
Appeal Decision

Site visit made on 4 July 2019

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 19 July 2019

Appeal Ref: APP/G5750/C/18/3207682

31 Second Avenue, London E12 6EJ

- 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 Khandhker Uddin against an enforcement notice issued by the London Borough of Newham.
 - The enforcement notice, reference 17/00125/ENFC was issued on 22 June 2018
 - The breach of planning control as alleged in the notice is: Change of use to a Use Class C4 house in multiple occupation (HMO).
 - The requirements of the notice are as follows:
 1. Cease the use as a Use Class C4 house in multiple occupation.
 2. Remove all fixtures and fittings that 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 steps 1 and 2.
 - The period for compliance with the requirements is one month.
 - The appeal was initially made on grounds (a) and (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. This has changed to grounds (c), (d) and (a). See below under Matters of clarification.
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Decision

1. The appeal is dismissed. See formal decision below.

Matters of clarification

2. This appeal is not against the Council's refusal to issue a LDC for a Class C4 HMO use. The appeal is against the above enforcement notice which alleges a change of use (COU) from a Use Class C3 dwellinghouse to a Use Class C4 dwellinghouse in multiple occupation (Class C4 HMO). The appellant states that the property has been in use as a Class C4 HMO for at least 10 years. It is accepted by the appellant that planning permission for a COU from a Class C3 house to a Class 4 HMO would have required Planning Permission (PP) from 31 July 2013, the date on which the Council issued an Article 4 Direction (A4D) removing permitted development (PD) rights for such a change of use.

3. The A4D requires that planning permission be granted for development consisting of a COU of a building from a use falling within Class C3 (dwelling houses) of the Town and Country (Use Classes) 1987 (UCO), to a use falling within Class C4 (HMO), being development comprised within Class 1 of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO).

4. Between 2007/2008 and 31 July 2013, the appellant would not have been required to apply for planning permission to change the use of the house to a Class C4 HMO. It would have constituted permitted development (PD) under the GPDO. Planning permission would have been required however for a change of use to a 'large HMO' (Sui

Generis). If the change of use to Class C4 had occurred during that period then it would not have constituted a breach of planning control. However the breach of planning control occurred after PD rights were removed and the notice alleges that the COU to a Class C4 HMO is unauthorised.

5. The Council considers that since 2007 the property has '*swapped from being a Class C4 HMO to a 'large HMO' (Sui generis use)*'. If the house was in HMO use in 2007/2008 that would be over 10 years prior to the issue of the enforcement notice and around 5 years or thereabouts before the Council issued the A4D.

6. The appellant contends that the property has been occupied only as a Class A4 HMO and refers to the 6 rooms which support that position. Furthermore, it is claimed that the use has been ongoing without interruption or abandonment for more than 10 years. It is claimed, therefore, that a breach of planning control has not occurred. During my site visit I noted that 6 rooms were in use. A 7th small front room on the upper level was empty and it was stated to be a utility or store room

7. The arguments put forward under ground (c) by the appellant are made on the basis that there was no breach of control and that the LPA was precluded from taking enforcement action because the change of use had occurred more than ten years prior to the issue of the notice. However, a ground (c) appeal is made simply on whether or not there has been a breach and not on how long ago the breach might have taken place. I deal with this below under ground (d).

8. The LPA considered that the appellant's arguments would be better considered under ground (d). Consequently the Planning Inspectorate Case Officer wrote to the parties at my request (prior to the site visit) asking for further comments. These have been received from the Council and the Appellant and I have taken them all into account in reaching my decision. The latest communication from the Appellant (an e-mail dated 9 July 2019, after the site visit) requests that the appeal be considered on grounds (a), (c), and (d). It is on this basis, therefore, that I have dealt with the appeal and, in doing so, I am satisfied that no injustice will be caused to either party.

9. With regard to the Council's contention that the house had been used for a 'large HMO (Sui Generis)', this is clearly disputed by the appellant although some evidence has now been submitted (see later). However, the allegation in the notice before me only relates to a Class C4 HMO. I have therefore also dealt with the appeal on the basis that the appellant's position is that the house has been in a Class C4 HMO use continually for a ten year period commencing on or before 22 June 2008.

Background information and planning history

10 The appeal building is a two-storey terraced dwelling on the west side of Second Avenue and to the east and west respectively of First Avenue and Third Avenue. These residential streets comprise similar two-storey terraced properties and they all have a junction with Romford Road (the A118) which lies to the north-west. During my visit I noted that many of the dwellings in this part of the Borough appeared to have had been converted to flats and many had rear and roof extensions/alterations.

11. The appellant submitted three Lawful Development Certificate (LDC) applications in 2018. These LDC applications were for the existing use of the property as HMOs. A Class C4 HMO and a 'large HMO' (Sui Generis). The first of these, (18/01072/CLE) was closed due to a discrepancy with the required fee. The second (18/01096/CLE dated 19 April 2018) was refused on the basis that the appellant had failed to demonstrate that the property had been used continually as a Class C4 HMO since 31 July 2013. The third (18/01964/CLE dated 6 July 2018) was for a LDC for the use as a HMO (Sui Generis) and this was also refused.

12. The drawing submitted with the second LDC (18/01096/CLE) application showed 3 separate bedrooms, a kitchen, a garden room and a bathroom on the ground floor and 3 more separate bedrooms, a bathroom and a storage room (also referred to at the site visit as a utility room) on the first floor. Thus, 6 bedrooms in all plus the first floor front room store. At the time of my visit I noted all 6 bedrooms, and the other shared facilities and the empty 7th room (store/utility). The layout accorded with the plan submitted as part of the LDC application 18/01096/CLE.

The appeal on ground (c)

13. To be successful on this ground it must be shown that, on the date the notice was issued (22 June 2018), a breach of planning control had not occurred. That might be either because there was a planning permission in place for the change of use from a Class C3 dwellinghouse to a Class C4 HMO (as set out in the allegation), or that permission was not required because the change of use constituted permitted development. The merits of the case do not fall to be considered under this ground. The onus is upon the appellant to precisely and unambiguously show that there has not been a breach of planning control in relation to the alleged change of use.

14. As indicated above, a ground (c) appeal must be made simply on the basis that there has not been a breach of planning control. It is not meant to cover whether or not the LPA was precluded from taking enforcement action by virtue of the time limits set out in Section 171B of the Act. This is the basis for an appeal under ground (d) which I have dealt with separately below.

15. By the appellant's own admission it is accepted that the dwellinghouse has been in Class C4 HMO use since at least 31 July 2013, when the Council issued the A4D. Indeed it is the contention that it has been in such a use for at least 10 years prior to the notice being issued and this is dealt with in the ground (d) appeal below. From the date of the A4D, PD rights were removed from making such a COU, thus requiring an express planning permission to be made and granted, to enable any such COU to be lawful for planning purposes.

16. Clearly no such application was made and it is the case, therefore, that there is no planning permission in place for a COU from a Class C3 to a Class C4 HMO dwellinghouse. The COU cannot constitute PD under the GPDO (due to the A4D) and it follows that the use of the dwellinghouse as a Class 4 HMO at the time the notice was issued was, on its face, a breach of planning control. It follows that the appeal must therefore fail on ground (c).

17. It is clear however, that it would have been lawful if it had been in use as a Class C4 HMO for a continuous period of 10 years from the date of issue of the notice: that is from on or before 22 June 2008. I now turn, therefore to ground (d) which is the appropriate ground on which to assess if the LPA was precluded from taking enforcement action against the alleged change of use.

The appeal on ground (d)

Introduction

18. The unauthorised development which has been carried out is a COU from a Class C3 dwellinghouse to a Class C4 HMO. With regard to the time limits set out in Sections 171B of the Act, such a COU is not development which is an '*operation in, over or under land*' - S171B.(1). Nor does it constitute development as a COU of '*any building to use as a single dwellinghouse*' - S171B.(2).

19. Thus the contention by the appellant that the 4 year rule is relevant is incorrect. This is not a COU from '*any building*' to a single dwelling house. It is a COU of a lawful

Class C3 dwellinghouse to a Class C4 dwellinghouse. These are specific uses set out in the UCO and such a COU would be allowed either as PD under the GPDO or if there is an express planning permission in place. The 4 year rule does not apply in this case.

20. In this enforcement appeal it is S171B.(3) which is applicable. This states that '*In the case of any other breach of planning control, no enforcement action may be taken at the end of a period of ten years beginning with the date of the breach*'. In this case the onus is on the appellant to show that the Class C4 HMO use has been continuous for a 10 year period commencing on or before 22 June 2008. National Planning Practice Guidance (PPG) makes it clear that an appellant is responsible for providing sufficient evidence to substantiate their claim and that the evidence should be precise and unambiguous (my underlining).

21. It is stated that the appellant is the freehold owner of the appeal property and that he and his family had lived there until 2007. It is indicated that in 2007 the appellant moved out and rented the house through a letting agent between 2007 and 2012. At that time the agent closed down and the property was then given to another letting agent who continued letting the house to various tenants as a HMO. In 2013 a Property Licence was obtained to let the house as a HMO. There are no precise details of the exact numbers of occupants between 2007 and 2013.

The LDC application(s)

22. The LPA had advised the appellant to submit a LDC application (18/01096/CLE, submitted on 19 April 2018) to demonstrate that it had been a Class C4 HMO for a continuous 10 year period. This was refused, as indicated above, on the basis that it had not been demonstrated that it had been used continually as a C4 HMO since 31 July 2013 to the satisfaction of the LPA. In fact, to be lawful it would have to have been shown that the Class C4 HMO use had been continuous from 10 years prior to the LDC application and not just back to 31 July 2013, the date of the A4D.

23. There is not a full record of the tenancies dating back to June 2007, or indeed to the relevant date of 22 June 2008 (10 years before the enforcement notice was served). However, the appellant had submitted the three applications for a LDC (See above). The documents submitted for the last two applications are listed in the respective LPA Delegated Reports.

Evidence relating to Class C4 HMO use

24. The evidence relied upon includes certified copies of various Tenancy Agreements (TAs) and Council Tax invoices (CTIs) and other invoices and letters. For the second application (18/01096/CLE dated 19 April 2018) the first TA is dated 28 January 2007 and there is an invoice from 2009 from the first letting agent. The CTIs cover the years for 2007/2008; 2009/2010 and 2010/2011 and are addressed to the appellant.

25. There are other TAs which include those dated 28 July 2010; 15 July 2012; 2 August 2012; 10 March 2013; 10 November 2013; 28 July 2013; 1 January 2014; 9 April 2016; 27 March 2016 and 1 March 2016. There is another Property Licence (PL) dated 14 November 2013 and various letters and bills addressed to tenants living at the property from 2016 to 2017.

26. The above PL (Number: 13/04804/HOADLI) was issued under Section 64 of the Housing Act and was valid from 01 January 2013 to 31 December 2017. It certified that No 31 was a HMO licensed with the LBNC subject to conditions. The property was '*licensed for a maximum of 7 people living as 5 households regardless of age*'. Thus the PL was Licensed as a large HMO (Sui Generis) as opposed to a Class C4 HMO which is for use by up to 6 persons.

27. The TAs dated 15 July 2012 and 02 August 2012 simply set out the full address of the property. The one dated 10 March 2013 refers to 'Upstairs Room 1 & Room 2' at the address. The one dated 10 November 2013 refers to 'Ground Floor second room' and there is a duplicate copy of this TA. The TA dated 1 January 2014 does not refer to a room, but simply the address of the property and the same is the case for the TA dated 9 April 2016. The next two TAs dated 27 March 2016 and 1 March 2016 also just set out the address of the property.

28. The documents submitted with the LDC applications included letters to various tenants from the NHS; HMRC; UK Border Agency; Energy supplier(s); Various Banks (Nat West, HMRC, Halifax, Sonali UK, Wescot on behalf of Barclays); a Debt Collector including 'arvato'; A Parking Charge; the Landlord's (appellant's) agreements with the letting agents (28 January 2007, 28 July 2010, 28 July 2013); copies of an invoice for carpets; one from Magnum Supplies Ltd; e-mails between appellant and LPA and the floor plan showing the layout referred to above.

Parts of the Council's statement and appellant's responses

29. The Council refers to the electoral roll for the years 2008, 2009 and 2011 and the fact that all show that more than 6 people were registered for the property. The Council contends, therefore, that this suggests it is questionable as to whether the HMO use was Class C4 or 'Sui Generis' for those periods. The appellant indicates that in HMOs, with transient populations, it is not uncommon for tenants to come and go. It is argued, therefore, that having a total number of more than 6 occupants in any particular year cannot be construed to mean that there were more than 6 tenants occupying the property at any one time.

30. The Council indicates that a lot of the evidence regarding letters etc addressed to people at the property do not match the names of the people in the TAs. The appellant's response is that, although the provision of month by month evidence may be challenging, the 10 year period of continuous use does not necessarily have to be up to the date of the application in order to succeed. It is contended that *'provided there has not been abandonment then if one is satisfied that there was a 10 year period of continuous use as a small HMO in the period 2008 – 2018, then this would be sufficient for the purposes of granting a CLD in this case'*.

31. In relation to an enforcement investigation (15/00280/ENFC) in 2015, Council Officers had visited the premises with the police. The Council indicates that the note for this visit showed 3 bedrooms at ground floor level (front, side and rear) and four bedrooms on the first floor (rear, side and two front rooms). The tenant who allowed entry at that time referred to a total of 7 people living in the property. However a Planning Contravention Notice (PCN) issued in 2017 was completed to confirm that there were 3 tenants at ground floor level and 3 at first floor level. There was also photographic evidence to suggest that a child also lived there.

32. The appellant's response to these points is that the notes for the visit in 2015 fail to indicate that one room on the first floor (front) is too small to be occupied as a bedroom and that there is no evidence that the 7 people found to be on the premises at that time were bona-fide tenants/residents. It is stressed that the PCN response clearly indicated the number of people in occupation in 2017 and the Council's queries in relation to the tenancy agreements and the electoral register names do not justify the Council's contention that there had been 7 occupiers rather than 6.

33. Based on an analysis of the documentation submitted in support of the LDC application the Council refers to the TAs and letters which identify 6 residents. However, the Council also refers to an additional person who was on the electoral role from 2008 to 2016 and that two of the submitted letters (one bank letter of December

2016 and one NHS letter of January 2017) have been shown to be for that person. On that basis the Council contends that it is reasonable to assume that this person had been residing at the property for the whole time and that in October and November 2016 there would have been more than 6 people living in the HMO, leading to it being classed as Sui Generis and not Class C4.

34. In the delegated report for the third application (18/01964/CLE) the officer refers to the documents submitted in support of the application which was for a large HMO (Sui Generis). These documents cover a period from 2008 through to 2018. I have not repeated all of the information here but generally the Council has referred to such matters as 'eight tenants being at the property (2008); one tenant (2009 and 2010); at other times no tenants (2011, part 2012 and 2015); two tenants (2013 and 2016) and three tenants (2014). For 2016 the numbers of tenants shown to have been in occupation range from five to nine tenants during various months of the year. For 2017 the information ranges from no tenants through to eight tenants and then in 2018 the figures are between none and four tenants.

35. The appellant responds to these points and the earlier ones by indicating that the Council has failed to demonstrate that their evidence is sound. It is further contended that the Council's comments are speculative as the electoral roll cannot say with confidence how many residents there might be in occupation in a HMO due to the obvious transient populations of such premises. The Council's arguments that the property was in use as a large HMO during part of the necessary 10 year period are considered by the appellant to be very weak.

Assessment

36. Having considered all of the evidence submitted for the previous LDC applications and for this appeal on grounds (c) and (d) against the enforcement notice, I find the overall situation to be both ambiguous and confusing. It is evident that some sort of HMO use of the property dates back to 2007 and there could have been many more tenancies, some of which might have been carried over after the end-dates of the TAs. However, in my view, there are far too many ambiguities and unclear points about the numbers of tenants who might have occupied the property at various times.

37. I accept that it would have been difficult for the appellant to provide a seamless list of tenants and TAs from 22 June 2008 until 22 June 2018. Nevertheless, in this situation the onus is upon the appellant to show that the house has been in Class C4 HMO use and occupied continuously (my underlining) by up to 6 persons (sharing) for the required 10 year period. Unfortunately the evidence submitted, in my view, goes nowhere near to establishing, on the balance of probabilities, that this has been the case. The LPA also reached the same conclusion and refused both of the LDC applications on the basis that the appellant had failed to demonstrate a 10 year continuous HMO use in Class C4.

38. As well as 'gaps' and queries relating to the TAs and other documents submitted, the fact is that the appellant actually applied for a LDC for a Sui Generis, or large HMO, after the earlier one for a Class C4 HMO had been refused. It is difficult to understand why this was the case if it was not in use as such. If the appellant had submitted documentation to claim a Sui Generis HMO use was being carried out, then it is reasonable and logical to assume that the dwellinghouse was being occupied at the time of that application by in excess of just 6 tenants sharing the property. The appellant was seeking to establish that a HMO Sui Generis use (for more than 6 persons) was lawful the time of the third application.

39. The allegation is that a COU from Class C3 to Class C4 has occurred and I have concluded above that there has been a breach of planning control. Once a COU has

taken place in breach of planning control it needs to be shown that it has continued substantially uninterrupted before it accrues immunity from enforcement action (*Thurrock BC v SSETR and Holding (CA) [2002]JPL 1278*). In that case the court held that a change of use could only become lawful if it continued throughout the requisite period and that, if it could not be shown that the use was continuous, then the 'gaps' in the use could not count towards immunity.

40. In this case although the Council could not have taken enforcement action for a COU from Class C3 to Class C4 HMO prior to 31 July 2013 (date of A4D), action could have been taken at any time before then if the house had been occupied as a large HMO (*Sui Generis*). After the 31 July 2013 the Council could, and indeed did, take enforcement action because there had been a breach of control (see the appeal on ground (c) above).

41. I acknowledge that the Council's evidence relating to the change in use between a Class C4 HMO and a large *Sui Generis* HMO is not in itself absolutely conclusive. But there is sufficient evidence in my view to throw doubt upon the appellant's case that the Class C4 HMO use had occurred continuously for the required 10 year period. During that period the 'gaps' in the evidence and the other submissions indicate to me that, on the balance of probabilities, the Council would not have been precluded from taking enforcement action. The 'gaps' did not count towards the period of immunity and in any case the appellant has failed to show that the use did not alternate between the two HMO uses and actively sought a LDC for the *Sui Generis* HMO use during the 10 year period.

42. In conclusion I do not consider that it has been demonstrated, on the balance of probabilities, that the appeal property had been in continuous use as a Class C4 HMO from on or before 22 June 2008 to 22 June 2018. The appeal, therefore must also fail on ground (d).

The appeal on ground (a)

The Main Issues

43. Having considered all of the representations and having visited the site and the surrounding area, I consider that the main issues with regard to whether or not planning permission should be granted for the change of use from a Class C3 dwellinghouse to a Class C4 HMO relate to:

- The loss of a family home in this part of the Borough,
- The quality of the housing accommodation provided and,
- The effect on the living conditions of the occupiers of nearby properties.

44. The most relevant policies are Policies 3.8, 7.1 and 7.15 of the London Plan (LP); Policies D3, D4, D13 and GG4 of the Draft London Plan and Policies S1, S6, SP1, SP2, SP3, H1, H3, H4 and SP8 of the now adopted London Borough of Newham Local Plan (NLP). The National Planning Policy Framework (NPPF) is a major material consideration and any matters raised on the basis of the earlier 2018 version are the same as those set out in the latest 2019 document. I have also taken into account relevant sections of the national Planning Practice Guidance (PPG).

The loss of a family home

45. Policy H4 of the NLP relates to the protection and re-shaping of the existing housing stock in the Borough. Amongst other things it seeks to specifically protect 3 bed and 4 bed+ family housing from conversion or use as smaller units of accommodation. In support of this aim the Council issued an Article 4 Direction (A4D) in July 2013 which required planning permission to be sought for a COU from Class C3

to Class C4 HMO. Thus Policy H4 now firmly resists conversions from single family dwellings to flats and HMOs and even seeks to support de-conversion.

46. In Policy S6 of the NLP the Council's objective for 'Urban Newham' is *'to improve the quality and distinctive identity of places contributing to their success and the area's popularity as somewhere to live, work and stay'*. The policy seeks to stabilise the population and to protect and increase family housing. Other policies including SP1, SP2, SP3, S1 and H1 relate to and support the overall aims of Policies H4 and S6. When assessed against the development plan policies, therefore, such a COU is contrary to the plan.

47. However, as referred to above, the house has not been used as a single family dwellinghouse since 2007 and this is not disputed by the Council. In fact the Council's case is that the HMO use has alternated between being a large HMO (Sui Generis) and a Class C4 HMO, between 22 June 2008 and 22 June 2018. In effect, therefore, the loss of this family dwellinghouse to a HMO use clearly occurred many years ago. I have disagreed with the appellant that this HMO use has been shown to have been a continuous Class C4 for the relevant 10 year period but, nevertheless, it is agreed by the parties that a HMO use dates back to around 2007/2008.

48. In one of the appeals referred to by the Council (APP/G5750/C/14/3000837), under the ground (a) appeal, the Inspector noted that the then relevant development plan policies (H4 and S6 of the Core Strategy), sought to prevent losses of family dwellings to sub-divided uses such as HMOs. However, because he had found *'in all probability'* that the property had been in use as a HMO for many years, he considered that its use had not caused the loss of a single family dwelling and concluded that there had not been a policy breach regarding the loss of a single family dwellinghouse.

49. Despite the differences between the two appeals (the previous one was a much larger property) and the fact that each case must be assessed on its merits, I consider that a similar argument can be made in this case. The planning history in this instance does not merely indicate that No 31 was *'in all probability'* in HMO use many years ago; it shows that it was, as a matter of fact, being used as a HMO and the Council agrees that this is the case. On this first issue, therefore, I conclude that the specific material considerations outweigh the current development plan policy aims and find in the appellant's favour with regard to the loss of a single family dwellinghouse.

The quality of the housing accommodation provided

50. As indicated by the Council, *'creating successful places is the lynchpin'* of its vision, as set out in the NLP. Policy SP1 seeks to ensure that high quality development will be expected and Policy SP3 adds to this vision by referring to the *'importance of contributing to the creation of, and continued support...of high quality accommodation for living'*. The Council contends that the COU has resulted in cramped and overcrowded conditions and lacks the *'sense of community'* which would be present if rented to a single family.

51. I disagree with the Council on this latter point, since a *'sense of community'* can, in my view, equally be achieved by a group of up to six people sharing a house such as this. However, I agree with the Council that the loss of downstairs reception rooms to bedroom use (in this case 3 on the ground floor) has significantly reduced any *'quality living space'* within the house. On the ground floor there is only one small *'garden room'* to the rear which leads off the kitchen. Despite this small communal area and the shared kitchen and bathrooms, the perception I got from my inspection of the property was that it was more physically akin to being used as a collection of separate bedsits, with minimal shared communal facilities.

52. The bedrooms do not appear to have any cooking facilities and, therefore, the kitchen must be shared. I also acknowledge that the '*garden room*' provides some communal living space and that there is a shower room on the ground floor and a larger bathroom at first floor level. However, having seen the layout of the dwelling as currently used and particularly the size of the two smaller rear bedrooms (3 and 4), I share the Council's concerns and consider that the accommodation provided is perceived as being cramped and overcrowded.

53. I have noted the appellant's submissions relating to the required space standards for HMOs and the maximum number of occupiers based on floor space in HMOs with shared kitchen facilities in a separate room. Based on the submitted plan and areas I accept that all but one of the bedrooms (except bedroom 3) are suitable for occupation by 2 persons if the minimum area of 10.2m² is used. Bedroom 3 has relied on the minimum area of 6.5m².

54. Both of these minimum figures are qualified and are only acceptable if '*there is sufficient communal space in the property*'. If one takes the kitchen, two bathrooms and the '*garden room*' as being communal spaces, then in theory and based upon the space standards, as argued by the appellant the house could in theory accommodate 11 persons. However, the space standards are already based upon a HMO having a '*shared*' kitchen and the above arguments are missing the point since there is still minimal communal '*living space*'. Apart from the kitchen, '*garden room*' and shower room the rest of the ground floor ground floor is taken up by bedroom space.

55. Also, as indicated by the Council, these space standards are for HMO Licensing purposes only and I agree that they can carry very little weight as a material planning consideration. The relevant space standards for planning purposes are set out elsewhere in the LP and other policies and I see no evidence to suggest that these are fully met in order to provide quality housing.

56. In summary on this issue, I consider that the unauthorised change of use has resulted in low quality housing which, overall, is undersized, overcrowded and does not provide an adequate or healthy living environment for existing or future occupants. This is contrary to policies within the NPPF and policies within the LP and NLP which aim to provide quality housing. The appeal, therefore fails on this second issue.

The effect on the living conditions of occupiers of nearby properties.

57. There is some evidence that the various occupants of No 31 (being used as a HMO) have caused concern for others due to noise and disturbance, including loud music. The Council then contends that, because of the number of people living at the property, there is the potential for more noise and disturbance being created than if the property was occupied by a single family.

58. In particular, the Council refers to the potential increase in comings and goings to the house and the effect that this might have on adjacent and nearby residents. However, the Council has not provided any detailed evidence relating to any unacceptable noise or disturbance issues caused by the occupants at the property and I have not been provided with detailed objections from interested persons. In addition to that there are no submitted reports from the Council's Environmental Health section or from the Police.

59. In my view, a grown-up family of up to 6 people (with, for example, teenage children) could be equally capable of producing '*loud music*' and just as much noise and disturbance as any other combination of 6 people living at the property. In any case, normally, if there was a significant issue regarding noise and disturbance one would expect reports from the Council's Environmental Health team, or even the Police, to

indicate that the HMO occupants at No 31 were causing such problems. In this case there is no such evidence.

60. In conclusion on this issue, and on the basis of all of the submissions therefore, I am not convinced that the current use of No 31 as a small HMO (Class C4) is harmful to the living conditions of nearby residents in this part of Second Avenue. I accept that some of the nearest dwellings are mostly occupied by single families but there are no specific objections before me. In all of the submissions, there is no significant evidence to suggest that nearby residents have been significantly and detrimentally affected by the HMO use at No 31.

61. In conclusion on this third issue I again, therefore, find in favour of the appellant.

Overall conclusion on the ground (a) appeal

62. I have found in the appellant's favour on the first and third issues. I have concluded that, in these particular circumstances, the loss of a family dwellinghouse does not undermine the aims and objectives of current development plan policies. On the basis of all of the submissions; my inspection of the appeal premises and the surrounding area and the positions of the adjacent and other nearby dwellings, I am also satisfied that living conditions of occupants of the nearest residential properties have not been unduly affected by the HMO use.

63. However, on the third issue, I have concluded that the accommodation provided (for up to 6 persons) in this particular house falls short of what should normally be provided to satisfy both national and local policies regarding the necessary standards and quality of housing provision. If an application for a COU had been made to the LPA on the basis of the accommodation currently provided, it is clear that the authority would not have granted planning permission and, on the basis of the submissions by all parties and from my site visit of the appeal property and the surrounding area, I see no justification in granting planning permission at this appeal stage for sub-standard accommodation.

64. I agree with the Council's reasons for taking enforcement action and the appeal on ground (a) must, therefore, fail. There are no other grounds of appeal for me to consider, but the LPA has the discretion to extend the compliance period and also to accept any further application for COU which would need to include a revised and acceptable standard of quality accommodation. However, I am not empowered to consider any revised layout/proposal and this would be a matter between the appellant and the Council.

Other matters

65. In reaching my conclusions I have taken into account all of the other submissions made by the appellant and the Council. These include the planning history; the initial grounds of appeal; the detailed statements; all appendices including photographic evidence and all of the final submissions.

66. However, none of these matters carries sufficient weight to alter my conclusions on any of the grounds pleaded and nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

67. In reaching my decision I have taken into account the Human Rights of the appellant and the occupants of No 31. From all of my findings I consider that the need to comply with the requirements of the notice are proportional and necessary in order to safeguard the amenities and the quality of housing provision of this part of the Borough. I do not consider that my decisions have interfered with any of the appellant's, or others', rights under ECHR legislation.

Formal Decision

68. The appeal is dismissed on both grounds of appeal and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under Section 177(5) of the Act.

Anthony J Wharton

Inspector