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## Appeal Decision

Site visit made on 17 March 2020

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 March 2020**

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**Appeal Ref: APP/J0350/C/19/3239940**

**Land at 146 High Street, Langley, Slough SL3 8LF**

- 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 Victoria Yao against an enforcement notice issued by Slough Borough Council.
- The enforcement notice was issued on 24 September 2019.
- The breach of planning control as alleged in the notice is: (i) Without planning permission, the material change of use of the dwellinghouse on the land to self-contained flats ("unauthorised use"); (ii) Without planning permission, the erection on the land of a single storey side extension and an attached timber conservatory on the front elevation ("unauthorised works").
- The requirements of the notice are: (i) Cease the unauthorised use; (ii) Remove all kitchens and kitchenettes from the land except one from the dwellinghouse; (iii) Remove all doors, walls and partitions which facilitate the unauthorised use; (iv) Demolish the unauthorised works; (v) Remove from the land all materials, rubbish, debris, plant and machinery resulting from compliance with the requirements listed (i) (iv) (*sic*) inclusive.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: The appeal is allowed and the enforcement notice is quashed.**

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### Preliminary Matter

1. In the absence of a ground (a) appeal, arguments regarding the planning merits of what is alleged in the notice cannot be considered.

### Ground (e) appeal

2. At s172 (2), the Act requires copies of an enforcement notice to be served on the owner and on the occupier of the land to which it relates and on any other person with an interest materially affected by the notice.
3. The detached building at the appeal property is used as several self-contained units of accommodation, one of which is occupied by the appellant and her family. The Certificate of Service supplied shows that copies of the notice, addressed to the appellant, 'the owner' and 'the occupier(s)' respectively, were delivered personally to the property by a Council Officer on 24 September 2019. As a result, insufficient copies of the notice were delivered to enable occupiers of each unit in the building to receive one.

During my visit to the property, I observed that the units were not individually numbered and did not have individual letterboxes. Even so, it should have been possible to provide sufficient copies of the notice for the occupiers of each unit, particularly as the allegation refers to use of the building as self-contained flats.

4. I am given to understand that the Council advised the appellant to alert other occupiers of the building, with the notice copy addressed to 'the occupier(s)'. Nevertheless, the duty to serve the notice on the occupiers rests with the Council, not the appellant. I am given to understand that no part of the building is rated separately for Council Tax purposes and that the appellant had previously described the property as being used as a house in multiple occupation. However, this does not explain why sufficient copies of the notice were not provided for the occupiers of each unit.
5. Moreover, an enforcement notice is required to be served in accordance with s329 (1) of the Act. The methods of service set out therein include delivering the notice to the person on whom it is to be served or to whom it is to be given, or by leaving it at the usual or last known place of abode of that person. I am given to understand that all the notice copies delivered were handed to the appellant. As sufficient copies of the notice were not provided for the occupiers of each unit, copies cannot have been delivered to those occupiers or left at their usual or last known place of abode.
6. In any event, the service of an enforcement notice by addressing it to 'the occupier' is only provided for by s329 (2) of the Act where that occupier's name cannot be ascertained after reasonable enquiry. I am given to understand that the Council undertook a search of HM Land Registry prior to taking enforcement action. However, the tenants of a property are unlikely to be listed as having an interest on the Title Register. The Council could have tried to ascertain the names of all occupiers of the building, for example by serving a Planning Contravention Notice under s171C of the Act, but as far as I have been made aware they did not do so. As a result, I am not persuaded that the Council have made sufficient efforts to try and ascertain the names of the occupiers of each unit and address copies of the notice to them accordingly.
7. Due to the above factors, I conclude that on the balance of probability the notice was not served as required by s172.
8. At s176 (5), the Act provides that where it would otherwise be a ground for determining an appeal under s174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, that fact may be disregarded if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.
9. As occupiers of each unit were not served with copies of the notice by the Council, they were reliant on the appellant to make them aware of the notice, its implications and their right of appeal. I am not clear whether this occurred. I acknowledge that several occupiers made representations with the appeal. This shows that those occupiers were at least aware of the notice prior to submission of the appeal. However, that does not inevitably mean that the occupiers had all been provided with copies of the notice by the appellant. As a result, there is no assurance that the occupiers have been in receipt of a copy of the notice and its accompanying documentation. It follows that there is no assurance that all the occupiers have been afforded the opportunity to take

part in these proceedings as appellants and to fully argue why their appeals should be allowed.

10. Upholding the notice would have significant consequences for occupiers of the building, as it is likely to result in some or most of them having to find somewhere else to live after six months, or otherwise there would be significant changes to their living conditions. Consequently, there would be substantial prejudice if the appeal were to proceed without giving all the occupiers an opportunity to fully take part in the proceedings. It follows that it would not be appropriate for me to disregard the failure to serve all the occupiers.

11. Therefore, the ground (e) appeal succeeds.

### **Conclusion**

12. For the reasons given above I consider that the appeal should succeed on ground (e). Accordingly, the enforcement notice will be quashed. In these circumstances the appeal under grounds (f) and (g) does not need to be considered.

### **Formal Decision**

13. The appeal is allowed and the enforcement notice is quashed.

*Stephen Hawkins*

INSPECTOR