



Appeal Decision

Inquiry held on 23 September 2009

Site visit made on the same date

by **Gloria McFarlane LLB(Hons)**
BA(Hons) Solicitor (Non-practising)

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

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Decision date:
16 October 2009

Appeal Ref: APP/D1780/X/09/2097252

16 Bassett Heath Avenue, Southampton, SO16 7FY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs S Kaur against the decision of Southampton City Council.
- The application Ref 08/01376/ELDC, dated 2 October 2008, was refused by notice dated 10 December 2008.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is "use of building as managers accommodation ancillary to the use of the main house as an HMO".

Summary of Decision: The appeal is dismissed.

Application for costs

1. At the Inquiry an application for costs was made by the Council against the Appellant. This application is the subject of a separate Decision.

Procedural Matter

2. All oral evidence was given to the Inquiry either under oath or by the witness having made an affirmation.

The Appellant's case – Main points

3. The building is the rearmost of a number of outbuildings within the curtilage of 16 Bassett Heath Avenue. It shares the outside space and the parking area and there is no separate planning unit. It was completed in 1988 under permitted rights of the main house. The building was let independently and an enforcement notice issued on 3 June 1993 prohibited its use as a dwellinghouse. An appeal against that notice was withdrawn on the basis that the Council accepted that its occupation was ancillary to the main house. By 1998 the Appellant was letting the main house which had effectively become a house in multiple occupation (HMO) with the Appellant and her family living in the building.
4. There is no application for an independent unit. The Appellant and her family, as managers of the main house, have occupied the building for more than ten years.

Whatever the use of the building may have been since 1993/4, and the Appellant concedes that at some time in the 1990s it was let to tenants for a year, no further action has been taken by the Council in respect of the use of the building.

11. It is an established principle that an enforcement notice must tell the recipient what he has done wrong and what he needs to do to put it right. The notice prohibits the use of the building as a dwelling; it is not concerned with the status of the building because the prohibited use is 'as a dwelling' and there is no qualification of this in any way by words such as 'separate' or 'ancillary'. There is no dispute that the building has the characteristics of a dwelling⁸ and that it has been used by the Appellant and her children as a dwelling. I therefore consider that the current use of the building is in contravention of the notice.
12. The Appellant also submitted that the building is not a separate planning unit, independent of the main house because the Appellant treats the whole site as one unit. It appears that no plan was attached to the application for the LDC but a plan was attached to the Council's decision which shows the relevant land to be the whole of 16 Bassett Heath Avenue. The planning unit for the enforcement notice and the LDC are one and the same and there can therefore be no argument that the building is a separate planning unit. The enforcement notice relates to the whole site and prohibits the use of the building as a dwelling which, using the ordinary meaning of the word, it is and there is no dispute about this. I do not find any merit in the Appellant's submissions in this respect.
13. I therefore consider that the use of the building as managers accommodation ancillary to the use of the main house as an HMO is not lawful because it constitutes a contravention of a requirement of an enforcement notice that is in force⁹.

Managers accommodation ancillary to the use of the main house as an HMO

14. It may be that I am wrong in my finding above. I will therefore consider the Appellant's contention that the use of the building is ancillary to the main house. Whether a use of land is ancillary or incidental is a matter of fact and degree and evidence was presented and submissions were made in respect of this aspect of the appeal.
15. The main house has a lawful use as an HMO for eight people following an application for a LDC dated 19 September 2003 which was granted on 23 September 2004¹⁰. The plan accompanying that application is in relation to the whole of 16 Bassett Heath Avenue but it does not show the footprint of the building¹¹. The Appellant makes no mention of the building in her statutory declaration in support of the application¹². I appreciate that the application was in respect of the main house but I find the omission of the building as the place in which the Appellant and her children were living to be surprising.

⁸ Statement of Common Ground paragraph 5.1

⁹ S.191(2) of the 1990 Act

¹⁰ Ref 03/01331/LDCE

¹¹ Document 2 and Statement of Common Ground paragraph 3.4

¹² Document 1.1 to Mr Lawrence's proof

20. I was referred to the cases of *Whitehead*¹³ and *Uttlesford District Council*¹⁴ but the facts of those cases are different from this case in a number of respects including in those cases the main houses were family dwellings, not HMOs.
21. I find as a matter of fact and degree for the reasons given above and all other matters raised that the use of the building as managers accommodation ancillary to the use of the main house as an HMO has not been proved on the balance of probability by the Appellant.

Conclusions

22. I have found above that the use of the building as managers accommodation ancillary to the use of the main house as an HMO is in contravention of an enforcement notice. I have also found, in the alternative and in addition, that the use of the building as managers accommodation ancillary to the use of the main house as an HMO has not been proved on the balance of probability by the Appellant.
23. For the reasons given above I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the building as managers accommodation ancillary to the use of the main house as an HMO was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

24. I dismiss the appeal.

Gloria McFarlane

Inspector

¹³ *Whitehead v SSE and Mole Valley District Council* [1992] JPL 561 – Doc 4

¹⁴ *Uttlesford DC v SSE and White* [1992] JPL 171 – Document 6 to Mr Lawrence's proof