
Appeal Decision

Site visit made on 16 December 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 06 January 2017

Appeal Ref: APP/Y5420/C/16/3153308

Land and building(s) known as 13 Whittington Road, London N22 8YS

- 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 Mr Adrian Creasey against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 24 May 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the dwellinghouse to a House in Multiple Occupation (C4 HMO).
 - The requirements of the notice are to cease the use of the property as a HMO.
 - The period for compliance with the requirements is four (4) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld as corrected

Procedural Matters

1. The breach of planning control alleged at paragraph 3 of the notice is the material change of use of the dwellinghouse to a House in Multiple Occupation (C4 HMO). In the requirements at paragraph 5 of the notice, the description of the use to be ceased is simplified to "HMO". Whilst the requirements of the notice are clear, it is important that the requirements correlate precisely with the breach of planning control alleged in the notice. I shall therefore correct the notice by replacing the abbreviated description of the use to be ceased in paragraph 5 with the full description at paragraph 3 of the notice. It is clear from the grounds of appeal that the appellant has understood the requirements of the notice and I am satisfied that no party would be caused injustice by correcting the notice in this respect.
 2. In paragraph 4 of the notice, it is indicated that it appears to the Council that the breach of planning control alleged in the notice has occurred "within the last FOUR years". However, Section 171B of the 1990 Act provides that where there has been a breach of planning control consisting of the carrying out without planning permission of building, engineering, mining or other operations, or the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In the case of any other breach of planning control, Section 171B indicates that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
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3. The breach of planning control alleged in the notice is neither the carrying out of building, engineering, mining or other operations, nor the change of use of the building to use as a single dwellinghouse. For the purposes of Section 171B of the 1990 Act, it must therefore fall within the description of "any other breach of planning control", such that the relevant period after which no enforcement action may be taken is ten years beginning with the date of the breach, rather than the four years stated in the notice. Given that there is no appeal on ground (d), and that demonstrating that the breach of planning control commenced more than ten years ago would be more onerous than for the four years stated in the notice, I am satisfied that the notice can be corrected in that regard without causing any injustice to any party. I shall correct the notice accordingly.

The appeal on ground (a) and the deemed planning application

4. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated three substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
- whether the use of the property as a House in Multiple Occupation is acceptable in principle, having regard to the development plan for the area
 - whether the use of the property as a House in Multiple Occupation provides adequate living conditions for current and future occupiers, and
 - the effect of the development on the living conditions of the occupiers of surrounding residential properties.

Principle of the use of the property as a House in Multiple Occupation

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be in accordance with the plan unless material considerations indicate otherwise. In this case, the development plan for the area includes the saved policies within the London Borough of Haringey Unitary Development Plan (UDP), two of which are of particular relevance to this appeal: Policy HSG6 Houses in Multiple Occupation (HMO) and Policy HSG11 Restricted Conversion Areas.
6. Policy HSG6 of the UDP provides that planning permission will be granted for houses in multiple occupation where, amongst other things, (a) the property to be converted is of an appropriate size, defined in the policy as more than two storeys and with a floor area greater than 120m²; and (c) the proposal would not result in more than 20% of houses in the street being HMO and/or conversions. Policy HSG11 re-affirms that permission will not be granted for conversions where conversions and/or HMO already equal 20% of the properties in a street.
7. The appeal property is a two-storey terraced house with, the Council calculates, a floor area of some 112m². That figure has not been disputed by the appellant. The current use of the appeal property therefore immediately fails to accord with the criteria specified at (a) in Policy HSG6 of the UDP by reason of the shortfall in floor area against the minimum specified in the policy. The Council has also used the Council Tax Valuation records to show that of the

60 properties in Whittington Road, 30 have already been converted into flats or HMOs, equating to 50% of the total. This figure, which again has not been challenged by the appellant, significantly exceeds the maximum of 20% of properties specified in Policies HSG6 and HSG11 of the UDP.

8. The use of the appeal property as a HMO does not, therefore, accord with Policies HSG6 and HSG11 of the UDP. The appellant considers that the appeal property is suitable for use as a HMO, having regard to the mixture of commercial and residential uses in the road, but does not address the failure to accord with the policies in the UDP in his evidence. Moreover, whilst I noted some commercial activities in other parts of Whittington Road, particularly close to the junction with Bounds Green Road, in the immediate vicinity of the appeal property the use is predominantly residential.
9. I therefore conclude that the use of the property as a HMO is not acceptable in principle, having regard to the development plan for the area. In particular, for the reasons stated above, the use of the property as a HMO is contrary to Policies HSG6 and HSG11 of the UDP. Although not part of the development plan, Policies DM16 and DM17 of the emerging Development Management Development Plan Document (DPD) also provide, amongst other things, that conversion to a HMO will only be permitted where gross internal floor area of the existing dwelling greater than 120m². The current use of the appeal property therefore fails to accord with these emerging policies.

Living conditions for current and future occupiers

10. Policy SP2 of the Haringey Local Plan (Local Plan) requires, amongst other things, that new residential development complies with the housing standards set out in the Council's Housing Supplementary Planning Document 2008 and the LA Housing Space and Child Play Standards 2009. However, I have not been provided with copies of those documents or any later documents that may have superseded them. Neither have I been provided with any assessment of the room sizes in the appeal property against the standards set out in those documents. Policy S11 of the Local Plan is a general design policy that requires all new development to create buildings that are of high quality.
11. I noted during my site inspection that the accommodation within the appeal property included a kitchen with separate dining area on the ground floor, with a bathroom and separate toilet on the first floor. The size of the bedrooms varied considerably. Some of the rooms, particularly those on the ground floor, were of a reasonable size. Other rooms, notably some of those on the first floor, were smaller in size. Most of the bedroom offered a reasonable outlook. However, in the absence of details of the minimum room sizes specified in the documents referred to in Policy SP2 or the later equivalents, I have no means by which to assess the quality of the accommodation provided.
12. I am therefore unable to reach a definite conclusion as to whether the current use of the appeal property accords with Policies SP2 and SP11 of the Local Plan although, in overall terms, I note that the floor area of the property is below the minimum of 120m² specified in Policies HSG6 and HSG11 of the UDP. This in itself is an indication that the current use of the appeal premises is unlikely to provide adequate living conditions for current and future occupiers in terms of minimum room sizes.

Living conditions for current and future occupiers of surrounding residential properties

13. It is evident from the representations received from local residents and the Bowes Park Community Association that the conversion of properties in Whittington Road to flats and HMO's is perceived as having a harmful effect on the amenities of occupiers of surrounding residential properties as well as the character of the area. Specifically in relation to the use of the appeal property as a HMO, the occupiers of the properties on either side complain of noise disturbance, both during the day and at night, as well as the inconsiderate parking of cars. Both occupiers also refer to rubbish being deposited in the front garden rather than in the waste bins, which is said to attract foxes and vermin, and that both the front and rear gardens are unkempt.
14. At the time of my site visit, there were two waste bins in front of the property and there was no rubbish in the front garden of the appeal property. The garden itself was relatively tidy, albeit not well tended. Nevertheless, this was only a snapshot in time and the appellant has provided no evidence to counter that in the written representations from local residents in terms of rubbish being deposited in the front garden or the other problems referred to in those representations. Indeed, having regard to the attention to detail and the consistency of the accounts submitted by local residents, I am satisfied that the use of the appeal premises as a HMO is causing the occupiers of surrounding properties genuine concern and is detracting from the amenities previously enjoyed by those occupiers in all these respects.
15. I conclude that the use of the appeal property as a HMO unacceptably harms the living conditions of the occupiers of surrounding residential properties. I therefore conclude that the development is contrary to Policy HSG6 of the UDP which, at criteria (d), indicates that planning permission will not be granted for a HMO where the use as an HMO would harm the amenity or character of the surrounding area or cause adverse parking problems.

Conclusion on ground (a)

16. Having regard to the above, I find that the use of the property as a HMO is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted. Accordingly, the appeal on ground (a) fails.

The appeal on ground (g)

17. The ground of appeal is that the period for compliance specified in the notice falls short of what reasonably be allowed. The period for compliance specified in the notice is four months.
18. The appellant explains that securing vacant possession of a property would be time -consuming, given that the current occupiers each hold short term tenancy agreements. However, I have not been provided with copies of the tenancy agreements held by the tenants at the appeal property or details in relation to those tenancy agreements in terms of the notice periods required by either side. In the absence of that information, I have no means of assessing how problematic it might be to secure vacant possession or how long that

might take. I am therefore not persuaded, on the information before me, that a period of four months is too short to secure compliance with the notice or that the period of four months specified in the notice is not proportionate to the breach of planning control that has occurred.

19. Accordingly, the appeal on ground (g) fails.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Formal Decision

21. It is directed that the enforcement notice be corrected by:

- deleting the words “within the last FOUR years” in paragraph 4.1 of the notice, and replacing them with “within the last TEN years”, and
- deleting the term “HMO” at paragraph 5 of the notice and replacing it with the words “House in Multiple Occupation (C4 HMO)”.

Subject to those corrections, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR