



Appeal Decision

Site visit made on 6 August 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 23 August 2019

Appeal Ref: APP/G5750/C/18/3208905

Land at 101 Chesterton Road, Plaistow, London E13 8BD

- 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 was issued on 13 July 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.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Procedural Matters

2. I am aware that since the appeal was submitted, the Council has adopted the Newham Local Plan 2018. As a result, the London Borough of Newham Local Plan: Core Strategy (adopted January 2012) and the Local Plan: Detailed Sites and Policies Development Plan Document (adopted 20 October 2016) have been formally withdrawn. Although the policies from these plans referred to in the enforcement notice are no longer relevant, they had aims very similar to the policies in the LP. Moreover, the LP was well advanced at the time of the appeal and the policies from it were clearly referred to and available for both sides to comment on. In view of this background, I am satisfied that neither side has been prejudiced by these changes to the development plan.
3. Under the ground (a) appeal, the deemed planning application, the appellant has set out a case that the use as a C4 class HMO is not a breach of planning control. That is an argument better related for consideration of an appeal under s174(c) of the 1990 Act. I take the view that this part of the appellant's case is therefore a 'hidden' ground (c) appeal. Although no formal ground (c) appeal was made, the argument was put forward at the start of the overall appeal and, consequently, the Council has had the opportunity to comment on

it. Therefore, I see no injustice to either side if I was to address this part of the appellant's case as if it was a ground (c) appeal. It would also be a fairer and more appropriate way to consider the argument made by the appellant.

The 'hidden' ground (c) appeal

4. The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) ordinarily permits the change from Use Class C3 (Dwellinghouses) to Use Class C4 (Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"). The appeal property is laid out with five bedrooms. However, in this case the Council has made a direction under Article 4(1) of the GPDO which, in short, has withdrawn the permitted development right to switch from C3 to C4 across the Borough. Express planning permission under the 1990 Act is therefore now required for such changes of use.
5. The appellant has previously applied for planning permission to retain a 5 person HMO (Council Ref: 18/01253/FUL), but that was refused by the Council. The appellant is therefore clearly aware of the need for planning permission for how the property is being used. Furthermore, the appellant holds a licence under the Housing Act 2004 for a HMO "for a maximum of 5 people living as 5 households regardless of age". That licence demonstrates the way the property is being occupied. That is backed up by what Council officers saw when they visited in 2017, which is not disputed by the appellant, and what the Council tax records show regarding payments made by unrelated individuals.
6. The appellant has included plans in her evidence and referred to those as "Approved plans from 2009". There is no indication that the plans were approved under a planning permission and the Council has not referred to any planning permission for the change of use or the internal layout shown on the plans. Based on the use of the property as a HMO, and in the absence of planning permission granted either by the Council, or one granted by the GPDO, there has been a breach of planning control.
7. I note the reference in the HMO licence to "any HMO for more than 6 people will also require planning permission". In Newham that would now seem to be misleading given the background of the Article 4 direction. However, the housing licencing and planning regimes, albeit complementary in seeking to secure suitable living conditions for residents of a HMO, are separate processes and the licence in this case does not convey planning permission for the use of the appeal property as a HMO. Planning permission is clearly required in view of the above background.
8. The misgivings the appellant has about the making of the Article 4 direction, and whether appropriate public consultation was carried out, are not matters upon which I can make any substantive comments or findings. As a matter of fact, the Article 4 direction exists. Regarding any infringement of human rights because of the direction, it is my understanding that this would need to have been considered by the Council and the Secretary of State when the direction was made. As such, that process is not an issue which I can re-consider now under this appeal. Moreover, under legal grounds of appeal, such as s174(c), human rights articles are not engaged.

9. Having regard to the above, and all other related points under this hidden ground of appeal, I find that the alleged change of use does constitute a breach of planning control. Consequently, the hidden ground (c) appeal fails.

The ground (a) appeal

10. The main issues are the effects of the development on the:

- availability of family dwellinghouses in Newham;
- living conditions of the residents of the property, with particular regard to the adequacy of the internal layout;
- living conditions of neighbours, with particular regard to potential noise and disturbance from comings and goings.

Family dwellinghouses

11. From the housing market evidence submitted, new developments in London are failing to provide enough affordable and family sized homes. The Council's own strategic housing market assessment also shows that there has been a steady loss of dwellings with 3 or more bedrooms. There is a risk that the Borough could fail to provide enough family homes. The consequences of this trend can be that families leave, and areas are created that have a more transient population. That in turn can impact negatively on how an area operates through lack of community integration and cohesion. Newham's development plan strategy is therefore to resist the loss of all family housing through the subdivision of existing houses. An underlying tool in that policy has been the Article 4 direction referred to above. No substantive circumstances have been put forward to justify a departure from this policy approach.
12. It is acknowledged that the layout of the property would not in itself preclude the property's use as a single family dwelling. However, that is not the way the property is being used. I also note that the appellant considers the Council could have negotiated to reach a mutually beneficial agreement about how the property could be used and whether the two first floor bedrooms could be considered as family housing. However, interactions between the Council and the appellant are matters away from this appeal. It is not clear to me that if the two bedrooms were occupied by a family, what would happen with the other bedrooms. In any event, the terms of the appeal development derive in this case from the alleged breach of planning control. That is a HMO and I must consider the appeal accordingly.
13. The development does not accord with the aims of LP policies S1, SP1, SP2, SP3, H1, H3 and H4 as they relate to creating community cohesion and inclusion, ensuring Newham is an attractive place to live and seeking to resist the loss of family housing. The Council has referred to many more policies. However, these seem the most relevant to this main issue. The conflict with these brings the scheme into conflict with the development plan as a whole.

Living Conditions – occupiers of the property

14. The Council appear to accept that the room dimensions of the property are sufficiently sized. It is concerned about the occupiers only sharing one bathroom, one kitchen and one living space. However, the bedroom on the top floor has next to it a shower room with a wash hand basin and toilet. Whether

that is used by residents in other bedrooms is not clear, but as a matter of fact the property has one bathroom and one shower room, with toilets and wash basins in each. Also, the living space and the kitchen are reasonably sized and, in my view, appropriate to serve the needs of five persons. The residents have access to a small but pleasant rear garden and there is an outbuilding which appears to be used for domestic storage and space. In this case the property has also been granted a HMO licence because the house is reasonably suitable for occupation by 5 persons.

15. In view of the above, the internal layout has not led to a poor standard of living conditions and there are no wider adverse effects on the healthiness of the neighbourhood. The development accords with the healthy and sustainable neighbourhoods, and neighbour amenity protection aims of policies SP2, SP3, SP8 and H1 from the LP, which are most relevant to this issue.

Living Conditions - neighbours

16. I appreciate that in some instances, use of a property as a HMO can lead to more comings and goings compared to an individual household. However, in this case the property is occupied by five persons which is restricted by the HMO licence. Although the residents are probably unconnected, this is not a considerably greater number of persons than if it was lived in by a family. Family occupation can involve shared comings and goings, but it can also include many different trips if those family members are children in education or grown up siblings who work as well as their parents.
17. Also, whilst the HMO appears to have operated since at least 2017, the Council has not brought my attention to any concerns raised by neighbours and the planning application seeking to retain the HMO did not draw any concerns from near neighbours. In my view, the Council has not established that, in this case, the HMO is causing undue noise and disturbance to neighbours from increased comings and goings.
18. In the case of appeal Refs: APP/G5750/C/14/2225862 & 3 the Inspector appeared to be considering a larger HMO for 7 persons. Also, the finding referred to by the Council was made under a s174(c) appeal. In that the Inspector was considering whether there had been a material change of use, which is different from a finding on planning merit. While he defined what may characterise a HMO, he made no finding about the acceptability or not of such a change of use. Appeal Ref: APP/G5750/W/16/3154230 was for a five bed HMO. However, I do not have any of the evidence before me that the other Inspector had and upon which he would have based his findings. I am mindful that each appeal should be considered based on its evidence and own circumstances. The afore-mentioned appeal decisions do not lead me away from my finding above.
19. The development complies with the relevant aims of policies SP1, SP2, SP3, SP8, H1 and H3 from the LP which appropriately cover this main issue.

Ground (a) Conclusion

20. Although I have found no harm related to the living conditions of the occupiers of the property or to those of neighbours, I have found harm arising from the loss of a family dwelling and conflict with the development plan as a result. That is the prevailing consideration. I have also had regard to references by

the appellant to the National Planning Policy Framework (the Framework). However, in view of the harm I have found, the Framework is not a material consideration which indicates a decision other than in accordance with the development plan.

21. I am mindful that my decision to uphold the notice may mean the current residents have to move and find alternative accommodation. I am also interfering with the use of the appellant's property. Nevertheless, the decision to refuse planning permission and to uphold the aims of planning policies that seek to protect against the loss of family houses in Newham is a legitimate and proportionate response and thus the interference with people's homes and property is justified.
22. Consequently, I conclude that the deemed planning application should be refused. Therefore, the ground (a) appeal fails.

The ground (f) appeal

23. An appeal under this ground is based on whether the steps required by the notice, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which may have been caused by the breach. In this case the breach is aimed at a use of the property. The requirements of the notice seek to cease the unauthorised use and to remove any of the associated works. They are clearly aimed at remedying the breach of planning control by putting the property back to the condition it was before the breach took place. As they do no more and no less, the requirements are not excessive.
24. I note the points made by the appellant under this ground of appeal. However, I have more appropriately considered them under the ground (a) appeal.

The ground (g) appeal

25. I agree that three months based on the circumstances of the appeal would be too short. However, nine months would be an unduly long time. Six months on the other hand would be a fair balance between the two time periods and would be reasonable to allow the use to cease and any works undertaken. It would also allow a more appropriate time for the tenants to find somewhere else to live, albeit the use of the property as a single dwellinghouse which could be let by the owner is not seemingly in question.
26. To this extent the ground (g) appeal succeeds and I shall vary the enforcement notice accordingly.

Formal Decision

27. It is hereby directed that the enforcement notice is varied by deleting the words "three months" from 'Time for Compliance' under section 5 and replacing them with "six months". Subject to this variation the appeal is dismissed, and the enforcement notice is upheld. Planning permission on the application deemed to have been made under s177(5) of the 1990 Act as amended is refused.

Gareth Symons

INSPECTOR