Appeal Decision

Site visit on 24 February 2004

by John Whalley CEng MICE

an Inspector appointed by the First Secretary of State

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Date 03 MAR 2004

Appeal ref: APP/H5390/X/03/1128113

No. 60 Netherwood Road, London W14 0BG

- The appeal was made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal was made by Triangle Dealings Limited against the refusal of the London Borough of Hammersmith and Fulham Council to grant a Lawful Development Certificate, (LDC) in the terms applied for.
- The use for which a Certificate is sought is the use of the 1st and 2nd floors as self-contained bedsitting rooms.
- The application, (reference 2003/01619/CLP), dated 6 June 2003, was refused by the Council by a notice dated 7 August 2003.

Summary of Decision: An LDC is issued in the terms set out below.

Appeal property

1. The appeal property is a 3 storey plus basement terraced house in Netherwood Road, London W14. There are self-contained flats in the basement and on the ground floor. The appeal concerns the first and second floors only. At present, each of the 2 floors provides 2 non self-contained bedsitting rooms with a shared bathroom/WC on each floor. It appears that either of the bathrooms can be used by occupiers of either of the 2 upper floors. Each room has its own cooking facilities.

2. The application is for proposed works to facilitate the use of the 2 upper floors as 4 separate and self-contained bedsitting rooms, described by the appellants as studios. Each unit would have its own new private bathroom/WC, (a shower room/WC for one of the second floor units). The existing bathrooms would become a kitchen as part of the rear unit on each of the 2 floors. All the physical alterations would be internal to the property. There would be no external alterations.

My conclusions

3. In reaching my conclusions, I have had particular regard to Annex 8 of Circular 10/97, Lawfulness and Lawful Development Certificates.

4. It is assumed the basement flat, the ground floor flat and the non self-contained bedsitting rooms uses are lawful. The case of *Lipson v SSE and Cambridge CC [1975] 30 P & CR 28*, concluded that houses separately let in bedsitting rooms with shared bathrooms and WCs were aptly described as in multiple-paying occupation. The present layout of the upper 2 floors of the appeal property appears to fit that description.

5. If that is right, the existing lawful use of No. 60 therefore is as 2 flats, (two planning units), and a house in multiple occupation, (HMO), (third planning unit), *(Birmingham Corporation v MHLG and Habib Ullah 11 October 1963 [1963] 3 All E R 608); (Duffy and Banks v Pilling [1976] 33 P and CR)*. It is therefore proposed that No. 60 becomes

2 flats, (no change to basement and ground floor planning units), and 4 small self-contained flats or studios, (4 planning units).

6. Firstly, I look at the application of s.55(2)(a)(i) and (ii) of the Act. They say works which only affect the interior of a building, (i), or, and do not materially affect the external appearance of the building, (ii), shall not be taken, for the purposes of the Act, to involve development of the land. That is the position here, (para. 2 above).

7. Secondly, the use of the appeal building is as described in para. 5 above. It is not a single dwellinghouse which is to be divided into 2 or more dwellinghouses. So s.55(3)(a) of the Act is not relevant here.

8. Thirdly, I consider whether the change of the HMO use of the first and second floors of No. 60 to 4 flats amounts to a material change of use requiring planning permission. In the case of *Winton & Others v SSE & Guildford BC 27 January 1982,* the Court cited *Wakelin v SSE [1978] JPL 769,* and held that, whilst the mere sub-division of a planning unit did not, of itself, amount to a material change of use, the effect of such a split may, as a matter of fact and degree, constitute a material change of use.

9. Although the proposed changes here would increase the number of planning units, there would be no increase in the floor area of residential accommodation. There would be no significant change in the nature of the residential use of the building. The proposed units of accommodation would not facilitate occupation by more people than as now set out. In my view, those changes, which would amount to little more than the provision of private washing and bathing facilities would be, as a matter of fact and degree, of such little significance as to not cause a material change of use of the building at No. 60. I cannot see that those minor alterations would so affect the character of the residential occupation of the first and second floors of No. 60 that, for example, there would be significantly more activity in or around the property. Nor do I think there would there be more demand for on street car parking spaces, or more noticeable noise or disturbance caused by new residents.

10. The Council, in taking a contrary view on the need for planning permission, said the accommodation to be provided would be materially different from the existing non self-contained HMO accommodation. It would be prejudicial to their policy objective to provide low cost rented accommodation in the Borough. They said the existing layout of the first and second floors at No. 60 could provide low cost accommodation for small households without dependants who were at risk of being homeless, or it could provide homes for low paid workers. The Council were concerned that the proposed units could be let for higher rents or sold to owner occupiers, taking the accommodation out of the low cost rental market. They referred to now adopted UDP policy HO9 which says that: *"Development that would result in the loss of non-self contained shared residential accommodation will only be permitted if the development would be wholly for permanently available affordable housing in accordance with policy HO5".*

11. There may be good reasons for the Council to seek to retain low cost residential accommodation. But I am not concerned with the planning merits of the appeal proposal. Nor with assessing if the resulting small units of accommodation might well fall within a reasonable assessment of "low cost" accommodation. It is whether or not, on the facts and the degree of changes, the proposed works would bring about a material change of use of the property.

12. It is reasonable to assume that the policy HO9 reference to "Development" includes only changes or operations which require planning permission. It has no direct application

here, where I consider that, because no significant planning consequences would be caused, planning permission is not needed for the LDC application works. I do not regard the flats use to be brought about by the internal works proposed at No. 60 as materially different in character and scale to the present HMO use. The changes to the accommodation at No. 60 may be an improvement, resulting from the provision of private, rather than shared bathrooms. But that would be offset by a corresponding reduction in habitable room space.

13. Irrespective of local policy, if the changes to No. 60 were likely to bring significant changes to the character and amenity of the immediate area, the change of use would be material. I do not think that would happen here. Particularly as there would be no increase in the size of living space at No. 60, I consider that any externally discernible effects would be minimal.

14. As a matter of fact and degree, I conclude that the proposed alterations at No. 60 Netherwood Road do not need planning permission. My conclusion is that an LDC should be issued in respect of the proposal. I have considered all the other matters raised in the representations, but find they do not affect my decision.

Formal decision

15. In exercise of the powers transferred to me, I issue an LDC for use of the land described in the certificate. It is attached to this decision.

Information

16. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

INSPECTOR

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