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# 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**

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**Appeal Ref: APP/C1950/C/13/2191701**

**Land at 87 De Havilland Close, Hatfield, AL10 0DP**

- 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 A Afanah against an enforcement notice issued by Welwyn Hatfield Borough Council.
  - The Council's reference is ENF/2011/0090.
  - 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 4 bedsit House in Multiple Occupation.
    - c) Remove all kitchenette facilities including 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 dining room (shown coloured green on the attached plan Plan "B").
    - e) Cease the use of the outbuilding for the provision of sleeping accommodation.
    - f) Cease the use of the former garage as a self contained unit.
  - The period for compliance with the requirements is six (6) months.
  - The appeal was made on the grounds set out in section 174(2)(a), (b), (c), (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, including the rear outbuilding, 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."
- By the substitution of the plan attached to this decision as Plan A, referred to in paragraph 2 of the notice.

2. It is directed that the notice be varied in paragraph 5 by:
  - Inserting after the word “property” in requirement (a) “including the rear outbuilding and the former garage”.
  - Deleting requirements (b) and (f). Requirements (c), (d) and (e) shall be renumbered as (b), (c) and (d) respectively.
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. 87 De Havilland Close is a residential property comprising an end of terrace building, an attached former garage that has been converted to living accommodation and an outbuilding in the back garden. The Council and the Appellant agreed that the wording of the alleged breach of planning control and the plan identifying the Land should refer to the property as a whole. The Council has submitted a corrected plan (Plan A) to include the former garage.
5. 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 to address these omissions. I am satisfied that this and the other corrections to the notice set out above may be made without injustice to any party.

### **Appeals on grounds (b) and (c)**

6. The Appellant’s appeal statement confirmed that the ground (b) appeal was not being pursued. That being so I will not consider the matter further and will proceed on the basis that the Appellant does not dispute that the use of the building as self contained units has occurred as a matter of fact.
7. The Appellant later confirmed in writing that the ground (c) appeal has been withdrawn.

### **Appeal on ground (a)**

#### *The development*

8. The Appellant has submitted a plan of an internal layout of the property for which planning permission is being sought through the ground (a) appeal (Drawing P01 rev A). The accommodation is described as 5 bedsits with varying degrees of self containment. All rooms include basic cooking facilities and shower rooms. In addition there would be a communal kitchen and dining room on the ground floor and a further communal kitchen on the first floor. An outbuilding in the rear garden would provide a communal gym/storage area.
9. 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, including the outbuilding, to use as self contained units. I will determine the ground (a) appeal on that basis. The layout plan of the property submitted by the Council indicates the form of self-containment that had occurred. I will not take account of the proposal and the internal layout plan now being put forward by the Appellant, which is for a materially different form of development. To do so would cause injustice. Consequently, the representations made by the Appellant on what he considers to be the merits of the proposed 5 bedsits with communal facilities are not directly relevant to the assessment of the unauthorised self contained units in the property.

#### *Main issues*

10. 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.
11. The relevant comparison is between the effects of the unauthorised use as self contained units and the lawful use of the property as a Class C3 dwellinghouse or its use by not more than 6 residents as a house in multiple occupation (Class C4). In the absence of appeals on grounds (b) and (c) this is not a matter of dispute. The Council identified six self contained units of accommodation, comprising four units in the main building, a unit in the former garage and a unit in the outbuilding. No alternative layout for a smaller number of self contained units has been proposed.
12. The Appellant has indicated a willingness to accept a planning condition to restrict the use of the rooms to one person or to single people and on that basis has argued that the proposal would not result in a greater intensity of use than the lawful use of the property. 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).
13. Therefore in assessing the main issues I will take into account that there would be the potential for 6 separate households, which may well result in more than 6 residents living at the property.

#### *Planning policy*

14. 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.
15. Consistent with the Framework's promotion of sustainable development a design objective of the Welwyn Hatfield District Plan 2005 is to ensure the highest quality of design in all new development. This objective is reflected in Policy D1. The supplementary design guidance on amenity space provision 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 encouragement of a good standard of residential accommodation and an increase in the number of homes is generally consistent with the Framework. Policies D1 and H4 have substantial weight. The supplementary planning document Houses in Multiple Occupation provides helpful background information, although the space standards and other related guidance is 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.

#### *Character and appearance*

16. De Havilland Close is 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. Worcester Road, to the north west, has a similar layout pattern. This residential area is near to the shops and leisure facilities at The Galleria and in the town centre.
17. The Council has explained that the appeal property is in a part 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 in the wider area 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. An Article 4 Direction came into effect on 12 January 2012 removing permitted development rights to change the use of a Class C3 dwellinghouse 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.
18. Focusing more specifically on De Havilland Close, the Council submits that the majority of the dwellings retain their original three bedroom design and function as single family dwellings. Records indicate that only around 14% of properties in a 50m radius of the site are currently in Class C4 use. On this evidence the probability is that the majority of properties in the immediate vicinity are single family dwellings.
19. Number 87 is on a corner plot of a short terrace. The original dwelling has been extended with a single storey extension to the rear. There is also a single storey outbuilding, which was originally attached to the principal building. The attached garage has also been converted to living accommodation. Each of the 6 self contained units identified by the Council could accommodate more than 1 resident. 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 nearby terrace houses.
20. The appeal site is in an area of the Borough that is under pressure from an imbalance in converted properties to smaller units of accommodation. Measures have been introduced through an Article 4 direction in an attempt to control such forms of conversions. The use of the property for 6 self contained units would add to this pressure and weaken attempts to maintain a mixed and

balanced community over a wider area. 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.

21. The change of use has not resulted in any significant physical changes to the exterior of the property. The main sign of greater intensity of use is the increased number of entrances into the property but this small scale change results in little visual harm. The clutter of garden space, referred to by the Council, would be screened from public view by the boundary wall and the effect on the appearance of the locality would be negligible. The storage of an increased number of refuse bins at the rear of the property on the public highway could be unsightly. 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 outside the property to the detriment of the appearance of the street. To this limited extent criterion (i) of Policy H4 on visual appearance is not fully met.

*Effect on neighbour amenity*

22. 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. In this development no additional upper floor windows have been formed and overlooking would not be an issue. There is no on-site parking spaces and no on-street parking adjacent. Increased disturbance from vehicular activity would be unlikely. The development complies with the specific criteria of Policy H4 on neighbour amenity.
23. As to other considerations, a significant increase in the number of separate households and residents would be likely to lead to an increase in the number of comings and goings and activity and use of external space. However, there are mitigating factors to take into account. Not all residents and their visitors would have to use the front door because of the separate means of access to units 2, 3 and 6. The outbuilding has resulted in the garden amenity area being adjacent to public amenity space. The end terrace property could be used by up to 6 residents under Class C4 without the need for planning permission. Overall in this instance, I conclude disturbance to neighbouring occupiers would be slight. The internal layout results in bathroom/kitchen areas and the hall/staircase being adjacent to the party wall. Therefore whilst the Appellant has made no reference to carrying out any form of sound proofing, noise transfer through internal party walls probably would not be a particular issue.
24. In conclusion the change of use would have a slight adverse effect on neighbour amenity.

*Standard of accommodation*

25. The standards of space and level of facilities varies between the units. The Council has drawn particular attention to Unit 3 (the former garage). The floor area is approximately 14 sq metres in total, with some 11.2 sq metres for living, sleeping and cooking. The size of this self-contained unit does not

compare favourably to standards for HMO accommodation. In addition the adjacent external space is public space and the attached lock-up garage is not part of the property, factors which reduce the privacy for the occupant(s) of this unit.

26. The Council's supplementary planning guidance indicates that a communal amenity space should be large enough to accommodate the needs of all residents. The outbuilding has reduced the size of the rear garden and the remaining space is narrow and enclosed. In the Appellant's opinion the space is more suited to use by adults rather than a family. However, the self contained units suggest some of the space may well be taken up with bikes or bin storage. Access would not be convenient for the occupants of units 1, 4 and 5, which may well discourage use. The communal use of the garden would impinge on the privacy of unit 2 because the window to living and sleeping accommodation would be overlooked. These factors would be unlikely to be relevant with a Class C3 use and would be less of an issue with a Class C4 use. I conclude the amenity space is not satisfactory for the development.
27. These considerations alone show that by reason of the excessive level of subdivision the accommodation fails to achieve the high quality of design required by Policy D1.

### *Parking*

28. The Council's standards indicate a maximum total of 4.5 car parking spaces for the development, whereas no on-site parking is provided. Secure cycle parking is not provided, although there probably would be space for such a facility in the back garden. The Council has referred to parking restrictions on De Havilland Close, limiting the potential for on-street parking.
29. 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. The development is well placed to encourage the use of alternative modes of travel to the private car and is unlikely to cause significant pressure on local parking facilities. However, the absence of any parking is a concern because it would rule out the possibility of letting any of the units to a person who for health or mobility reasons may require the use of a car.
30. 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.

### *Conclusion*

31. 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)**

32. 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. The addition of the words 'including the rear outbuilding and the former garage' will improve the precision of the wording and enable the deletion of requirement (f). The positive requirement (b) to return the property to either a C3 family dwellinghouse or a Class C4 HMO is excessive. The Appellant has raised no objection to requirement (e).
33. 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 not produced any evidence to show which, if any, of the kitchenette facilities served the former authorised use or 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.
34. The appeal on ground (f) succeeds only in part.

### **Appeal on ground (g)**

35. The Appellant has requested a compliance period of a year to avoid disruption to tenants and to enable all existing tenancy agreements to be honoured.
36. No information has been provided of the tenancy agreements or the circumstances of the occupiers to support this ground of appeal. The physical works required are unlikely to be extensive. In the light of these considerations the compliance period of six months is reasonable. The appeal on ground (g) fails.

### **Conclusion**

37. 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



## Plan

This is Plan A referred to in my decision dated: 20.08.2013

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

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