The Planning Inspectorate

Appeal Decisions

Site visit made on 21 June 2022

by Katie Peerless Dip Arch RIBA

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

Decision date: 1 July 2022

Appeal A: APP/B5480/C/21/3266870
325 Hilldene Avenue, ROMFORD, RM3 8DJ

- 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 Barry Atkins against an enforcement notice issued by the London Borough of Havering
- The enforcement notice, numbered ENF/234/17, was issued on 11 December 2020
- The breach of planning control as alleged in the notice is the unauthorised material change of use of a dwellinghouse (class C3) to a house in multiple occupation.
- The requirements of the notice are to cease using the property as a house in multiple occupation.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) & (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B: APP/B5480/C/21/3266927
325 Hilldene Avenue, ROMFORD, RM3 8DJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Barry Atkins against an enforcement notice issued by London Borough of Havering.
- The notice, numbered ENF/234/17 was issued on 11 December 2020.
- The breach of planning control as alleged in the notice is the unauthorised conversion and use of the annexe to a self-contained unit of residential accommodation.
- The requirements of the notice are to: (i) cease using the annexe as a self-contained unit of accommodation; (ii) remove the new front door from the property and brick up the resulting opening in materials that match in colour and texture the host building; (iii) permanently remove all door locks or any other locking mechanisms from the interconnecting door between the annexe and host building and (iv) remove all materials, door(s), door frame(s), rubble and debris from the site as a result of undertaking steps (i), (ii) and (iii) above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) & (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decisions

Appeal A: APP/B5480/C/21/3266870

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already

carried out, namely the change of use to a house in multiple occupation at 325 Hilldene Avenue Romford RM3 6DJ as shown on the plan attached to the notice and subject to the following condition:

1) The premises shall be used for a house in multiple occupation for no more than 5 persons at any one time and for no other purpose in Class 4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Appeal B: APP/B5480/C/21/3266927

2. It is directed that the enforcement notice be varied by the deletion of requirement (iii) and the reference to it in requirement (iv). Subject to these variations, Appeal B 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.

Preliminary Matters

3. The appellant's arguments under the Appeal A - ground (b) (that the alleged development has not taken place as a matter of fact) appears to me to be more related to an appeal on ground (c), i.e. the change of use to a house in multiple occupation (HMO) does not require a grant of planning permission to authorise it.

4. His case appears to be that this is because the conversion was carried out before an Article 4 direction preventing the change of use from class C3 (single dwellinghouse) to class C4 (small HMO) was adopted by the Council in 2016. A class C4 HMO is defined as being one that accommodates between 3 and 6 people. I will therefore consider the merits of the ground (b) appeal together with an appeal on ground (c).

5. The Council's Private Sector Housing Team granted the appellant an HMO licence for the property in May 2018. This authorises a total of 7 occupants (5 in the main house and 2 in the annexe).

Main Issues

Appeal A

6. I consider the main issues in this case are:

   On grounds (b) & (c), whether the alleged breach of planning control has taken place as a matter of fact and, if it has, whether planning permission is needed to authorise it and, if these grounds fail;

   On ground (a), the effect of the development on the living conditions of: (i) existing and future occupants of the property (with reference to space standards) and their neighbours (with reference to noise and disturbance).

Appeal B

7. I consider the main issues in this case are:

   On ground (b), whether the alleged breach of planning control has taken place as a matter of fact and if this ground fails;

On ground (a), the effect of the development on: (i) the living conditions of existing and future occupants of the property (with reference to living standards); (ii) highway safety and (iii) the character and appearance of the surrounding area and if this ground fails:

On ground (g): whether the time for compliance is reasonable.

Site and surroundings

8. The appeal property is an end of terrace house that has been extended at the side on 2 floors to provide living space, including a kitchen area on the ground floor and a bedroom and bathroom above (under planning permission ref: P0092.16). This part of the house (the annexe) has its own staircase and doors at the front and rear. There is also access to the main house through a ground floor door leading into the kitchen.

9. The main house has a bedroom to the front on the ground floor and a kitchen to the rear. There is also access to the rear garden. On the first floor there are 3 rooms and a bathroom. The 2 front rooms have been used as bedrooms but the rear room (described as bedroom 4 in the Council's statement), is claimed to be used only for storage. It was locked at the time of my site visit and the appellant did not have a key to open it. I saw at my visit that the annexe and the ground floor bedroom were occupied but bedroom 3 was not. The room described as bedroom 2 in the Council's statement of case was said to be occupied by a single person but, again, the appellant did not have a key to open it.

10. The house is situated amongst other similar residential properties, set back from the highway and separated from it by an area of grass. The area to the front of the property is covered in hardstanding and can accommodate at least 2 cars. In the wider vicinity are a variety of leisure, open space and commercial uses and the site is close to a busy roundabout.

Reasons

Appeal A - grounds (b) & (c)

11. The appellant bought the property in 2015 when it was a single family dwelling and he confirms that he converted it to an HMO after purchase, with tenants moving in during the latter part of that year. Prior to the adoption of the Article 4 Direction in July 2016, planning permission would not have been needed for a change from a single family dwelling to a small HMO. Evidence provided by the appellant indicates that, after the conversion, there were 8 occupants of the property in 3 household groups who all moved in during 2015. I also saw at my site visit that the house is in an HMO use. The change to an HMO has consequently occurred as a matter of fact.

12. However, even though this change occurred before the Article 4 Direction came into effect, the HMO created at that time did not fall within class C4 and was in fact a 'large' HMO. This has a *sui generis* (or unclassified) use and would have required planning permission to authorise it at that time and this is still the case now. There is also nothing to indicate that this situation subsequently changed prior to the adoption of the Article 4 Direction.

13. Planning permission for the annexe was granted in June 2016 with the intention of providing more space for one of the tenant families and in 2018 it has been confirmed, through the issue of the HMO licence and the appellant's own evidence that 7 people have been living at the property.

14. Even if this number were to now be reduced to 6 or less, the change to an HMO would still require planning permission because of the effect of the Article 4 Direction. Consequently, there is no authorised HMO use of the property at present and there has been a material change of use undertaken without planning permission. The appeals on grounds (b) and (c) therefore fail.

Appeal B - ground (b)

15. When planning permission was granted for the annexe, there was no second front door included and there were conditions attached preventing the use of the annexe as separate residential accommodation and the addition of any additional external openings. A front door has now been inserted without planning permission and, whilst there is an internal lockable connecting door to the main house, the facilities within the annexe enable it to be used as an independent dwelling unit with no need for the occupants to enter the main house.

16. The appellant states that the unit part of the other residential accommodation in the property and that the allegation that it is a separate dwelling is therefore wrong. However, the unit is occupied, the physical layout would now allow it to be used in this way and there would be nothing to prevent the occupiers from doing this. I consequently conclude that the alleged breach of planning control has occurred as a matter of fact and the appeal on ground (b) fails.

Ground (a) – procedural matter

17. The property, including the annexe, has been granted a licence for an HMO for up to 7 people. It therefore seems to me that the HMO Licencing department of the Council considers that there is sufficient space within both parts of the building to accommodate this number satisfactorily without overcrowding.

18. However, 2 enforcement notices have been issued and the appeals on ground (a) seek planning permission for the breaches of planning control alleged in each separately. This means that, in Appeal A, planning permission is sought for a house in multiple occupation and, in Appeal B, for the use of the annexe as a separate unit of accommodation.

19. If ground (a) for Appeal B fails then, given my findings on grounds (b) and (c), the annexe would revert to being a part of the original house. It seems to me that, if this were the case, then it would then be for me to consider whether to grant planning permission for the whole property, including the annexe to change to an HMO.

Appeal B – ground (a)

20. Therefore, I will firstly consider the merits of the planning application for appeal B. As a self-contained dwelling, the size of the annexe does not meet the acceptable space standards set by the Department for Levelling Up, Housing and Communities, which require a minimum of 58m^2 for a 1 bedroom, 2 person, 2 storey dwelling. The annexe has an area of only 37m^2 and I consider that this deficiency, combined with the lack of any private external amenity space, means that the proposed retention of the unit as a self-contained dwelling is unacceptable.

21. The change also conflicts with the Council's adopted Supplementary Planning Document on residential extensions and alterations which notes that the Council will resist the change of an annex to a self-contained dwelling.

22. The Council has also cited a lack of parking space at the front of the property, but there appears to be room for 3 cars which would meet the required standard. Nevertheless, the Council is concerned that a separate residential use would lead to a demand to more on-street parking from visitors. However, I consider this to be a minor issue which does not attract any great weight against the grant of planning permission.

23. I note that the annexe has not been built in accordance with the approved drawings. As well as the insertion of the front door, the ground floor window is offset so that it does not line up with that on the first floor. In my view, these alterations, particularly the door, unbalances the elevation, in conflict with the design standards set by the Council's Core Strategy and Development Control Policies Development Plan Document 2008 (DPD) policy D61. The door also facilitates the use of the annexe as a separate dwelling and would make it difficult for the Council to monitor this use unless it was removed.

24. The appellant has not explained why he considers that the annexe should remain a self-contained unit, other than stating that he installed the front door to provide an additional means of escape. If, however, the annexe was used as part of the main house, there would still be escape routes from this part of the property – through the ground floor window, the rear door into the garden and through the kitchen into either the garden or to the main front door.

25. It also seems to me that any outstanding concerns about fire safety could be addressed through consultations with Building Control, who have apparently already certified the building before the door was installed, and who could advise on whether any further safety measures would be required if it were now to be removed. I therefore propose to refuse planning permission for the retention of the annexe as a separate dwelling, to protect the living conditions of future occupiers by ensuring its use remains part of that of the main house.

Appeal B – ground (g)

26. The appellant has appealed on ground (g), that the time for compliance is insufficient but has given no indication of why this is the case or how long he would consider a reasonable period. In these circumstances, I consider that the 3 months allowed by the Council is a reasonable period in which to carry out the physical works to the building which is what it would take to convert the annexe back to being an integral part of the house rather than an independent unit. The appeal on ground (g) therefore fails.

Ground (a) – Appeal A

27. Turning to Appeal A, the Council resists the conversion to an HMO on the grounds of an unacceptable impact on neighbours and unacceptable living conditions for the occupants. However, the extended house could easily accommodate a large family unit consisting of, for example, grandparents, parents and 2 or 3 children.

28. In that scenario, the day-to-day comings and goings of such a family and the impact this would have on their neighbours could be similar to that experienced when the property is used as an HMO. I have not been given any details of complaints from neighbours, which might have been expected if the unauthorised use was already causing problems, particularly as it has been going on since 2015. In this respect, I consider that there is no reason to refuse planning permission on the grounds of an unacceptably harmful impact on the neighbours.

29. However, it should be noted that occupation by a single family would be likely to retain the ground floor living space, whereas at present the only communal area available to the occupants of the main house is the kitchen and small garden. The occupants of the annexe have their own living space and kitchen but this is not available to the others living in the property.

30. At present, one of the first floor bedrooms remains empty, to comply with the limit on the HMO licence numbers which means the remaining 3 rooms have a total of 7 people in them. If these circumstances were to continue, I agree that the property would be overcrowded with restricted living space and the conditions for the occupants would be consequently sub-standard. This would conflict with policy 8 (vi) of the emerging Havering Local Plan and the standards set by the East London HMO Guidance.

31. However, I consider that that the use of the property as an HMO for up to 5 people would be an acceptable compromise. Although the house is not detached, it can already be used as a comparatively large residential property that would meet the second requirement of DCD policy DC4, which calls for a new HMO use to not give rise to greater levels of noise and disturbance than would an ordinary single family dwelling. Restricting the number would allow the occupants some more shared space and would be very unlikely to have any unacceptable impact on the neighbouring occupants.

32. I realise that the current licencing regime has agreed that the property could house 7 people, but this does not take into account the planning implications that I have considered in previous paragraphs. Planning permission will therefore only be granted for a class C4 HMO.

33. In the light of this finding, I shall delete the requirement to remove the lock from the door between the annexe and the main house, so that this area can be used as part of the HMO.

Conditions

34. I shall impose a condition to restrict the number of occupants of the property to prevent overcrowding and any unneighbourly impacts, for the reasons set out above.

Conclusions

35. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted subject to the aforementioned condition.

36. I also conclude that Appeal B should not succeed. I shall uphold the enforcement notice with the variations noted above and refuse to grant planning permission on the deemed application.

Katie Peerless

Inspector