
Appeal Decisions

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 Refs: APP/G5750/C/18/3207328, 3207333, 3207335 & 3207336 Flats 2, 3, 4 & 6 Max House, 1 Canning Road, Stratford, London E15 3NW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by FPROP Limited against 4 enforcement notices issued by the Council of the London Borough of Newham on 22 June 2018.
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Appeal A Ref APP/G5750/C/18/3207328 – Flat 2

- The breach of planning control as alleged in the notice is the material change of use to a sui generis house in multiple occupation.
 - The requirements of the notice are:
 1. Cease the use of the property as a sui generis 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) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref APP/G5750/C/18/3207333 – Flat 3

- 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) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref APP/G5750/C/18/3207335 – Flat 4

- The breach of planning control as alleged in the notice is the material change of use to a sui generis house in multiple occupation.
- The requirements of the notice are:
 1. Cease the use of the property as a sui generis 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) of the Town and

Country Planning Act 1990 as amended.

Appeal D Ref APP/G5750/C/18/3207336 – Flat 6

- 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) of the Town and Country Planning Act 1990 as amended.
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Summary of Decisions: The appeals are allowed, the notices are quashed, and planning permission is granted on the deemed applications.

Background

1. While the appeals concern 4 individual flats, they are in the same building, and there is a common thread insofar as the locational and policy context in which all the appeals fall to be considered is concerned. Accordingly, therefore, I consider it appropriate for the matters to be dealt with jointly.
2. Max House is a 3 storey former office building attached to a range of commercial units that form part of the Abbey Trading Estate. The appeals building contains 6 flats, 4 of which are the subject of the current appeals. Flat 2 is on the ground floor of the building, Flats 3 and 4 are on its first floor, and Flat 6 is on the second floor. According to the appellant, the 6 flats became lawful through the effluxion of time. Although there is nothing that shows that this has been formally acknowledged by the issuing of a Lawful Development Certificate, this point is not contested by the Council who indicate that the 6 flats are lawful.
3. The development plan includes the London Plan (consolidated with alterations 2011), published in March 2016 (TLP) 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 appellant was advised of the changes and I note that the statement of case refers to the NLP policies.
4. The National Planning Policy Framework (the Framework), as updated since the notice was issued, is a material consideration.
5. 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.

Reasons

Issues

6. 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

7. In essence, the nub of the Council's concern, as set out in the first reason for issuing each of the 4 notices, is that the respective changes of use have resulted in the loss of a family dwellinghouse within the Borough¹. The background to this concern is set out in the respective officer's reports which note that a Strategic Housing Market Assessment undertaken by the Council found that there had been a decline in the proportion of family dwellings. Following on from this, the current policy approach is to resist the loss of family housing, in particular through the subdivision of the traditional housing stock.
8. Strategic principle 1c of Policy NLP H1 seeks to secure the delivery of a mix and balance of housing types, but also refers to a significant increase in family housing to replace that lost to conversion. And, strategic principle 1c of NLP Policy S1 refers to the provision and protection of family housing. 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. Spatial strategy 2b of Policy H3 provides for HMOs, but indicates that they should be purpose-built or converted from premises other than family-sized dwellings.
9. NLP Policy H4, headed 'Protecting and Re-shaping the Existing Housing Stock' protects 3 bed and 4+ bed family housing and supports the de-conversion of flats and HMOs back to family dwelling houses in order to protect and re-shape the existing housing stock. 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 conversions 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 existing family dwelling stock is an essential element too.
10. As the development in question has resulted in the loss of 4 what are regarded as family sized dwellings, on the face of it, the NLP's housing policies, together with the reasons that underpin them, appear to offer strong support for the Council's stance. The concern about prejudicing the ability to stabilise the community and reduce population churn, as expressed in reason

¹ According to the Council 'family sized' dwellings comprise 3 or more bedrooms.

1 for issuing each of the notices, is consistent with strategic principle 1c of NLP Policy S1, namely creating and sustaining new and rejuvenated inclusive, stable, healthy, mixed and balanced communities. However, I have serious reservations about the appropriateness of applying this approach to the appeals site and its surrounds.

11. As noted in paragraph 1 above, Max House is at the western end of a range of commercial units. There is residential accommodation in the vicinity at Channelsea House to the south of the Greenway and I have been advised that approval was granted for the creation of 10 residential units at OMM House nearby in 2017, albeit that scheme did not appear to have been implemented at the time of my site visit. Other than these instances though Max House lies in the midst of a range of commercial and other non-residential uses, including a large London Underground depot on the north side of Abbey Road opposite Max House.
12. The Council officer's reports on the 4 appeal properties all note that "*The area is characterised by industrial and commercial buildings located within the Abbey Lane Commercial Estate*". Moreover, according to the Council's appeal statement, "*the site is allocated within the Council's Local Plan Policies Map as being located within the Canning Road East Industrial Location*"^{2,3}. My impression was that there is a marked contrast between the area to the west of the railway tracks which pass through Abbey Road station, which includes the appeals site, and the land beyond the railway further to the east. The latter is predominantly residential in nature, whereas this is palpably not the case insofar as the immediate surrounds of the appeals property are concerned.
13. Contrary to the Council's view, I find it difficult to see how a handful of individual pockets of residential use sited within a predominantly industrial and commercial area have the potential to create a new community, or even become part of the wider community in Stratford. Indeed, I note that the incompatibility of a residential use with the surroundings was one of the main factors that underpinned the Council's opposition to a scheme to redevelop Max House as recently as January 2017⁴. Although this assessment pre-dated the adoption of the NLP, I find the Council's concern in this respect well-founded and is something that serves to add weight to my own reservations.
14. As the development in question has resulted in the loss of what are regarded as family sized dwellings, albeit by no stretch of the imagination could it be regarded as subdivision of any of the traditional housing stock, I consider that the conversion of the 4 flats concerned is contrary to the relevant provisions of the development plan. And, while NLP Policy H4 provides for the subdivision or conversion of 3+ bed housing in certain circumstances, none of these – save perhaps for (iii) – apply here. However, even though the Council's stance has been supported on appeal, as the 2 decisions cited demonstrate, I am not inclined to attach much weight to them in this instance.
15. Judging by the appellant's photographs, both the properties concerned appear to be family houses. Furthermore, unlike the appeals site, they appear to be

² Council's appeal statement paragraph 2.1.

³ Paragraph 2.1 of the Council's statement also notes that "The area is characterised by residential development of a similar age and style to the appeal property" but this neither accords with my impression, the NLP's designation, or the officer's report.

⁴ Pre-application report No.16/03442/PREAPP 17 January 2019.

situated within established residential areas. As I see it, the considerations involved in this case, in particular those concerning the site's location, are such that a different approach from that contained in the development plan is warranted. Accordingly, therefore, I am not satisfied that the uses in question would have unacceptably adverse implications for the dwelling stock in the Borough.

Issue 2

16. Even though space standards, both nationally and the TLP ones, do not apply to HMOs, a policy aim is, as reflected in NLP Policies S6 and H1 and TLP Policy 3.5, 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 retreat⁵) in multiple user buildings, including HMOs. In addition, The Framework expects planning decisions to ensure healthy living conditions and create better places to live and indicates that higher densities should not be at the expense of acceptable living standards.
17. The outdoor area associated with the residential accommodation in Max House amounts to no more than what the appellant terms a 'sliver' of a yard area by the building's entrance, and 2 small parking areas. The appellant accepts that Flat 2 is dark in places and I noted that although there is a reasonable amount of shared space, this space has no source of natural light, a trait in evidence in the other 3 flats, albeit a modest amount of natural light reaches their kitchen areas. But, although I have read that the number of tenants recorded by the Council varied from 8 in Flat 4 to 5 in Flat 6, and facilities are shared, the accommodation in the individual flats did not appear to me to be unduly cramped, even though some of the bedrooms are doubles.
18. The lack of, or limited nature of, natural lighting in the communal areas of each of the flats in question, coupled with the extremely modest amount of outdoor space attached to Max House and the somewhat unattractive surrounds of the accommodation, is such that I do not consider the accommodation in dispute accords with NLP Policy SP8. Moreover, for essentially the same reasons, it could not reasonably be regarded as high quality living accommodation, as required by NLP Policies S6 and H1 and TLP Policy 3.5.
19. These findings strongly suggest that the Council's concern about the quality of the housing provision in this instance is well-founded. However, although this concern is underpinned by the development plan, in this instance the qualitative deficiencies I have identified, have to be seen against the Council's acceptance that the 6 flats in the building are lawful, a factor which I regard as a very weighty consideration.
20. It seems to me that the relative paucity of natural light and outdoor amenity space would apply just as much were the accommodation to be used as flats. Given the impetus for the provision of family homes contained in the NLP, and the indication that "*The Council will seek to return the land to its former use*" set out in each of the notices, I consider that there is a strong prospect that if the notices are upheld, the accommodation would revert to being flats. In the light of my reservations of the locational suitability of Max House for family

⁵ The London Plan refers to a home as a 'place of retreat'.

housing as well as the qualitative shortcomings of the accommodation, my view is that such an outcome - a realistic fallback position in this instance - would be far from desirable.

21. The accommodation in question is not ideal when viewed against the development plan and the aspirations incorporated into its provisions. Be that as it may, the particular considerations involved in this case, including the fallback position, are such that, on balance, I do not consider the accommodation in question provides an unacceptably unsatisfactory living environment for the occupiers of the HMOs.

Issue 3

22. NLP Policy SP8 expects all development to achieve good neighbourliness by avoiding negative impacts for neighbours on and off the site. In a similar vein, TLP Policy 7.15 requires new development to manage noise by avoiding significant noise impacts on the health and quality of life, an approach reflected in The Framework.
23. In all probability, occupiers of the HMOs, 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 HMOs would be more likely to lead separate, individual lives involving more comings and goings than a family who share common activities and make more shared trips.
24. All the accommodation in Max House is accessed by shared hallways and staircases, so activity associated with the HMO uses in these areas in particular could well be apparent to the occupiers of the other living accommodation in the building. The third reason for issuing each notice states *"The change of use results in an increase in noise and disturbance"* affecting the area and Max House. However, despite the trenchant tenor of this assertion, no evidence that shows that this has actually occurred has been adduced. And, as the Council indicate, the industrial and commercial nature of the site's surrounds, is likely to lessen the potential for disturbance associated with the HMOs.
25. I have had regard to the appeal decisions referred to by the Council, but in this instance, but as each case falls to be considered on its merits, I am not inclined to attach a great deal of weight to them. If the HMOs in this instance were likely to give rise to the type of problems highlighted by the Council, I would have expected them to have manifested themselves by now. In the apparent absence of anything that demonstrates or even suggests that the HMO uses in question, either individually or collectively, have caused any problems for either the occupiers of the flats or the other HMOs in Max House, I am not satisfied that the living conditions of the neighbours would be adversely affected to an unacceptable degree.

Overall Conclusions

26. For the reasons given above, the circumstances of this case are somewhat unusual in that the appeals site is not in a residential area and the residential status of the appeals building appears to have come about rather fortuitously. Insofar as issues 1 and 2 are concerned, the scheme does not accord with the development plan, but mindful of section 38(6) of the 1990 Act I consider the

particular material considerations involved here are such that a decision that is not in accordance with the plan is warranted in this instance. As to issue 3, the locational and site specific circumstances that apply here are such that I see no conflict with the development plan.

27. For the reasons given above I conclude that the appeals should succeed on ground (a) and planning permission will be granted. No conditions have been suggested by the parties and I see no need to attach any.

Other Matters

28. 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 Decisions

Appeal A Ref APP/G5750/C/18/3207328 – Flat 2

29. I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use to a sui generis house in multiple occupation at Flat 2, Max House, 1 Canning Road, Stratford, London E15 3NW referred to in the notice.

Appeal B Ref APP/G5750/C/18/3207333 – Flat 3

30. I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use to a Use Class C4 house in multiple occupation (HMO) at Flat 3, Max House, 1 Canning Road, Stratford, London E15 3NW referred to in the notice.

Appeal C Ref APP/G5750/C/18/3207335 – Flat 4

31. I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use to a sui generis house in multiple occupation at Flat 4, Max House, 1 Canning Road, Stratford, London E15 3NW referred to in the notice.

Appeal D Ref APP/G5750/C/18/3207336 – Flat 6

32. I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use to a Use Class C4 house in multiple occupation (HMO) at Flat 6, Max House, 1 Canning Road, Stratford, London E15 3NW referred to in the notice.

D H Brier

Inspector