between the units. Unit 2 has the most generous layout with the sleeping accommodation separate from the living, dining and kitchen areas. In contrast unit 5 is approximately 11.6 sq metres, and there is no opportunity to partition off the minimal kitchen facilities from the main body of the room. The Appellant considers that the provision of modest washing and cooking facilities gives the tenants a greater degree of independence. However his assessment is of the layout shown on Drawing E01 rev A, which included the provision of communal facilities, not the unauthorised development.
23. Of the ground floor units, units 1, 3 and 4 do not have the benefit of a hallway and the main front door opens directly into these units. As the Council has pointed out, the access to units 1 and 3 by means of a gate from the side footway provides a less safe environment for the occupiers. The outlook of unit 3 is confined by the boundary fencing.
24. The Council's supplementary planning guidance indicates that a communal amenity space should be large enough to accommodate the needs of all residents. The Appellant has provided an attractive garden for use by residents. Even so, because of the internal layout of the building, access to the garden is inconvenient for the occupiers of most of the units and the privacy of unit 2 is not adequately protected.
25. For these reasons the level of subdivision is excessive and the accommodation fails to achieve the high quality of design required by Policy D1.

Parking

26. The Council's standards indicate a maximum total of 6 car parking spaces for the development. Three spaces are shown on the frontage, two of which are in tandem. This would be an unsatisfactory form of provision for self contained units and so in effect there are two useable spaces. No specific proposal has been made to provide secure cycle parking, although there probably would be space on site for such a facility. The Council has referred to parking restrictions on De Havilland Close and St Albans Road West limiting the potential for on-street parking.
27. The location of the site is an important consideration in assessing the adequacy of the level of parking provision for the type of accommodation provided. The property is easily accessible to the town's shopping and leisure facilities, public transport is available and there are cycle routes to the station and the university area. The units are unlikely to be let to families. On balance the development is unlikely to cause significant pressure on local parking facilities and is well placed to encourage use of alternative modes of travel to the private car.
28. The District Plan expects residential development to accommodate all parking on-site and full provision to the maximum standard is anticipated to be the norm. On that basis the development fails to comply with Policy M14. Balanced against this, the Framework advocates a pattern of land uses in an area that encourages people to minimise journey lengths for employment, shopping, leisure and other activities. The location of the development is consistent with that objective.

Conclusions

29. The conversion to self contained units fails to meet all the criteria of Policy H4. The development fails to achieve the high quality of design and standards of amenity required by Policy D1 and encouraged by the Framework. The failings of the scheme are unable to be satisfactorily addressed by planning conditions that meet the tests in Circular 11/95 and the Framework. The development is unacceptable and the appeal on ground (a) fails.

Appeal on ground (f)

30. An enforcement notice shall specify the steps the authority requires to be taken or the activities which the authority requires to cease in order to achieve, wholly or partly, remedying the breach or remedying any injury to amenity (section 173(3) and 173(4)). It is clear that the purpose of the notice is to remedy the breach of planning control. Requirement (a), to cease the use of the property for the provision of self contained units capable of independent use, is not excessive to achieve this purpose. However, the positive requirement (b) to return the property to either a Class C3 family dwellinghouse or a Class C4 HMO is excessive. There is no doubt that the property includes the attached former garage. Requirement (e) to cease its use as a self contained unit is repetitive of step (a) and is unnecessary. Therefore requirements (b) and (e) should be deleted.
31. For the purposes of remedying the breach an enforcement notice is able to require the alteration or removal of any buildings or works or the carrying out of any building or other operations (section 173(5)). In respect of a material change of use a notice may require the removal of works integral to and solely

for the purposes of facilitating the unauthorised use, even if such works on their own might not constitute development. The Appellant has requested that the notice allows for kitchen facilities to be retained to serve 6 bedsits in a Class C4 HMO or requires only the removal of cooking appliances. However the Appellant has not produced any evidence to show which, if any, of the kitchenette facilities served the former authorised use or provided information when the facilities were installed. The removal of only cooking appliances would not achieve the purpose of the notice. I am satisfied that requirement (c), which allows for the retention of one kitchenette to be used as a future communal kitchen, is not excessive.

32. The appeal on ground (f) succeeds only in part.

Appeal on ground (g)

33. A compliance period of a year has been requested by the Appellant to enable him to honour all existing tenancy agreements and to plan an appropriate time in which to carry out the works.

34. I note the Appellant acknowledged that the physical works required may not be extensive. No evidence on the circumstances of the occupiers has been provided to support this ground of appeal, although the response to a planning contravention notice indicates that occupiers of the units may have six month tenancies. In the light of this latter consideration it is reasonable to extend the period for compliance to eight months. To this extent the appeal on ground (g) succeeds.

Conclusion

35. For the reasons given above, and having taken account of all other matters raised, the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Diane Lewis

Inspector

