



Appeal Decision

Site visit made on 8 October 2019

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 11 October 2019

Appeal Ref: APP/G5750/C/19/3223678

Land at 29 Sebert Road, Forest Gate, London, E7 0NG

- 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 Mabud Hussain against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 18/00784/ENFC, was issued on 1 February 2019.
 - The breach of planning control as alleged in the notice is the material change of use of the ground and first floor of the property to a sui generis House in Multiple Occupation (HMO) and the material change of use of the basement to a self-contained unit of residential accommodation.
 - The requirements of the notice are to
 - 1 Cease the use of the basement of the property as a self-contained unit of residential accommodation.
 - 2 Cease the use of the ground and first floors of the property as a sui generis HMO
 - 3 Remove from the property all but one kitchen.
 - 4 Remove from the property all but one supply of electricity, gas and water.
 - 5 Remove from the property any internal dividing doorways and internal partitioning that solely facilitates the use of the ground and first floor of the property as a sui generis HMO and the use of the basement as a self-contained unit of residential accommodation.
 - 6 Remove from the site all debris arising from compliance with steps 1 to 5.
 - The period for compliance with the requirements is 5 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.
 - **Summary of decision: Appeal dismissed, notice upheld and planning permission refused.**
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Procedural Matter

1. The appellant, through his agent, casts doubt on whether a material change of use has taken place and refers to case law in support of the argument. It is also claimed that the development is permitted through the passage of time. However, when contacted by the Inspectorate that these seem to relate to appeals on grounds (c) and (d), the agent clarified that these comments related only to the host property (which is assumed to mean the ground and first floor) and not to the basement element. It was made clear by the agent that the appellant did not wish to appeal on grounds (c) and (d). I have therefore not considered submissions relating to those matters in this decision.

The appeal site and relevant planning history

2. The appeal property is a two-storey terraced house with 3 bedrooms at ground floor and 4 on the first floor. One of the ground floor rooms has an en-suite bathroom and there are communal WCs, a shower room and a bathroom elsewhere. To the rear of the ground floor is a communal kitchen and a conservatory. A flight of steps at the front of the property lead to a self-contained basement flat and there is a passage at the side of the house leading to the rear garden. The property is located in a residential area.
3. Planning application 13/00317/FUL for flat conversion to provide 3 units, single storey rear and side extension and front and rear lightwells was refused.
4. A Planning Contravention Notice returned in November 2018 indicated that the ground and first floor has been in use as a 7 bedroom HMO since January 2014. It was also indicated that the basement has been used as a self-contained unit since 2014 although the Licence allowed for up to 7 people and included the basement as a living room.
5. An Article 4 Direction of 31 July 2013 removes permitted development rights for the change of use of Use Class C3 dwellinghouses to Use Class C4 HMOs. HMO licences were issued for the appeal property in January 2014 for a maximum of 7 persons living as 5 households and in January 2018 for 7 persons living as 4 households.

The appeal on ground (a)

6. The main issues in the ground (a) appeal relate to the loss of a family home, the quality of the accommodation provided and the affects the use has on the living conditions of nearby residents.
7. The Councils Strategic Housing Market Assessment identified in 2010 that if the proportional loss of family units continues at the same rate, Newham will fail to provide enough family homes. Accordingly, policy has been developed to resist the loss of all family housing, in particular through the subdivision of the existing traditional housing stock. Policy H4 of the Newham Local Plan specifically protects 3 bed and 4+ bed family housing. Policy H3 indicates that large and small HMOs should be purpose built or converted from premises other than family-sized dwellings and be directed to preferred locations such as town and local centres. Policy S6 provides greater focus on improving housing quality and restricting HMOs and flat conversions. The unauthorised use of the appeal site as an HMO and a flat clearly does not accord with these policies as it contributes to a further imbalance in the local housing stock.
8. The use of the house as an HMO results in higher density of persons living within a space designed for family accommodation. The sharing of cooking facilities, WCs, bathrooms, living space, and in some cases, bedrooms, and the loss of personal privacy, does not contribute to providing high quality living accommodation that Local Plan Policy SP2 and SP3 seek. The basement flat is dark, lacking in natural daylight, ventilation, outlook and outdoor amenity space detrimental to the living conditions of the occupants.
9. I note that the Council has also expressed concern about the absence of cycle parking but the appeal site is, in my view, sufficiently large for such facilities to be provided securely. Additionally, it is pointed out that the flat does not meet

desired accessibility or means of escape standards but these are not the determinative factors in this appeal.

10. The Council has had complaints about noise and disturbance arising from occupants of the appeal property and written representations have been submitted by three local residents referring to noise and loud music, disturbance, deposition and burning of rubbish, outside parties in the summer, loss of privacy, and the blocking of the common access to the rear. Such disturbance is often associated with more intensively used accommodation and it contrasts with the generally quieter use of a property in single family occupation.
11. I conclude that the material change of use of the property is harmful to the balance of the housing stock, it represents a poor standard of accommodation and is harmful to the living conditions of local residents. It is contrary to the policies in the London Plan and Newham Local Plan as described above.
12. The appeal on this ground fails.

The appeal on Ground (f)

13. An appeal on this ground is that the steps required to comply with the requirements of the notice are excessive.
14. The appellant claims no opportunity was given to apply for planning permission, that the Council did not work pro-actively with the appellant and the option to comply with the terms of the HMO license should have been given by the Council.
15. The appellant has had the opportunity to submit a planning application but has chosen not to do so and correspondence from the Council indicates that the appellant was kept informed. Additionally, there was no lawful use of the property in the planning context. However, none of these matters are relevant to a ground (f) appeal.
16. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
17. The appeal on this ground fails.

The appeal on ground (g)

18. The appellant considers that the 5 months given to comply with the notice is too short as it does not allow tenants to identify and physically relocate to alternative accommodation. A compliance period of 9 months is sought.
19. The appellant claims that the tenancies of the existing tenants expires at different times and the appellant would need to give the tenants no less than 6 months notice at the end of their tenancy. However no supporting information, such as copies of tenancy agreements, has been submitted that supports such a claim.

20. I am satisfied with the Council's explanation that under the Housing Act 1988 a Section 21 notice can be served giving 2 months to vacate the property. Consequently, the compliance period would be an adequate period for the property to be vacated and the necessary works to be carried out.

21. The appeal on this ground fails,

Conclusions

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

Decision

23. 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.

Peter Jarratt

Inspector