



Appeal Decision

Site visit made on 19 August 2019

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2019

Appeal Ref: APP/G5750/C/18/3207645

14 Barclay Road, Plaistow, London E13 8SA

- 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 A R Chowdhury against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 22 June 2018.
- The breach of planning control as alleged in the notice is 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 3 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.

Summary of Decision: The appeal is dismissed, and the notice is upheld with a correction and a variation.

Application for costs

1. An application for costs was made by Mr A R Chowdhury against the Council of the London Borough of Newham. This application is the subject of a separate Decision.

The Notice – Invalidity Claim

2. Referring to section 173(3) of the 1990 Act, the appellant submits that the enforcement notice is invalid in that the requirements are too vague and uncertain. In particular, citing *Miller-Mead v Minister of Housing and Local Government [1963] 1 All ER 459*, it is contended that requirement 2 is, to use the words of Upjohn LJ, “*hopelessly ambiguous and uncertain*”; there is no way that the appellant can be certain of what he needs to do to comply with the requirement.
3. As all the requisite components of the notice are in place, I am not satisfied that it can reasonably be regarded as a nullity. And, while the appellant refers to “*all*” the requirements in making his claim, his argument focuses solely upon requirement 2. No issue is taken with requirements 1 and 3, both of which I find perfectly clear and pass the ‘test’ for validity stated by Upjohn LJ, in *Miller*

Mead, namely *"does the notice tell the person [on whom it is served] fairly what he has done wrong and what he must do to remedy it?"*.

4. As regards requirement 2, an enforcement notice directed at a material change of use may require the removal of works that are part and parcel of unauthorised development, even though such works on their own do not constitute development so as to enable land to be restored to its condition before the change of use took place. The same principle applies to fixtures and fittings. However, while reference is made to locks on bedroom doors and mattresses and beds, these items are prefaced by *"not limited to"*. As a result, just what the other fixtures and fittings that *"solely facilitate the use"* are is far from clear.
5. I appreciate that it could be argued that there is a reasonable expectation that the appellant, as the owner of the property, would have the best knowledge of its condition before the change of use took place. Be that as it may, while the Council indicate that the appellant could seek clarification if need be, the lack of specificity inherent in requirement 2 carries imparts an air of uncertainty into notice to the extent that it is defective in this respect. That said, mindful that the rest of the notice appears to be sound, I am not satisfied that the defect is sufficiently momentous to render the notice as a whole invalid.
6. Amending the requirement by specifying the items required to be moved is likely to extend the scope of the notice and so would be likely to lead to injustice. However, as I see it, the matter can be resolved by simply deleting requirement 2 from the notice. As this step would not significantly reduce the efficacy of the notice, I am satisfied that I can exercise my power to correct it in this manner without giving rise to injustice. This measure also means that requirement 3 would no longer be needed and I shall therefore remove it too.

Appeal on Ground (a) and the Deemed Application

Planning Policy and Background

7. The development plan includes the London Plan (consolidated with alterations 2011) published in March 2016 and the Newham Local Plan (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 who had already referred to them was allowed an opportunity to comment.
8. The National Planning Policy Framework (the Framework), as updated since the notice was issued, is a material consideration.
9. 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.

Main Issues

10. I consider there are 3 main issues. Firstly, the implications of the change of use for the dwelling stock in the Borough. Secondly, whether the accommodation provides a satisfactory living environment for the occupiers of the HMO. And, thirdly, whether the living conditions of the neighbours would be adversely affected.

Issue 1

11. The appeal property is a two storey mid-terrace house with a single storey rear extension and a loft bedroom, accessed via a spiral staircase. Although there is a school opposite the property on the east side of Barclay Road, the surrounding area is predominantly residential, and I have read that between 1999 and 2015 the appeal property was rented out as a single family dwelling. The appellant submits that the use of a "six/seven"¹ bedroom house is not an efficient or sensible use of scarce housing resources. This is not an argument to which I attach much weight as 2 of the bedrooms are on the property's ground floor where living space would normally be expected to be found.
12. I accept that NLP Policies H1 and S1 do not expressly prohibit the conversion of houses to HMOs. Nor does Policy SP3 refer to HMOs either. And, strategic principle 1c of Policy H1 seeks to secure the delivery of a mix and balance of housing types. However, the latter also refers to a significant increase in family housing to replace that lost to conversion. In a similar vein, strategic principle 1c of Policy S1 refers to the provision and protection of family housing. Furthermore, NLP Policy S6 states that population will be stabilised with a greater focus on improving housing quality and increasing family housing by, in some instances, encouraging the de-conversion of family sized homes that may have been sub-divided in the past. The policy also provides for restricting HMOs and flat conversions. None of these policies lend support to the development in question.
13. In order 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 came into force, there had been a significant growth in the number of dwelling conversions. Many of these were created from family sized dwellings for which there is the highest demand. The resultant reduction in housing choice challenged the wider aspiration of stabilising communities. The justification notes 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 the existing family dwelling stock is an essential element too.
14. Policy H4 recognises that there are circumstances where conversion can have multiple benefits or more desirable outcomes than retaining a family dwelling, but there is nothing that shows that such circumstances appertain in this instance. The appeal property has a rear garden as private amenity space and the original front entrance still leads into its hallway. The property is located in a mainly residential street away from the main traffic routes and movement

¹ It is not clear what is meant by seven bedrooms. The rest of the appellant's case e.g. paragraph 1.3 of the appeal statement refers to the property having 6 bedrooms.

corridors. It is not a type of property, nor is it in a location, where conversion to a HMO may be acceptable.

15. The appellant submits that the development in question 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 appellant may not like or agree with Policy H4 for the reasons he gives, but this development plan policy has been scrutinised through the examination and adoption process and has priority.
16. In conclusion, the change of use of the appeal property 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.

Issue 2

17. Since the notice was issued a HIMO licence under the provisions of Part 2 Section 64 of the Housing Act 2004 was issued on 6 September 2018². I accept that the purpose of the licence is to show that the accommodation is satisfactory. Nevertheless, the paramount considerations in the appeal are derived from the relevant planning policies in the development plan and the Framework.
18. Even though space standards, both nationally and those contained in The London Plan (TLP), do not apply to HMOs, a policy aim, as reflected in NLP Policies S6 and H1 and TLP Policy 3.5, is to secure high quality living accommodation. In particular, NLP Policy SP8 expects appropriate provision to be made for communal spaces and private amenity spaces (such as bedrooms and places of retreat³) in multiple user buildings, including HMOs. In addition, The Framework indicates that higher densities should not be at the expense of acceptable living standards.
19. No issue is taken with the size of the individual bedrooms, 4 of which have ensuite facilities. But, although the property contains 2 kitchens, these are both relatively small and lack external windows. The communal lounge, which has no windows in its walls and which, according to the appellant, measures 3.5m by 2.8m, appeared very cramped relative to the amount of sleeping accommodation in the building. In addition, the use of 2 of the ground floor rooms as bedrooms reduces the amount of common space available to residents.
20. The appeal property has a shared outdoor space at the rear of the house and a detached outbuilding appeared to provide further communal space. Be that as it may, I regard the nature and limited amount of such space within the main body of the appeal building as a serious limitation. The Framework expects planning decisions to ensure healthy living conditions and create better places to live. In addition, the NLP and TLP policies referred to in paragraph 18 above contain a clear vision and expectations which I do not consider are fulfilled in this instance. Even though the HIMO licence is a consideration which carries

² The licence ref. 17/01062/HOHMOL refers to 7 bedrooms at the appeal property.

³ The London Plan refers to a home as a 'place of retreat'.

some weight, I regard the shortcomings I have identified as a disadvantage which adds to the concern I expressed on the first issue.

Issue 3

21. NLP Policy SP8 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. I accept that the intensity of the residential use of the individual properties in the area may well vary considerably, as the appellant submits. However, my view is that the likely pattern of use is a more significant factor than the number of occupants. In all probability, occupiers of the HMO would be more transient and have less commitment to their home and neighbourhood than a conventional family. Moreover, it is reasonable to assume that the occupants of the HMO would be more likely to lead separate, individual lives than a family who share common activities and make more shared trips.
23. The comments made by a neighbour, which have not been called into question by the appellant, include a number of matters which I regard as unneighbourly behaviour and appear to be related to the nature of the occupancy of the appeal property. Mindful that No.4 is a terrace house, the different pattern of occupancy and the related activity likely to be associated with a HMO in this location is such that this could well prove disturbing to the neighbours whose homes would become less pleasant places in which to live. I therefore conclude that the living conditions of the neighbours would be adversely affected and that the development in question is not supported by NLP Policy SP8. I see this as a further disadvantage.

Overall Conclusion

24. 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 appeal should be determined other than in accordance with the development plan. The Class C4 HMO is unacceptable.
25. For the reasons given above I conclude that the appeal on ground (a) fails and planning permission will not be granted on the deemed application.

Appeal on Ground (g)

26. The issue is whether the 3 month compliance period is reasonable and proportionate.
27. No details of the terms of the current tenancies have been put forward, but mindful that the tenants' current homes are involved, it seems to me that 3 months is a very limited period to allow for the service of any notices that may be necessary and, perhaps more importantly, to give the tenants a reasonable opportunity to make alternative arrangements, including finding somewhere else to live.
28. 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. In

the circumstances, I consider that the 6 month compliance period sought by the appellant strikes the right balance and is more reasonable. To this extent therefore the appeal on ground (g) succeeds.

Other Matters

29. I have taken into account all the other matters raised. None, however are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decision

30. I direct that the enforcement notice be:

- A. Corrected in section 5 by the deletion of requirements 2 and 3.
- B. Varied in section 5 by the deletion of "three months" as the period for compliance and its substitution by "six months"

31. Subject to the correction and variation, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D H Brier

Inspector