The Planning Inspectorate

Appeal Decision

Site visit made on 29 August 2017

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 31 August 2017

Appeal Ref: APP/X1355/C/17/3169798
24 Nevilledale Terrace, Durham, DH1 4QG

- 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 Mrs Gabrielle Moore against an enforcement notice issued by Durham County Council.
- The enforcement notice was issued on 24 January 2017.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the land from domestic dwellinghouse (C3 use class) to a House of Multiple Occupation (C4 use class).
- The requirement of the notice is to permanently cease the use of the property as a House in Multiple Occupation (Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended).
- The period for compliance with the requirements is on or before the 30th June 2017.
- The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Preamble

1. The compliance period set out in the notice refers to the specified date of 30 June 2017, which is now in the past. However, that equated to a compliance period of approximately 4 months from the date the notice came into effect. Therefore, I shall vary the notice to reflect this period, a variation I feel able to make without prejudice to either party, particularly as I note there is no appeal on ground (g), that the compliance period is too short.

The appeal on ground (b)

2. This ground of appeal is that the matters alleged in the notice have not occurred. However, the appellant's case is that the material change of use was indeed carried out, but that it was carried out prior to the coming into effect of a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development)(England) Order, 2015 (Article 4 Direction). The alleged material change of use has clearly occurred as a matter of fact and the appeal on ground (b) must therefore fail.

3. However, I shall go on to consider the appellant's case on what should really have been an appeal on ground (c), that there has not been a breach of planning control. On this ground, the onus is on the appellant to substantiate her case, the relevant test being the balance of probability.

4. The Article 4 Direction came into force on 17 September 2016 and, from that date, removed the right to change the use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 to a use falling within Class C4 (houses in multiple occupation), without first obtaining planning permission.

5. The appellant completed the purchase of the appeal property on 12 September 2016. She was aware of the imminent coming into effect of the Article 4 Direction, having previously obtained the Council's advice on this matter. She has enclosed copies of 3 separate tenancy agreements with 3 students, dated 13 September 2016, and she indicates that the property was occupied prior to 17 September by 3 students, with a fourth moving in later. A Council Tax Bill, dated 10 February 2017, refers to the property as 'occupied only by students' from 13 September 2016.

6. Given that the date of completion of the purchase was the previous day, it is implausible that any significant physical changes were effected to the property prior to the date of the tenancy agreements. A material change of use would only have taken place when the appeal property was actually brought into use as a house in multiple occupation (HMO). Whilst the tenancy agreements clearly indicate an intention to use the property as a HMO, they are little indication of when the new use actually commenced. The appellant's own evidence is that the usual student tenancy agreement starts 1 July and runs to 30 June the following year and that students are rarely in residence before September or even October. In this case, there is little indication as to why there might have been a change to the normal student pattern of behaviour. For example there is no evidence from the occupants themselves as to when they actually took up residence.

7. The Council Tax Bill is similarly inconclusive as to the actual commencement date of the HMO use. It is likely that the relevant Council department relied on the tenancy agreements, as there is no indication that the property was inspected by that department prior to 17 September to ascertain the use.

8. Three close neighbours, who in September 2016 appear to have been keenly aware of the incoming Article 4 Direction, have stated that the property was unoccupied prior to the relevant date of 17 September. Mrs Wilkinson was a keyholder for the previous owner and both she and Ms Crichton stated that they entered the house on 13 September and that there was no electricity, floorboards were up and that it was a building site and uninhabitable. In response to a complaint of ongoing conversion works, the Council carried out a site inspection on 16 September and found builders on site, carrying out extensive internal refurbishing works. The view taken then by the Council was that the property was clearly unoccupied and uninhabitable. Mrs Wilkinson and a further neighbour, Mr Scott, stated that they knocked on the door many times during the evening of 16 September without reply and that the house was in darkness throughout.

9. The letter from the builder, Mr Delaney, adds little to the appellant's case. He indicates that building works continued into November and that he worked around the tenants, as the house was partly occupied during that period. However, his letter is very imprecise about dates and he gives no indication as to how many tenants there were or when any of the tenants actually moved in. His letter is therefore not inconsistent with the representations from neighbours

which indicate that white goods and flat pack furniture were delivered in late October/early November and that students moved in during November.

10. Despite the onus being on her to substantiate her case, the appellant has provided little evidence of any substance to indicate exactly when the property was actually brought into use as a HMO. The neighbours were clearly monitoring the property very closely and their evidence is consistent with that of the Council that, prior to the relevant date of 17 September 2016, the property was uninhabitable due to the extent of building works and was, indeed, uninhabited. On the balance of probability, it appears highly unlikely that one or more students would have moved in prior to September 17, earlier than appears necessary for term time, living alongside substantial building works and apparently without electricity. My conclusion is therefore that the concealed appeal on ground (c) must also fail.

Formal Decision

11. The enforcement notice is varied by deleting "On or before the 30th June 2017" and inserting "Within 4 months from the date this notice takes effect". Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

B.S.Rogers

Inspector