The Planning Inspectorate

Appeal Decision

Site visit made on 26 April 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 20 June 2017

Appeal Ref: APP/Y5420/C/16/3159862
The land and building(s) known as 56 Cavendish Road, London, N4 1RS

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr C Markides against an enforcement notice issued by the Council of the London Borough of Haringey.
- The notice was issued on 2 September 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to a House in Multiple Occupation.
- The requirements of the notice are:
  - I) Cease the use of the premises as a House in Multiple Occupation.
  - II) Remove all fixtures and fittings that facilitate the use of the premises as a House in Multiple Occupation:
    - Remove the kitchen sinks, kitchen cupboards and washing machine/fittings from all bedrooms within the premises.
  - III) Clear all debris and material from the site resulting from compliance with requirements i) and ii) of this notice.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in s174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Decision

1. The enforcement notice is varied by, in paragraph 5, deletion of "Three (3) months" and substitution of "Six months" as the time for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Preliminary matters

2. The allegation, at paragraph 3 of the notice, concerns a material change of use of the premises to a House in Multiple Occupation [hereafter "HMO"]. However, the allegation does not state the previous use from which the change of use has occurred. From the evidence, I understand the previous use (which the Council describes as the "lawful use") to have been a single family dwelling. I shall deal with the appeal on that basis.

3. Paragraph 4 of the notice states that it appears to the Council the breach has occurred "within the last 4 years". However, in the case of a breach which alleges a material change of use (which is not a change of use to a single

dwellinghouse) the relevant time period for enforcement is ten years.[1] Notwithstanding, the matter is of little consequence as the appellant has stated that the use commenced in March 2015[2] (only eighteen months or so before the issuing of the notice) and no appeal has been brought on ground (d)[3]. The notice has been issued in time. As the matter does not go to the effect of the notice, I do not consider it necessary to make any correction in these overall circumstances.

The appeal on ground (a) and the deemed application

Planning policies

4. The development plan is comprised of the London Plan [hereafter "LP"] and the saved policies of the Haringey Unitary Development Plan [UDP]. Policy 3.8 LP seeks to provide for a range of housing choices to meet local needs. Policy HSG6 UDP recognises that HMOs form an important source of low cost accommodation whilst, at the same time, seeks to protect a stock of family housing within the borough. The policy sets out criteria within which permission will be granted. Criteria (a) and (b) seek to limit conversions within restricted areas to properties of more than two storey height with a floor area of more than 120m². Criterion (c) seeks to avoid an over intensification of HMOs (i.e. more than 20% of houses) in any particular area/street and criterion (d) seeks to protect the amenity and character of the area and avoid adverse parking conditions.

5. Policy 3.5 LP seeks to ensure new housing is of high quality design that (amongst other things) has adequately sized rooms and efficient room layouts which are functional and fit for purpose.

6. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.[4]

7. The National Planning Policy Framework [hereafter "the Framework"] sets out the Government's planning policies for England and how it expects these to be applied at local level. The Framework seeks to achieve sustainable development by (amongst other things) widening the choice of quality homes (paragraph 9). Section 6 gives guidance on delivering a wide choice of high quality homes. Section 7 is concerned with requiring good design which contributes positively to making places better for people including by (amongst other things) optimising the site's potential to accommodate development. Paragraph 207 encourages an effective and proportionate approach to enforcement. National policies as expressed in the Framework are important material considerations for the appeal.

8. HSG6 UDP (saved in 2013) pre-dates the Framework although is in conformity with it and therefore is capable of carrying substantial weight. The LP policies post date the Framework, are up to date and capable of carrying full weight.

[1] The time limits for the enforcement of different types of breaches are set out in s171B.
[2] The date at which the use commenced was given by the appellant in his response to the Planning Contravention Notice.
[3] An appeal on ground (d) is that, at the date the notice was issued, no enforcement action could be taken in respect of the breach.
[4] S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

9. Reference has been made to the Council's evolving Development Management DPD [hereafter "DPD"]. Policy DM1 seeks to ensure new development achieves a high standard of design which (amongst other things) enhances quality of life and delivers sustainable development. The DPD has been through independent examination. The Inspector's report, published in April 2017, found the DPD to be sound with no main modifications identified for policy DM1. Policy DM1, therefore, is capable of carrying significant weight.

Main issues

10. Having regard to the planning policies, statutory requirement and submissions made by the parties I consider the main issues in the appeal on ground (a) and the deemed application to be:

    i. Effect upon the interests of providing for a housing mix that meets local needs;

    ii. Effect upon the living conditions of the occupiers of the HMO, in particular with regard to living space and noise.

Effect on housing mix

11. The appeal property is sited within a restricted area where an Article 4 Direction takes away permitted development rights to change the use of dwellings (Use Class C3) to HMOs for up to six residents (Use Class C4).[5] Policy HSG6 does not preclude entirely, within restricted areas, the change of use of a dwelling to a HMO but seeks to restrict such developments to larger properties i.e. those of more than two storey height and having a floor area of more than 120m². Whilst the property, in this case, is of more than two storey height I cannot be sure that it is of the appropriate floor area as no calculations of floor area have been provided.

12. Irrespective of whether the property is of an appropriate size in this restricted area, the policy is clear that the granting of permission should not in any event result in more than 20% of houses in the street being HMOs and/or conversions.

13. The appellant has argued that, even with the appeal development, Cavendish Road remains well stocked with family dwellings. The Council's HMO licensing register reveals only five other HMOs. However, this record is of completed registrations and is not necessarily conclusive of the number of all HMOs in the street. Additionally, it does not include other types of conversions.

14. The appellant has conducted a survey over part of the street (undertaken by counting door bells on front doors). Of the number of properties surveyed the appellant calculates that 63% appeared to be in use as family dwellings. The Council has produced an extract from the VOA council tax records which covers all the properties in the street. On the basis of this record, together with the HMO licensing register record supplied by the appellant, the Council calculates that approximately 57% of properties in the street are family dwellings the remainder being HMOs and/or conversions.

[5] Class L to Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) [" the Order"] provides for the change of use of a dwellinghouse (Use Class C3) to a use as a HMO by not more than six residents (Use Class C4) as permitted development. The Article 4 Direction removes those rights within the area in which the appeal site is located. Whilst the Article 4 Direction was made under an earlier version of the Order it has continued effect.

15. Whilst the ratio of dwellings to HMOs and/or conversions has not been agreed between the parties I am satisfied, on the evidence, that the number of family dwellings falls considerably short of, and the number of HMOs and/or conversions considerably exceeds, what is envisaged by the policy. There is, thus, already an imbalance in the desired housing mix which is added to by the appeal development.

16. The intensification of HMO accommodation within the area is likely to lead to (amongst other things) increased activity and noise, additional recycling and refuse bins on property frontages and deterioration in community cohesion due to a higher turnover of occupants. From what I saw at my site visit, and from the comments made by interested parties, these effects are already evident in Cavendish Road and are increased by the appeal use.

17. Whilst close to a station and transport corridor, neither do I rule out that the development gives rise to additional vehicular activity (including by residents', visitors' and servicing vehicles), and places additional pressure upon on-street parking which is already restricted and in high demand.

18. These effects, cumulatively, have a negative impact upon the character and appearance of the area as a family living environment and, in turn, if they go unchecked are likely to result in the area being less attractive for family homes thus threatening the retention of family housing stock.

19. The appellant argues that the development provides low cost accommodation for which there is a need. However, the Council's policy seeks to protect family housing as well as providing for an element of HMO accommodation and sets the threshold for HMOs and/or conversions at 20% of properties within any particular street.

20. There is no evidence to indicate that housing needs have changed over the life of the policy, for example because there is an over supply of family housing or an overriding need for HMO accommodation. I have no reason to doubt that the 80:20 ratio envisaged by the policy is still an appropriate measure to provide for a housing mix to meet local needs.

21. On this first main issue I conclude that the development is harmful to the interests of providing for an appropriate housing mix. The development is, thus, contrary to saved policy HSG6 UDP and 5.8 LP and there is insufficient justification for its retention.

Effect upon the living conditions of occupiers

22. It is unclear how many people occupy the property although I am told it is licensed for nine residents over six separate rooms.

23. Policy 3.5 LP, to which I have been referred, sets out minimum space standards for new dwellings. However, there are no exact calculations to show how the development compares to these standards and neither party has argued that the space standards should be applied to HMO use. However, the policy does seek to ensure that new homes are of high quality with adequately sized rooms.

24. The HMO licensing regime as applied in Haringey controls the standards for HMO accommodation. I am not aware of there being any other planning standards at local level. I have no reason to doubt that the licensing regime provides for adequate space and room sizes for the number of residents

occupying the property and suitable living facilities. At my site visit I saw that each room has its own (or convenient access to) shower/WC facilities, that there is a well equipped kitchen and utility area, shared living space and a shared garden area to the rear. I am satisfied, therefore, that the property is fit for purpose and provides for reasonable living conditions for its occupants in terms of space and facilities.

25. With regard to the stacking of rooms, two bedrooms are positioned above the shared kitchen, utility and living area. There may be some transference of noise from these busier areas to the rooms above. However, in a HMO where there is shared space residents cannot reasonably be protected from noise to the same extent as might be possible in self contained accommodation. When also taking into account that the shared space is below (not above) the bedrooms I do not consider that any noise transference would be unreasonable or that this is a decisive issue in the overall circumstances of this case.

26. On this second main issue, therefore, I do not find that unreasonable effects arise in terms of the living conditions of the occupiers, or that the development offends policy 3.5 LP or emerging policy DM1.

Other matter

27. It is suggested that there has been a deliberate breach whereas the appellant says he has been in constant communication with the Council. This is not a matter on which I can arbitrate. Neither does it alter the conclusions I have reached on the main issues.

Conclusions on ground (a) and the deemed application

28. I find no unreasonable effects in terms of the living conditions of the occupiers which is, thus, a neutral factor in the overall balance of considerations in my decision.

29. However, I find that the development is harmful to the interests of providing for an appropriate housing mix that meets local needs. That harm is not outweighed by the limited benefits of providing for additional low cost HMO accommodation. The development is contrary to the cited policies of the development plan and the development plan read as a whole. There are no other benefits or material considerations that have been advanced that indicate a decision other than in accordance with the development plan.

30. Therefore, I conclude on ground (a) that the appeal should fail. The deemed application shall be refused.

The appeal on ground (g)

31. On ground (g) a period of 12 months is requested as the property provides a home to the residents some of whom may wish to remain in the property. It is argued that an extended period would allow time for the appellant to pursue the possibility of obtaining a HMO license for six persons.

32. Irrespective of whether or not the appellant changes his HMO license to six persons, the Article 4 Direction takes away permitted development rights and the matter of planning permission for such use would also need to be resolved. Because of these uncertainties I afford little weight to the appellant's argument in considering the reasonableness of the timescale.

33. I do, however, acknowledge that a consequence of the notice is that occupiers will need to find alternative accommodation. A longer time period would be helpful to the appellant and his tenants in this regard. On the other hand, I must also take into account the wider public interests which are best served by timely compliance with the notice to remedy the identified harm. I consider a period of 6 month would strike an appropriate balance between these conflicting public and private interests without placing a disproportionate burden upon the appellant and occupiers.

34. I shall vary the notice accordingly. To this limited extent the appeal on ground (g) succeeds.

Conclusion

35. For the reasons given above, and except to the limited extent I have identified on ground (g), I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application.

Susan Wraith

Inspector