The Planning Inspectorate

Appeal Decision

Inquiry held on 18 June 2013
Site visit made on 19 June 2013

by Simon Hand MA

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

Decision date: 25 July 2013

Appeal Ref: APP/X5210/C/12/2187790
64 Fellows Road, London, NW3 3LJ

- 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 Welby Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN12/0706.
- The notice was issued on 11 October 2012.
- The breach of planning control as alleged in the notice is without planning permission: the unauthorized change of use of the property from a HMO to 31 self contained flats.
- The requirements of the notice are within a period of 6 months of the Notice taking effect: 1) The use of the above property as self-contained flats shall cease and the accommodation shall be rearranged as non self contained accommodation. 2) Remove any associated fixtures and fittings associated with the self contained units
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding 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.

Decision

1. The enforcement notice is corrected: by the deletion of the number "31" and the substitution of the number "26" in The Breach of Planning Control Alleged. Subject to this correction the appeal is allowed and the enforcement notice is quashed.

Background to the Appeal

2. No 64 has a long history of use as flats or as an HMO. The most recent planning application granted by the Council was for extensions and conversion from 20 bedsits and a self contained 1 bedroom flat, to 26 bedsits. These were described as "non-self-contained HMO letting rooms". The lawful use is therefore as a sui generis house in multiple occupation (HMO). The plans of the approved use, called 'set 1', showed 26 units, 24 with a sink and shower room, called 'washing facilities', and 2 with no facilities. All the units had cooking facilities but shared various WCs, and the two units in the roof shared WCs, showers and washing facilities.

3. This permission was implemented, and in 2011 the Council were satisfied that No 64 was a HMO more or less in accordance with the permission. Later, at the date the notice was issued, it is not contested that the number of units had been increased to 31, and all contained within them, kitchen facilities, showers, WCs and sinks as shown on plans 'set 2'. They were in effect self-contained.

At the time of the inquiry, further works had been carried out to reduce the number of units back down to 26, but all were still self-contained with respect to kitchens, showers, toilets and WCs as shown on plans 'set 3'. A further set of plans, 'set 4' were provided to show how the 26 units could be "de-self-contained", by switching doors around so that each en-suite was accessed from outside the respective unit, not from inside. The Council dispute that this is effective de-self-containment.

4. Originally set 4 was intended to show how the building could be made to comply with the requirements of the notice, but the notice does not require a reduction in the number of units from 31 to 26 but merely that the 31 units that exist are "rearranged as non self contained accommodation".

The appeal on ground (b)

5. The appellant argued that there had been no material change of use so the breach had not occurred as a matter of fact. There is no dispute that 31 units have been created and they have self-contained washing and toilet facilities. It was agreed that the argument as to whether this amounts to a material change of use is better considered under ground (c).

The appeal on ground (c)

Previous Appeal Decisions and c08/2010

6. The Council supplied an appeal decision relating to 92 West End Lane (APP/X5210/C/11/2149820). The lawful use of the building in that case was as an HMO. Three of those units had been turned into self-contained flats "in that they provide all the requirements for day-to-day living, that is, cooking facilities, bathroom facilities and living accommodation". The Inspector concluded unequivocally therefore there had been a material change of use by virtue of s55(3) of the Act, which is that the use as 2 or more dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use. The flats, when they were part of an HMO, had kitchen facilities and an unenclosed shower. Two of the flats now had kitchenettes, and ensuites with a shower and WC, while the third had those facilities plus a separate bed room. On the basis of the evidence before her, and this was a written representations appeal, the Inspector concluded, although it is not explicit in the decision, that this amounted to the creation of separate flats which were individual dwellings in planning terms and so there was a material change of use.

7. The appellant, by contrast, supplied the Charlotte Place decision (APP/X5210/X/10/2123828). This was a lawful development certificate and listed building appeal, but dealt with the same issues. Here five non-self-contained bedsits were converted into three s/c flats. It was agreed at that inquiry that each of the flats was now a separate planning unit, whereas the five bedsits had been a single planning unit, occupied as an HMO. However, the Inspector found this did not necessarily mean there had been a material change of use. Where an HMO is converted into flats with "only internal works and no increase in the number of units" there will only be a material change if there is change in the overall character of the use. To this extent the Inspector relied on *Richmond-upon-Thames LBC v SSETR & Richmond-upon-Thames Churches Housing Trust [2001] JPL 84* for the proposition that the extent to which a particular use fulfils a legitimate or recognised planning purpose is

relevant in deciding whether a change from that use is material. He thus considered the effect on the character of the building and the area and on the Council's policy objectives. He found these were minor and that there had been no material change of use.

8. The West End decision was made after the introduction of Circular 08/2010 *Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupation*. The Charlotte Place decision was also made after that circular was published but the application was made before. The Inspector thus explicitly ruled out considering 08/2010.

9. Annex A of c08/2010 describes the criteria for determining whether the use of a particular building should be classed as C3 which is a dwellinghouse that is not an HMO. It states

> "Premises can properly be regarded as being used as a single dwellinghouse where they are:
>
> • a single, self contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them;
>
> • designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse;"

The definition goes on to specifically exclude bed-sitting rooms where it says the "the planning unit is likely to be the whole building which would therefore be classified as a house in multiple occupation".

10. The appellant argues there are still some shared facilities. These are a washing machine and the garden. The house also has a single hot-water and central heating system, and a single wi-fi capability. Each resident also receives linen and some crockery. I agree that the shared facilities do not really bear upon the second leg of the definition, that the unit has been adapted for residential purposes. To my mind it is clear that each unit clearly offers the full facilities required for independent living. The shared elements are either useful extras or something that could be found in any large building that had been subdivided into separate flats.

11. In my view therefore, the units clearly meet the second part of the definition in that they adapted for residential purposes. However, the definition has two parts and self-containment does not necessarily mean that a separate 'planning unit' has been created. Neither does the issue of C08/2010 make any difference to the approach outlined in Charlotte Place. A large house in multiple occupation is not a "single dwellinghouse" for the purposes of s55(3) as it is a sui generis use so the approach taken in the West End Lane decision is not appropriate. The circular helpfully defines what it considers to be a bedsit or a flat, but nowhere does it suggest that the mere act of self-containment automatically triggers a material change of use. I shall thus adopt the approach in the Charlotte Place decision. Whether the change from the 26 units shown in set 1 to the 31 units shown in set 2 is has created 31 C3 units and whether the change is material and so requires planning permission is a matter of fact and degree.

12. The question of fact and degree depends on any external effects and on the impact on the Council's policies. Firstly however, there is the question of the 'fallback' position, to enable comparisons to be made. The Council did not consider that 'set 4' met the requirements of the notice. The key phrase is that "the accommodation shall be rearranged as non-self-contained accommodation". The Council argued that because there would still be 26 units, each next door to one of 26 bathrooms, each unit still had its own bathroom and so there were no shared facilities. The Notice does not require there to be shared facilities, simply that the units should be "non-self-contained". As a matter of fact that is what they would be. They would also be shared in the sense that if the occupant of unit 9 was having a shower and a friend who was over for a cup of coffee wanted to use the WC, there would be nothing from stopping him or her using the WC outside of unit 3 opposite. I do not think this materially different than if the appellant took out one bathroom per floor, so that there was no longer enough to go round and some people had to share. Consequently I consider that if 'set 4' is implemented the requirements of the Notice would be fulfilled. This then is the fallback position. The 26 non-self-contained units would be bedsits and the building as a whole would still be a sui generis HMO.

Impact on character

13. It was agreed there were no external alterations to the building so there were no Conservation Area issues. The Council did suggest there would be an increase in the comings and going from the building. The appellant was of the view that as there was no increase in the number of flats, there could be no such change. This is true with reference to the 'set 4' layout, but not to the 31 units in existence at the time of the notice. 5 more units represent nearly a 20% increase above the original 26 units and so also in the number of people coming and going. That said, it is only 5 more people, in an area with many flats, HMOs etc. I do not think the extra 5 units will produce significant extra comings and goings so that a material change of use would be triggered. I note this point was not pursued further by the Council. In particular there is no attempt in the Notice to reduce the number of units from 31 back to 26, that is an initiative of the appellant. There will thus be little or no impact on the character of the building or the area.

The Council's policies

14. Policy DP9 of the Camden Unitary Development Plan specifically supports the need for HMOs as there is a shortage of such accommodation in the borough. By contrast there is already an over-provision of 1 bed flats in the Borough and policy DP5 sets out a table that in terms of dwellings shows there is greatest need for flats with two or more bedrooms and a lower need for market rented 1 bed or studio flats. Thus the Council seek to resist the loss of bedsits (by which I mean HMOs) by their conversion to 1 bed flats. If a building is converted to 1 bed flats they would have to comply with the space standards set out in DP26 and the Camden Planning Guidance supplementary document. The minimum size for a 1 person s/c flat is 32sqm. The Council would also require a mix of flats with different numbers of bedrooms to comply with DP5.

15. It is the Council's contention that the appellant has created 31 (or 26) s/c 1 bed flats. These are all (except for one in the 26 unit scenario) considerably below the minimum 32sqm requirement. There is also no mix of flat sizes and so the development is wholly contrary to their policies. The appellant

maintains they have not created 1 bed flats, or even studio flats, in the sense the Council are using the term. What they have done is provide well appointed bedsits with s/c washing and toilet facilities which are still affordable to the same type of clientele as would use ordinary bedsits. Each exceeds or meets the minimum bedsit standard of 12sqm. None of the Council's policies have thus been contravened.

16. The purpose of the Council's policies is to protect the supply of affordable accommodation, represented by bedsits, in the Borough. They have plenty of 1 bed flats already, but a shortage of larger flats. They also have different space standards for bedsits and flats. Traditionally bedsits consisted of a single room for each occupant but with shared communal facilities. Thus a small room was acceptable as the occupant was not confined to that room for all their day-to-day living. 1 bed flats, by contrast were self contained. The occupant needed to use the flat for all their living requirements and so the flat needed to be bigger than a bedsit. Thus when a bedsit turns into a 1 bed flat it triggers the Council's housing mix and space standard policies. These are a clear set of policies, designed with a clear set of goals in mind.

17. Unfortunately, the rental market no longer relates to this straightforward approach. There is an entire range of 'products' available to rent, from traditional bedsits with almost all facilities shared, via those that share just washing facilities, to those with only WCs shared. All these are undoubtedly bedsits, and the buildings they are in would most likely be HMOs. However a shared WC is not a communal facility, and there is absolutely no reason why a person living in such a bedsit should put up with a space almost 3 times smaller than a person in a 1 bed flat, simply because he occasionally leaves the room to visit the WC. However, the Council do not want to insist that all bedsits should triple in size, as they would lose two thirds of their bedsit stock and their rents would increase, thus defeating the object of having a cheap stock of residential units available for people who can't afford 1 bed flats.

Rental levels

18. A key issue is therefore whether bedsits are actually cheaper than flats. The appellant provided a schedule of rents either achieved for the units currently occupied, agreed for those shortly to be occupied or target rents for those still empty. The average rent for all 26 flats I calculate to be £234.50, and the average of just those 14 that have been let is £246.57. In closings the Council suggested these figures were not reliable, particularly because they were more than the figures from a survey of tenants taken at the time the building was split into 31 units. I calculate the average rent of those who responded to the survey to be £249.60. It is true this is slightly higher than now, and there are 5 less units now, so some will have been enlarged. I do not think this invalidates the appellant's figures though, it is difficult to compare like with like, and rents change depending on the market, the demand and whether people can negotiate the rent down (hence 'target' rents). The Council had not sought to undermine the figures before and I have no reason now to assume they are not accurate.

19. The appellant also provided unchallenged evidence that the difference in rent levels between having properly self-contained facilities and those proposed in 'set 4' would be 5-10%. The non-self-contained flats would therefore be rented out at somewhere between £211.05 and £234.25 (that is £234.50 minus 10% and £246.57 minus 5%).

20. These figures are important. There was much evidence and discussion as to average rental levels in the Borough, and what a typical bedsit might fetch. The Council were concerned to demonstrate that the s/c units created by the appellant were out of reach of the target bedsit market. Regardless of how these units were classified, as bedsits, flats or whatever, they are not available to the traditional bedsit clientele, and so their conversion was contrary to the Council's policies designed to protect the supply of cheap bedsits.

21. I am not convinced by these arguments. I agree with the appellant that looking at averages is fraught with difficulty. A 1 bed flat above a shop in a less popular part of Camden might be cheaper than a smart bedsit in a trendy area and the appellant's evidence demonstrated this to be so. What is not in doubt is the Council's evidence that the weekly rent a household on median income in the Borough could afford is £190.70. Whatever the outcome of this appeal, the units at 64 Fellows Road will not be available for those people.

Conclusions

22. I am persuaded by the appellant that the units at the appeal site have not been turned into 1 bed flats in any real sense, but that they are well appointed bedsits. They would be let to the same clientele whether s/c or not, on the same short term tenancies and meet the same short term needs of single people in work who cannot afford to rent or buy more spacious one bed flats. The housing mix policy DP5 and space standard policy DP26 are thus not contravened. DP9 resists self-containment but it notes at 9.14 this is because bedsits are seldom large enough to be self-contained without a reduction in their numbers and increase in rents, neither of which has happened here. I do not think the underlying purpose of DP9 is contravened. As I have already determined, the difference between 31 and 26 units is minor and I consider the self-contained units are so similar to the non-self-contained units that the differences are immaterial so there has been no loss of units. The question of scale therefore does not arise. I conclude that the units are still bedsits; they have not become individual C3 uses. The building remains as an HMO and the changes made to the units are not material. There has been no material change of use and the appeal on ground (c) succeeds.

Other matters

23. A s106 unilateral undertaking was offered in the event the appeal succeeded on ground (c). This ensures the development remains car free, so there is no increased demand for on-street car parking and that none of the units can be sold, or leased on a lease longer than 12 months so as to remain available for short term renting.

24. Following measurements taken on site I am content that all the 26 units as converted meet the minimum standards for bedsits of 12sqm. The same cannot be said for the 31 unit version, as it is impossible now to verify those measurements, and some units were then less than 12m.

25. Much of the appellants arguments were based on 26 units in the building. They accepted that success on ground (c) would enable them to revert to 31 units, but they had no intention of doing so. Given the uncertainties over the sizes of the units in the 31 version and the fact that both parties agreed there would no problem of prejudice I shall correct the allegation in the notice to read 26 units. Thus success on the ground (c) appeal allows for 26 units only.

26. There is no need to consider the appeals on grounds (f), (g) or (a). Subject to the correction mentioned above I shall quash the notice.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

James Findlay QC
He called

Michele Glazebrook	BSc (Hons), CMCIEH, DMS
Igal Levy	BA (Hons)
George Vasdekys	MRTPI
Ross Lakani	BSC (Hons), MSc (Structures), MISE

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson of Counsel
He called

Kate Goodman	BA (Hons) DIP TRP
Hannah Parker	BA, Mplan

DOCUMENTS

1 Council's letter of notification
2 New 'set 3' plans with latest measurements
3 Draft s106 unilateral undertaking
4 Additional paragraph for Michele Glazebrook's summary
5 List of suggested conditions
6 Schedule of room rents
7 Draft s106 agreement
8 Explanation by Council of need for s106 agreement
9 Explanation by appellant why BREEAM condition unacceptable
10 Closing submissions on behalf of the Council
11 Closing submissions on behalf of the appellant