The Planning Inspectorate

Appeal Decisions

Site visit made on 29 May 2019

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2019

Land at 4 Eric Close, Forest Gate, London E7 0AY
Appeal Ref: APP/G5750/C/18/3207322 (Appeal 1)

- 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 Mrs Rhoda Tom West against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 17/00978/ENFC, was issued on 15 June 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use to a Use Class C4 house in multiple occupation (HMO).
- The requirements of the notice are:
    1. Cease the use as a Use Class C4 house in multiple occupation.
    2. Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds.
    3. Remove from the site all debris arising from compliance with steps 1 and 2.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal Ref: APP/G5750/W/18/3207295 (Appeal 2)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Rhoda Tom West against the decision of the Council of the London Borough of Newham.
- The application Ref 18/01054/COU, dated 16 April 2018, was refused by notice dated 29 May 2018.
- The development proposed is retrospective application for retention of 6 person HMO (House in Multiple Occupation).

DECISIONS

Appeal Ref: APP/G5750/C/18/3207322

1. It is directed that the enforcement notice be varied by the substitution of five months as the time for compliance in section 5 of the notice. 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 section 177(5) of the 1990 Act as amended.

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2. The appeal is dismissed.

REASONS

Appeal 1 ground (a)/deemed planning application and Appeal 2

Main Issues

3. The Appeal 2 development is described in the planning application form as retention of six person HMO. In effect planning permission is being sought retrospectively under section 73A of the 1990 Act for the development consisting of a change of use to a HMO.

4. The development which is the subject of the Appeal 1 ground (a)/deemed planning application and Appeal 2 is essentially the same and therefore the main issues are common to both appeals.

5. The issues are the effect of the change of use on (i) the dwelling stock in the borough, (ii) the standard of accommodation for the occupiers of the house in multiple occupation (HMO), and (iii) the amenity of the neighbouring residential occupiers, having particular regard to noise and disturbance.

6. When I visited the site in May 2019 the property was occupied by residents. Human rights and equality issues are considerations integral to my decisions.

Planning Policy

7. The development plan includes the London Plan (consolidated with alterations 2011) published in March 2016 and the Newham Local Plan (the NLP) adopted in December 2018. The Council's Core Strategy and the Detailed Sites and Policies Development Plan Document cited in the reasons for issuing the notice and in the reasons for refusal have been superseded and no longer apply. The Council provided an update on the NLP policies relevant to the appeals and the appellant was allowed an opportunity to comment.

8. The National Planning Policy Framework (the Framework) is a material consideration.

Dwelling stock

9. 4 Eric Close is a two storey end of terrace property that has been extended at the back and has living accommodation within the roof space. There is no dispute that the former use of the property was a Class C3 dwelling house. The property is in a primarily residential area with a mix of houses and flats, although immediately to the north is an electricity sub-station and an area of undeveloped land.

10. An Article 4 Direction came into force on 31 July 2013 that took away permitted development rights. As a result planning permission is required for a change of use of a building from a use falling within Class C3 (dwelling houses) to a use falling within Class C4 (houses in multiple occupation), as defined by the Town and Country Planning (Use Classes) Order 1987.

11. Policy S6 of the NLP states that population will be stabilised with a greater focus on improving housing quality and increasing family housing. The policy provides for restricting HMOs and flat conversions and encouraging de-conversion of family sized Victorian and Edwardian homes that may have been sub-divided in the past. A strategic principle of Policy H1 of the NLP is to secure the delivery of a mix and balance of housing types, including a significant

increase in family housing to replace that lost to conversion. The development is not supported by these policies.

12. To protect and re-shape the existing housing stock Policy H4 protects 3 bed and 4+ bed family housing and supports the de-conversion of flats and HMOs back to family dwelling houses. The importance of this policy objective is set out in the justification. In summary prior to 2012, before policy restrictions and the Article 4 direction, dwelling conversions saw a significant growth in numbers. Many conversions were created from family sized dwellings for which there is the highest demand. As a result, the reduction in housing choice has challenged the wider aspiration of stabilising communities. The evidence is clear that Newham will fail to provide enough family housing if reliance is placed only on increasing the rate of provision through new house building. Retaining existing family dwelling stock is an essential element too.

13. Policy H4 recognises that there are circumstances where conversion can have multiple benefits or more desirable outcomes than retaining a family dwelling. The plans show that the property at number 4 had 3 bedrooms on the first floor and two rooms in the loft space. There is access to a rear garden as private amenity space and the original front entrance remains leading into the hall. The property is located in a residential cul-de-sac away from the main traffic routes and movement corridors. It is not a type of property nor is it in a location where conversion may be acceptable. The conversion has been to a HMO and therefore the possibility of supporting conversion of a large family dwelling house (4 bedroom plus) to new 4 bedroom plus dwelling units does not apply.

14. The appellant submitted that the HMO would meet the needs of single person affordable accommodation and is not located in an area where there is a high concentration of shared homes. In the appellant's view a HMO contributes positively to a mix and balance of housing types. However, the NLP emphasises and explains why it is necessary to retain family homes. Sufficient capacity for flats and HMOs is expected through purpose-built new build, conversion of non-residential uses and re-use of redundant premises above shops in town centres. The development plan policy has been scrutinised through the examination and adoption process and has priority.

15. In conclusion, the change of use of 4 Eric Close into a Class C4 HMO is not supported by Policies S6, H1 and H4 of the NLP. The conversion would have an adverse effect on the borough's housing stock of family homes and would undermine the NLP's strategy for building sustainable mixed communities.

Standard of accommodation

16. The Technical housing standards – nationally described space standard published by the then Department for Communities and Local Government in 2015 and the space standards set out in Table 3.3 of the London Plan do not apply to HMOs. Even so a policy aim is to secure high quality living accommodation, as reflected in Policies S6 and H1 of the NLP and Policy 3.5 of the London Plan. More specifically, Policy SP8 of the NLP expects appropriate provision to made for communal spaces and private amenity spaces (such as bedrooms and places of retreat) in multiple user buildings including HMOs. The Framework endorses the need for good design and states that higher densities should not be at the expense of acceptable living standards.

17. With reference to Appeal 1, the appellant indicated in a response to a planning contravention notice in December 2017 that there were 6 bedrooms, 1 living room, 1 common room, a kitchen/dining room and 3 bathrooms. Specific to Appeal 2, the design and access statement described the accommodation as comprising on the ground floor a living room, a kitchen/dining room, room 1 and a WC; on the first floor 3 rooms, a common room and a bathroom and on the second floor 2 rooms and a shower. Each room has natural light. The descriptions relate well to the layout I saw on the site visit.

18. Within a HMO the units of living accommodation provide the main residence of the occupiers. The residents do not form a single household, although they share one or more basic amenities. The London Plan talks of the home 'as a place of retreat'. No up to date details have been provided by the appellant of the dimensions or floor areas of the individual rooms or of potential furniture layout within a room. The building occupies the full width of its plot and as a result of the extensions and alterations it is deep from front to back in comparison with the width. This floor plan constrains the size, shape and utility of the rooms, limiting the space available for accommodating both furniture and circulation. In particular room 6 in the loft is reduced in size by the adjoining shower and staircase. Room 1 on the ground floor, although of a more generous size, lacks privacy because of its position next to the front door and adjacent to the hallway. The living room appeared cramped and multi-functional. The use of the adjacent front room as a bedroom reduces the amount of common space available to residents to an unacceptable degree. The property does not lend itself to use as a HMO.

19. The appellant in part relies on the fact that the current use benefits from a HMO licence to demonstrate that the standard of accommodation is acceptable. A licence is a consideration in favour of the use. However, a full copy of the licence has not been submitted to confirm the details, which reduces the weight I will give to this factor[1]. I note that the Council reported a licence dated 21 November 2017 provided for a maximum of 7 people living as 5 households and lists the ground floor reception room as a living room. Notwithstanding, the paramount considerations are derived from the relevant planning policies in the development plan and the Framework.

20. The Framework expects planning decisions to ensure healthy living conditions, achieve good design and create better places to live. The London Plan and the NLP sets out a clear design vision and expectations. I conclude that the HMO fails to comply with Policies S6, SP8 and H1 of the NLP and Policy 3.5 of the London Plan.

Amenity of neighbours

21. Policy SP8 of the NLP expects all development to achieve good neighbourliness by avoiding negative and maximising positive social, environmental and design impacts for neighbours on and off the site.

22. The property is in a primarily residential area and a HMO is a residential use. To that extent there is compatibility in use.

23. Use Class C4 is use of a dwelling house by not more than six residents as a house in multiple occupation. The appellant considers that the potential

[1] An extract from a licence was attached to the response to a Planning Contravention Order, a document submitted with the Council's appeal questionnaire.

number of residents occupying the property as a Class C3 dwelling house would be 9 compared to 6 residents as proposed. In my view the likely the pattern of use is the more significant factor rather than the number of occupants. The probability is that occupiers of the HMO would be more transient and have less commitment to their home and neighbourhood. A reasonable expectation is that each occupant of the HMO would lead separate, individual lives. By contrast a family is likely to share common activities and make more shared trips, thereby reducing the numbers of comings and goings. The probability is that there would be slightly less activity associated with a dwelling house.

24. No information has been provided on sound insulation to the property, although the hall and stairs probably adjoin the circulation areas in the neighbouring dwelling. In addition, number 4 is an end of terrace property with a non-residential building to the north. Therefore the layout and the siting of the building are factors that would act to reduce disturbance through noise transmission.

25. On balance the Class C4 HMO use would not be a good neighbour and there would be negative social, environmental and design impacts for neighbours. The development is not supported by Policy SP8 of the NLP.

Human Rights

26. There would be the prospect of residents of the units losing their current homes. They may have difficulty finding an alternative suitable, affordable place to live. The refusal of permission would be an interference with each of the occupier's rights to respect for their private life and their home. The seriousness of the interference would have the potential to engage the operation of Article 8. However, Article 8 is a qualified right that requires a balance between the rights of the individual and the needs of the wider community and the public interest.

27. The regulation of land use is an important function of Government. Good standards of development are important to ensure development is sustainable. The protection of the health and well-being of the residents themselves is of particular relevance in this case. The interference with the rights of individual occupiers would be necessary and proportionate to achieve the legitimate public end pursued.

28. Similarly, the interference with the owner's qualified right under Article 1 of the First Protocol would be necessary and proportionate in the public interest.

Conclusions

29. The change of use to a Class C4 HMO is contrary to the development plan when read as a whole. There are no material considerations of sufficient weight to indicate the appeals should be determined other than in accordance with the development plan. The Class C4 HMO is unacceptable.

30. For the reasons given above the Appeal 1 ground (a) appeal does not succeed and Appeal 2 should be dismissed.

Appeal 1: ground (f)

31. The appellant challenged step 2 for being vague and excessive.

32. The issues are whether the requirements are sufficiently precise to tell the recipient of the notice what must be done or abstain from doing to remedy the breach and whether the steps are excessive.

33. The purpose of the enforcement notice is to remedy the breach of planning control. The requirement to cease the use of the property as a Class C4 HMO is derived directly from the description of the breach of planning control, is necessary to fulfil the purpose of the notice and is one of the categories of remedial action open to a local planning authority as set out in section 173(4) of the 1990 Act.

34. An enforcement notice directed at a material change of use may require the removal of works that are integral to facilitating the unauthorised development, even though such works on their own do not constitute development. This type of requirement enables the land to be restored to its condition before the change of use took place. Relevant to this appeal, the same principle applies to fixtures and fittings. A reasonable expectation is that the landowner (the appellant) is the person with the best knowledge of the condition of the property before the change of use took place. When placed in this context step 2 is not vague or excessive. On particular aspects, the appellant has provided no evidence that there were locks on bedroom doors before the change of use occurred. The requirement would not prevent beds being accommodated in the property to serve a lawful use.

35. The appeal on ground (f) fails.

Appeal 1: ground (g)

36. The issue is whether the compliance period of three months is reasonable and proportionate. The appellant has requested that the period is extended to nine months in order that tenants may find alternative accommodation and to allow time for the property to be marketed and let as a family dwelling.

37. The appellant has provided no evidence on such matters as the range of options open to the tenants, their tenancy agreements and in particular the periods of notice. There is no justification for a period of nine months. However, three months leaves limited leeway to make any necessary arrangements, to inform and serve notice on existing tenants and for the tenants to have an opportunity to secure an alternative place to live.

38. The enforcement notice only requires the use as a Class C4 HMO to cease. It does not have a positive requirement for the use as a family dwelling to be restored. Therefore no time should be allowed in the compliance period for marketing and letting the property as a Class C3 use.

39. The Framework confirms that effective enforcement is important as a means of maintaining public confidence in the planning system. There is a balance to be struck between allowing sufficient time to take the necessary steps to remedy the breach, ensuring that the breach does not continue longer than is necessary and paying due regard to the human rights of the occupants.

40. In the circumstances a compliance period of five months strikes the right balance and to this extent the appeal on ground (g) succeeds.

Appeal 1: Conclusion

41. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Diane Lewis

Inspector