
Appeal Decision

Site visit made on 23 August 2016

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 13 October 2016

Appeal Ref: APP/B4215/C/16/3150510
3 Ingleton Avenue, Manchester M8 4QT

- The appeal is made by Dr Krishna Bastola under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: ENF/12646/15) issued by Manchester City Council on 14 April 2016.
 - The breach of planning control alleged in the notice is "the material change of use from a dwellinghouse (Class C3) to a House in Multiple Occupation (Class C4)".
 - The requirement of the notice is "Cease the use of the property as a House in Multiple Occupation (Class C4)"
 - The period for compliance with the requirement is nine months.
 - The appeal is proceeding on the ground set out in section 174(2)(a).
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Background and introductory matters

1. The breach of planning control is the change of use of the house from a house occupied by a single household (Class C3) to a house in multiple occupation (HMO) with not more than six residents (Class C4). The General Permitted Development Order normally grants planning permission for such a change of use, but in 2010 the Council made a direction under Article 4 of the Order, which removes the right to make this change throughout the whole of the City.
 2. The reports that brought the direction into force stated that there were high concentrations of houses in multiple occupation in only a few wards of the City, but that the direction had been applied to the whole of the City to ensure that the problems identified in the reports did not spread to other parts. The reports added that the direction "does not mean that all applications for change of use to a HMO will be refused: the Council will use the Core Strategy policy (once adopted) to determine applications, which does not rule out further HMOs in areas where concentrations are low".
 3. The house was not in one of the identified wards, or near to one, when the direction was made. It is still in a part of the City where the proportion of the housing stock that consists of houses in multiple occupation is low. (The number of licensed HMOs recorded in February 2016 in postcode M8 was only nine. I have no information about the number of HMOs that do not require a licence, but the Council have not disputed the appellant's claim that the overall number is low.)
 4. The Core Strategy policy referred to in paragraph 2 above was adopted in 2012 (Policy H 11). It reads as follows: -
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"Policy H 11

Houses in Multiple Occupation

Change of use from a C3 dwelling house to a C4 HMO will not be permitted where there is a high concentration of residential properties within a short distance of the application site falling within one or more of the following categories:

- Exempt from paying Council tax because they are entirely occupied by full time students.
- Recorded on Private Sector Housing's database as a licensed HMO.
- Any other property which can be demonstrated to fall within the C4 or sui generis HMO use class.

In cases where the concentration of such properties is significant but less high, the Council will examine property type and resident mix in more detail when considering an application for a change of use.

In areas of high concentration, extensions to HMOs (as defined in the Housing Act 2004) would not be permitted where this could reasonably be expected to lead to an increase in the level of occupation.

In parts of Manchester which do not have a high concentration of HMO/student housing but where the lack of family housing has threatened the sustainability of the community to the extent that regeneration activity with the specific intention of increasing the amount of family housing has taken place, there will be a presumption against changes of use which would result in the loss of a dwelling which is suitable for a family. Changes to alternative uses, including C4 and HMOs with more than six occupants, will only be acceptable where it can be demonstrated that there is no reasonable demand for the existing use.

The approach above will also be used for change of use to a HMO which is classified as 'sui generis'.

Notwithstanding the policy requirements set out above, all proposals for change of use of existing properties into houses in multiple occupation, and all proposals for conversion of existing properties into flats (which might not necessarily fall within Class C4), would be permitted only where the accommodation to be provided is of a high standard and where it will not materially harm the character of the area, having particular regard to the criteria in policy DM1."

5. An application to convert the house into a Class 4 use was refused by the Council in 2015 and an appeal against that decision was dismissed later in that year (Appeal Reference APP/B4215/W/15/3006637). The inspector dealing with the appeal identified the main issues as being the effect of the development on: -
 - i) The living conditions of the occupiers of the development applied for, with particular regard to external amenity space;
 - ii) The living conditions of occupiers of existing neighbouring dwellings with particular regard to noise and disturbance;

- iii) The character or appearance of the Crumpsall Green Conservation Area (the CA) with particular regard to provision for waste bins;
 - iv) The supply of an appropriate mix of housing types and the creation of mixed and balanced communities; and
 - v) On-street parking and traffic conditions in the locality, with particular regard to parking provision for the development.”
6. The inspector’s conclusions on these issues were, in summary: (i) the external amenity space was inadequate; (ii) neighbours’ living conditions could be harmed by the level of external activity, noise and disturbance; (iii) the character and appearance of the CA would be preserved; (iv) the development would not make a positive contribution to the neighbourhood, because it did not comply with policies which seek to give priority to family housing and resist the loss of dwellings suitable for families; and (v) it had not been shown that there would be a material increase in the demand for on-street parking.
7. The inspector’s overall conclusion was “that the harms outweigh the modest benefits of the scheme”.
8. The appellant has in the current appeal sought to address the concerns that led to the dismissal of the previous appeal by (a) increasing the amount of external amenity space, (b) offering to limit the number of occupants to five and (c) supplying further information relating to the planning policies.

Decision

9. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the change of use of 3 Ingleton Avenue, Manchester M8 4QT from a dwellinghouse (Use Class C3) to a dwellinghouse used by not more than six residents as a “house in multiple occupation” (Use Class C4).

Reasons for the decision

10. I agree with the previous inspector that the development has preserved the character and appearance of the CA and that there is unlikely to be a material increase in the demand for on-street parking, and I note that these matters are not raised in the reasons for the issue of the enforcement notice. The main issues in the current appeal are the issues (i), (ii) and (iv) listed in the previous appeal, which I will re-assess, taking into account the representations made in the current appeal. I have dealt with the issues in turn and then reached an overall conclusion.

The living conditions of the occupiers of the development applied for, with particular regard to external amenity space

11. The previous inspector considered that the internal amenities were acceptable, and I agree. However, she recorded that the only external amenity space for the occupiers was a narrow strip adjacent to the kitchen/living room, which she understandably considered to be inadequate.
12. The arrangements for external amenity space have now been changed. The area previously allocated for car parking has been added to the narrow strip to

form a larger amenity space, increasing the space provided from about 11.5m² to about 37.5m². The loss of the car parking area is in my opinion acceptable in view of the previous inspector's decision to disregard this area as a parking area and her conclusion that it had not been shown that there would be a material increase in the demand for on-street parking without it.

13. The space now provided has been enclosed by fencing to make it private and it is accessible to all the occupants of the house from the door of the lobby next to the kitchen/living room. In my view, it provides them with adequate external amenity space within the meaning of Policy DM 1 of the Core Strategy.

The living conditions of occupiers of existing neighbouring dwellings with particular regard to noise and disturbance

14. This issue was dealt with in paragraphs 11 to 14 of the previous decision. The inspector's reasoning was as follows: -

"11. It is acknowledged that the appeal property, occupied by a single household, could accommodate a family of six persons; and it cannot be assumed that the HMO would not be either well managed or that the behaviour of 'individual' residents would be disrespectful. However, the point at issue is the overall intensity of activity and the potential for it to erode the quality of life for nearby residents.

12. In this case, the comings and goings of occupants with potentially different lifestyles, patterns of work and social groupings could result in significantly more activity than might be expected from a single household. In addition, with the proximity of the hospital and the potential for the accommodation to be occupied, at least in part, by health care employees, some of whom might work shifts, occupants could be leaving and returning to the property late at night and in the early morning with the consequential prospect of increased disturbance to neighbours.

13. Moreover, given the limitations on the external amenity space described above, the small front forecourt could provide an opportunity for occupants, and their visitors, to gather. With anything more than a small group engaged in 'normal' conversation, raised voices and laughter, in close proximity to the windows of the neighbouring property, this could result in intrusive disturbance and an adverse effect on adjoining living conditions.

14. On balance, I conclude that the intensity and nature of the occupation as a C4 HMO use could result in a level of activity, noise and disturbance which would be harmful to the living conditions of occupiers of dwellings close by, contrary to provisions in Policies SP1, H11 and DM1 of the Core Strategy which seek to ensure a high standard of development that makes a positive contribution to neighbourhoods."

15. In the current appeal, the appellant suggests that this issue could be addressed by imposing a planning condition limiting the number of occupants to five. I do not consider that such a condition is necessary. The inspector's reasoning was based to a large extent on conjecture, whereas the change of use to Class C4 has now been in place for a considerable time without any evidence that problems of this kind have occurred (the only correspondence I have received from interested persons raises concerns about behaviour at some of the flats in

the surrounding area and makes no comment about activity at the appeal site). In addition, the limitations on the external amenity space have now been resolved.

16. In my view, the balance is now in favour of a conclusion that activity, noise and disturbance are unlikely to occur at levels that would unacceptably affect neighbours' living conditions and therefore be contrary to the planning policies referred to.

The supply of an appropriate mix of housing types and the creation of mixed and balanced communities

17. This issue was dealt with in paragraphs 19 to 25 of the previous decision. The inspector's reasoning was as follows: -

"19. Policy H3 of the Core Strategy seeks to prioritise family housing and other high value, high quality development in North Manchester where this can be sustained. Reflecting the aim to create sustainable communities with a mix of households Policy H11 seeks to manage changes from C3 Dwelling Houses to C4 Houses in Multiple Occupation to prevent further loss of C3 Dwelling Houses. It is a requirement of Policy H11 that the quality of design of an HMO is of a high standard.

20. In North Manchester 43% of housing consists of two bedroom houses or apartments and a Housing Need and Demand Assessment 2010 (Arc4) indicates that there is a need for family housing with three and four bedrooms. The Council submit that in this part of Crumpsall the number of family dwellings has been diminishing and that there is a large concentration of flats, HMO type accommodation and supported housing. They draw my attention to appeal APP/B4215/A/14/2223880 where the Inspector supported the Council's approach of seeking to retain family houses.

21. The appellant submits there are no HMOs in the area and only eight in the M8 area. Neither party has submitted evidence of the make-up of the housing stock in this locality. However, on my visit I walked around the local area and observed a significant concentration of properties in the vicinity of the appeal site which appear to have been converted into flats or otherwise subdivided.

22. From the plans and my observations of the building I consider that the appeal property could revert to a dwelling suitable for family occupation. There is no evidence to say that there would be no demand for it as a dwelling house.

23. There may be a large number of HMOs in South Manchester, but that is not to say that this C4 HMO would make a positive contribution toward rebalancing this. A C4 HMO might not accommodate any more people than a C3 dwelling house. It is close to North Manchester General Hospital and could provide convenient accommodation for doctors and staff working at the hospital, patients and visitors. But there is no evidence of a shortfall of accommodation for these purposes or that the Hospital supports the proposal. Therefore I attach very limited weight to these arguments.

24. I conclude that the use of No 3 as a C4 HMO increases the supply of smaller accommodation and results in the loss of a three bedroom dwelling that would be suitable for family housing. My earlier findings in respect of the lack of adequate external amenity space and potential adverse effects on neighbours' amenity mean that the development is not of a high standard and this adds to the harm.

25. The development is therefore contrary to provisions within Policies H3 and H11 of the Core Strategy which seek to give priority to family housing and resist the loss of dwellings suitable for families. In this way it fails the requirement of Policy SP1 of the Core Strategy to make a positive contribution to the neighbourhood."

18. I have re-appraised these paragraphs, taking into account the present situation and the further information available to me. My observations are as follows: -

- Policy H 3 is a policy that deals with new residential development. It says nothing about changes of use of existing houses to Class C4.
- Policy H 11 is the policy that specifically deals with the "Change of use from a C3 dwelling house to a C4 HMO" and it is therefore the primary policy against which the appeal should be assessed. It "does not rule out further HMOs in areas where concentrations are low" (see paragraph 2 above).
- Since the house is in a part of the City where the proportion of the housing stock that consists of houses in multiple occupation is low (see paragraph 3 above), the appeal falls to be assessed against the following parts of Policy H 11: -

"In parts of Manchester which do not have a high concentration of HMO/student housing but where the lack of family housing has threatened the sustainability of the community to the extent that regeneration activity with the specific intention of increasing the amount of family housing has taken place, there will be a presumption against changes of use which would result in the loss of a dwelling which is suitable for a family. Changes to alternative uses, including C4 and HMOs with more than six occupants, will only be acceptable where it can be demonstrated that there is no reasonable demand for the existing use." [I consider the second sentence here to be subordinate to the first, and therefore only to come into play when the circumstances set out in the first sentence apply. (See paragraph 9.53 of the Core Strategy.)]

"Notwithstanding the policy requirements set out above, all proposals for change of use of existing properties into houses in multiple occupation, and all proposals for conversion of existing properties into flats (which might not necessarily fall within Class C4), would be permitted only where the accommodation to be provided is of a high standard and where it will not materially harm the character of the area, having particular regard to the criteria in policy DM1."

- The Council have not maintained that the house is in a part of Manchester "where the lack of family housing has threatened the sustainability of the community to the extent that regeneration activity with the specific intention of increasing the amount of family housing has taken place". The

"presumption against changes of use which would result in the loss of a dwelling which is suitable for a family" therefore does not arise and the second sentence referred to above does not come into play.

- Accordingly, Policy H 11 only indicates that the appeal should be assessed in relation to the standard of accommodation and the effect on the character of the area, with particular regard to the criteria in Policy DM 1.
 - It is unclear to me why the previous decision makes reference to flats in the area when discussing the number of HMOs or why the appeal reference APP/B4215/A/14/2223880 is relevant when it is a decision relating to flats.
 - Evidence has now been provided that adds weight to the argument referred to in paragraph 23 of the previous decision. This consists of an email from the Hospital indicating that there is an unmet need for off-site staff accommodation and fully supporting the appellant's case and a letter of support from a consultant doctor living in the house.
 - The "earlier findings" referred to in paragraph 24 of the previous decision are no longer a concern, following my conclusions on issues (i) and (ii).
19. My re-appraisal has therefore led me to the conclusion that "The supply of an appropriate mix of housing types and the creation of mixed and balanced communities" is not a determining issue in the current appeal. The outcome of the appeal depends in my view on the assessment called for by the final paragraph of Policy H 11, namely that "all proposals for change of use of existing properties into houses in multiple occupation ... would be permitted only where the accommodation to be provided is of a high standard and where it will not materially harm the character of the area, having particular regard to the criteria in policy DM1".
20. Policy DM 1 is a general development policy, which states that all development should have regard to a list of specific issues. The issues listed that are of significance in this appeal are the following: -
- Development should have regard to the character of the surrounding area.
 - Effects on amenity, including ... noise ... and traffic generation.
 - Adequacy of internal accommodation and external amenity space.
 - Refuse storage and collection.
21. The surrounding area is characterised by a mixture of residential properties of various styles and types, several commercial premises, a medical centre and the Hospital. The change of use of the house from Class C3 to Class C4 has had no visible impact on the appearance of the house. There is no evidence that material harm has been done to the character of the area. Its effect on amenity is acceptable for the reasons already given. The internal accommodation and the external amenity space have been found to be adequate. Refuse continues to be stored in bins on the forecourt, as it is at other terraced houses in the area, and it is easily collected from there.
22. The "high standard" of accommodation called for by Policy H 11 is not defined in the Core Strategy. The General Permitted Development Order does not set

any standard when granting planning permission for changes of use from Class C3 to Class C4 and the Article 4 Direction was not made for this purpose. What the term means, it seems to me, depends on subjective opinion.

23. The appellant has listed the works that have been carried out in connection with the change of use of the house to Class C4. These include refurbishment to meet current Building Regulations, quality loft insulation, double glazing, measures to reduce water consumption, energy-efficient lighting and solar panels. The consultant doctor has recorded her satisfaction with the facilities provided within the accommodation, which include satellite television and broadband, as well as the usual kitchen and bathroom facilities. In my opinion, it is reasonable to conclude in this instance that the "high standard" of accommodation called for by Policy H 11 has been provided.

Overall conclusion

24. For the above reasons, I have found that there is no conflict with any of the Core Strategy policies. There are insufficient reasons to withhold planning permission. The appeal has therefore succeeded and planning permission has been granted. The Council have not suggested that any planning conditions should be imposed in this event and I do not consider that any are needed.

D.A.Hainsworth

INSPECTOR