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Appeal Decisions

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Hearing held and site visit made on 10 January 2006

by Martin Joyce DipTP MRTPI

an Inspector appointed by the First Secretary of State

Date

01 FEB 2006

Appeal A: APP/J4423/C/05/2002582
94 Harcourt Road, Sheffield S10 1DJ

- 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 Thornsett Properties Limited against an enforcement notice issued by the Sheffield City Council.
- The Council's reference is 04/04632/CHU.
- The notice (Notice A) was issued on 12 May 2005.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the property from a dwellinghouse to a House in Multiple Occupation.
- The requirements of the notice are reduce the number of occupants of the property to a maximum of six persons.
- The period for compliance with the requirements is "30 June 2005".
- The appeal is proceeding on the grounds set out in Section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission also falls to be considered.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Appeal B: APP/J4423/A/05/1181542
94 Harcourt Road, Sheffield S10 1DJ

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Thornsett Properties Limited against the decision of the Sheffield City Council.
- The application Ref: 04/04632/CHU, dated 25 October 2004, was refused by notice dated 19 January 2005.
- The development proposed is a retrospective application for the alteration of a dwelling house to a House in Multiple Occupation.

Summary of Decision: No further action is taken.

Appeal C: APP/J4423/C/05/2002588
61 Harcourt Road, Sheffield S10 1DJ

- 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 Thornsett Properties Limited against an enforcement notice issued by Sheffield City Council.
- The Council's reference is 04/04849/CHU.
- The notice (Notice B) was issued on 12 May 2005.

- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the property from a dwellinghouse to a house in multiple occupation for seven occupants.
- The requirements of the notice are to reduce the number of occupants of the property to a maximum of six.
- The period for compliance with the requirements is "before 30 June 2005".
- The appeal is proceeding on the grounds set out in Section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission also falls to be considered.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Appeal D: APP/J4423/A/05/1181490
61 Harcourt Road, Sheffield S10 1DJ

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Thornsett Properties Limited against the decision of the Sheffield City Council.
- The application Ref: 04/04849/CHU, dated 15 November 2004, was refused by notice dated 19 January 2005.
- The development proposed is a retrospective application for the alteration of a dwelling house to a house in multiple occupation.

Summary of Decision: No further action is taken.

Procedural Matters

1. Both Section 78 appeals concern applications for development, a change of use of a single dwellinghouse to a house in multiple occupation, that has already taken place. The Section 174 appeals relate, respectively, to the same developments.

Matters Concerning the Notices

2. Both Notices incorrectly cite that the alleged breach of control falls within Section 171A(1)(b) of the Town and Country Planning Act 1990. The correct citation should be Section 171A(1)(a), as neither development concerns a breach of a planning condition. In addition, Notice A does not, as a matter of fact, specify a period for compliance as it merely states "30 June 2005". Notice B gives the period for compliance as "Before 30 June 2005", thus implying that the insertion of a date in Notice A, rather than a period, was a typing error.

3. The Council accepted that the above matters were erroneous but they agreed that they were correctable. The appellants did not dispute that appropriate correction could take place without causing injustice. In any event, it was accepted that a new period for compliance would need to be inserted, as the date of 30 June 2005 had now passed. This was a matter that would be more appropriately dealt with under ground (g). In all of the above circumstances, therefore, I shall correct the notices in respect of the erroneous citation of Section 171A(1)(b), using the powers available to me.

The Appeal Sites

4. The appeal properties lie on either side of Harcourt Road, close to the University of Sheffield. No 94, on the north-western side of the road, is a three-storey plus basement

semi-detached building. It is being used to house eight students, each of whom has a bedroom. There is a shared kitchen and lounge on the ground floor, two toilet/shower rooms on the first floor and a further toilet on the second floor. A room on the first floor, marked as a study for room eight on the application plan, was being used as a communal room at the time of my visit. It contained various items of fitness equipment.

5. No 61, on the opposite side of the road is a three-storey end-of-terrace property, housing seven students, each of whom has a bedroom. A communal lounge and kitchen are located on the ground-floor, and there is a shower room/toilet on each of the first and second floors.

THE APPEALS (A and C) ON GROUND (c) AGAINST NOTICES A and B

6. The appellants submit that planning permission is not required for the development that has taken place at the appeal properties as they contend that, whilst occupation of the property exceeds the number of residents provided for by Class C3(b) of the Town and Country Planning (Use Classes) Order 1987 (UCO), there has been no material increase in the intensity of the use of the property. This opinion is supported by the commentary on this provision in the Encyclopaedia of Planning Law, and also by an appeal decision made in respect of a similar case in Southampton in March 2005 (FSS Ref: APP/D1780/C/04/ 1162748). Moreover, reliance is placed upon the fact that the Council has chosen not to take enforcement action against similar usage of another property elsewhere in the city.

7. The Council submitted that the wording of Class C3(b) of the UCO was quite clear, and that any increase in the number of residents over six required planning permission. Additionally, whilst not disputing that the current occupants of the appeal properties lived together as a single household they considered that it is likely that there has been an increase in the amount of coming and going to each property, by both residents and visitors, giving rise to disturbance to the area, and that increased occupancy would lead to extra amounts of refuse being generated. They have not undertaken any survey to support such contentions but they considered that even a small increase such as this would lead to a cumulative and detrimental effect on the character of the area. In this context they referred to an appeal decision, dated 4 April 2005, concerning a proposal for a house in multiple occupation in Endcliffe Rise Road, Sheffield (FSS Ref: APP/J4423/A/04/1167924), where the Inspector considered that the change of use would have such an impact on the surrounding area.

8. In response, the appellants disputed that an increased number of residents of the appeal properties would necessarily lead to additional activity, especially if the occupants were a group of friends, as appeared likely in each instance. Indeed a property occupied by six unrelated people living independently could have a greater number of visitors if each had a separate group of friends. However, as with the Southampton case, it was a matter of fact and degree and they maintained that, in these appeals, the increase in occupancy had not triggered a material change of use.

9. In considering these submissions and contentions, I start with the factual position at the appeal properties, in terms of the manner of occupation of each. This can be summarised as follows:

   (a) The properties are each let on an annual basis; the current leases run from 1 July 2005 to 30 June 2006.

(b) They are let by way of a single lease to, respectively, groups of seven or eight students.

(c) The students collectively occupy each house, sharing all bills.

(d) The occupants of each property consist of a pre-formed group of students who approached the appellants with a desire to jointly rent a property.

(e) Each student has a separate single bedroom, save that one bedroom in No 94 Harcourt Road has a double bed, but none of the bedroom doors are lockable.

(f) There are no cooking or washing facilities in any bedroom; the students share such facilities in the kitchens and shower rooms of the two properties. There is also communal usage of a large lounge with sufficient seating for every resident at each property.

(g) There are single gas and electricity meters at each property.

10. From the above facts, and from my inspection of the two properties, I am in no doubt that the current occupiers of the two properties each live as a single household; indeed that fact is accepted by the Council without reservation. Nevertheless, it is a matter of fact that the number of occupants of each property exceeds, by one and two respectively, that specified in Class C3(b) of the UCO as comprising a use as a dwellinghouse when living together as a single household. However, the crucial question in these appeals is, in my opinion, whether the increase number of residents has lead to a material difference in land use planning terms, because otherwise there would be no material change of use requiring planning permission. This leads, therefore, to a consideration of whether the use of the appeal properties by either seven or eight occupants has lead to an intensity of use that has a materially different character from that of such usage by six residents. This is clearly dependent upon the particular circumstances of each case, as a matter of fact and degree. In this context, the appeal decision on which the Council rely is not relevant, and I place no weight on the fact that the Council have not taken enforcement action in respect of another property elsewhere in their area.

11. With regard to Appeal A, concerning No 94 Harcourt Road, the appeal property is a large semi-detached dwelling that has sufficient internal space and accommodation to comfortably house eight occupants, with each having their room. Kitchen, bathing and toilet facilities are all entirely adequate and there is both a large lounge and a further communal room, on the first floor, that are shared by residents. As for the question of increased impact on the surrounding area, including neighbouring occupiers, there is no evidence before me to indicate that the use has resulted in any specific complaints in respect of either noise or disturbance, or that there has been any untoward amount of activity. I am mindful that Harcourt Road has a significant number of properties in use as either shared houses or houses in multiple occupation, with only about 10% remaining as single family dwellings. Therefore it seems to me that the coming and going of either residents or visitors to the appeal property is likely to be indistinguishable from that which occurs throughout the street as a whole, and the Council has not provided any survey or other information to suggest otherwise. I also noted that, although there is no suggestion that any of the residents of the appeal property own cars, the street has parking controls, and that the Council's policy is not to issue parking permits to students. This appears to have the effect of maintaining adequate parking provision for other residents, and I noted significant

kerbside space at both my pre- and post-hearing visits. In any event Harcourt Road is close to the University and other local facilities, and is clearly a part of the city that has a long-established student population. It follows, from all of the above, that I am of the view that the occupation of 94 Harcourt Road has not lead to any significant increase in activity, noise, disturbance or any other matter such as to indicate that the intensity of use of the property as shared residential accommodation by eight persons is materially different from that which would occur if there were only six residents.

12. Turning to Appeal C, concerning No 61 Harcourt Road, my findings are essentially the same as those set out above with regard to Appeal A. The property is a large end-of-terrace house that can comfortably accommodate seven residents, each having their own bedroom. Communal facilities are similarly entirely adequate, and there is, again, no record of any complaint about the use, suggesting that it is impossible to tell it apart from a property that has only six residents. It follows that, without any specific evidence to show that the occupation by one additional resident has any impact in land use planning terms, there is no materially greater intensity of use than if it had been occupied by only six residents.

13. This leads me to conclude, on the balance of probability and on the particular facts of these cases, that the use of the two appeal properties by eight or seven residents living together as a single household is not materially different from a use of each property by six residents living together as a single household. Consequently, planning permission is not required for the use that it taking place at each property and the appeals on ground (c) succeed. The notices, as corrected, will therefore be quashed.

14. It follows from my decisions on ground (c) that the deemed planning applications and the appeals on grounds (f) and (g) in respect of Appeals A and C do not need to be considered. Additionally, in respect of the Section 78 appeals (Appeals B and D), I shall take no further action on those appeals in circumstances where I have determined that planning permission is not required for the development that was applied for.

Other Matters

15. All other matters discussed at the Hearing and raised in the written representations have been taken into account, including the Council's concern that a favourable decision for the appellants on ground (c) could set a precedent for a different form of occupation of either property by seven or eight residents which would be difficult to control. However, I do not share that concern as it seems to me that any difference in the effect of a different form of tenure of either property could be investigated with a view to deciding whether other types of occupancy were materially different from that prescribed in Class C3(b) of the UCO. This, and the other matters raised, does not, therefore outweigh the conclusions reached on the main grounds of these appeals.

Conclusions

16. From the evidence at the Hearing, and for the reasons given above, I conclude that the citation in paragraph 1 of the notices of Section 171A(1)(b) is incorrect, in that the alleged breach of control falls within the realms of Section 171A(1)(a). I shall therefore correct the notices to reflect this.

17. As to the appeals on ground (c), I am satisfied on the evidence that they should succeed. In view of the success on legal grounds, Appeals A and C under grounds (f) and (g), as set out

in Section 174(2) of the 1990 Act as amended, and the applications for planning permission deemed to have been made under Section 177(5) of the 1990 Act as amended do not fall to be considered. Additionally, I shall take no further action in respect of Appeals B and D, under Section 78 of the 1990 Act.

FORMAL DECISIONS

Appeal A: APP/J4423/C/05/2002582

18. I direct that the enforcement notice be corrected by the deletion, in paragraph 1, of the words "within paragraph (b) of Section 171A(1) of the above Act" and the substitution of the words "within paragraph (a) of Section 171A(1) of the above Act".

19. Subject to this correction I allow the appeal, and direct that the enforcement notice be quashed.

Appeal B: APP/J4423/A/05/1181542

20. In the light of the decision on Appeal A, I take no further action on this appeal.

Appeal C: APP/J4423/C/05/2002588

21. I direct that the enforcement notice be corrected by the deletion, in paragraph 1, of the words "within paragraph (b) of Section 171A(1) of the above Act" and the substitution of the words "within paragraph (a) of Section 171A(1) of the above Act".

22. Subject to this correction I allow the appeal, and direct that the enforcement notice be quashed.

Appeal D: APP/J4423/A/05/1181490

23. In the light of the decision on Appeal A, I take no further action on this appeal.

Mark Joyce

INSPECTOR

APPEARANCES

Mr R G Bolton BSc(Hons), Director, and Miss K Hulse BA(Hons) MA, Planning Assistant, of Development Land and Planning Consultants Ltd, represented the appellants.

Miss L Johnson BA(Hons) MRTPI, Planning Officer, represented the Local Planning Authority.

ADDITIONAL DOCUMENTS PRODUCED AT THE HEARING

Document	1	List of persons present at the Hearing.
Document	2	Letter of notification of the Hearing and list of persons so notified.
Document	3	Letters dated 12 May 2005, sent by the Council with the two enforcement notices, produced by the appellants.
Document	4	Extract from the Proposals Map of the Sheffield Unitary Development Plan, showing the appeal site and surrounding area, produced by the appellants.