
Appeal Decision

Site visit made on 9 October 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Appeal Ref : APP/T5150/C/18/3214539

Land at 4 Heber Road, London, NW2 6AA

- 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 Graham Alan Woodruff against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 14 September 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the premises to a House in Multiple Occupation (HMO) for more than six occupants.
- The requirements of the notice are step 1 cease the unauthorised use as a House in Multiple Occupation for more than six occupants, step 2 reduce the number of beds at the premises to no more than six beds, step 3 provide a communal living room and separate kitchen on the ground floor of the premises, and no more than one bedroom at the ground floor of the premises.
- The period for compliance with the requirements is two 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 succeeds in part and the enforcement notice is upheld as varied in the terms set out in the Formal Decision

Ground (a) appeal and deemed application

Main Issue

1. The main issue in the determination of this appeal is the effect of the development on the living conditions of current and future occupiers of the property with regard to adequacy of accommodation.

Living conditions – occupiers

2. The development plan (including the London Plan and the Brent Development Management Plan (the DMP)) reflect the National Planning Policy Framework (the Framework) in seeking to ensure that development is high quality and meets local needs. Policy DMP1 of the DMP provides that development should provide high levels of internal and external amenity. Policy DMP20 supports accommodation with shared facilities where certain specified criteria are met. Specified criteria include the development being of acceptable quality to meet the needs of its occupants. I have also taken into account as a material consideration the Supplementary Planning Document adopted in November 2018 which states that development should provide well-designed communal amenity space.

3. The appeal site is a terraced dwelling in a residential area. There is no dispute that at least one family with children lives in the property. I saw at my site visit that many of the rooms are small and lack adequate circulation and storage space. Bathroom facilities are cramped and do not reasonably meet the need of occupants, particularly families with children. The communal kitchen is awkward and cramped with no space for communal dining. This means that occupants are likely to spend more time in the individual units where space is also limited.
4. The rear amenity area is not well-designed and photographs produced by the Council show it to be poorly maintained and much of the available space is taken up by a rear outbuilding to which the occupiers have no access.
5. The development is not high quality and does not provide high levels of internal and external amenity. The identified harm is significantly greater than the use of the property as a C4 HMO.
6. My attention is drawn to an appeal decision concerning another property. I shall determine this appeal on its own particular facts but in any event that appeal concerned a proposal for a sui generis HMO and the facilities were not on all fours with the facts of this appeal.
7. I note that the property has an HMO licence for up to 10 persons but this is a separate legislative regime and does not affect the need for planning permission. Whether or not the Council drew the Appellant's attention to this is not a ground of appeal and not a matter to which I have afforded weight. There is no presumption or legitimate expectation that planning permission will be granted where an HMO licence has been issued. The level of occupancy has a direct bearing on the adequacy of communal living space and the likely incidence of comings and goings from the property.
8. The Appellant argues that policy DMP20 should be afforded little weight. Policy DMP20 is an adopted development plan policy and there is insufficient justification before me not to afford it weight accordingly.
9. I have considered the demand for local housing but this does not outweigh my concerns about the adequacy of the accommodation. I have considered the effect of the development on the living conditions of neighbours but do not consider this to be a main issue on the evidence before me.
10. I conclude that the development causes undue harm to the living conditions of current and future occupiers by reason of the inadequacy of the standard of accommodation and it fails to accord with relevant policies in the development plan including policies DMP1 and DMP20 of the DMP and the Framework.

Conclusion

11. The development causes harm to the living conditions of current and future occupiers by virtue of the inadequacy of the standard of accommodation.
12. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. The Appellant suggests a condition limiting occupation of bedrooms but I do not consider this or any other conditions could overcome the identified harm. Planning permission should not be granted on the deemed application.

Ground (g) appeal

13. This ground of appeal is that the period for compliance is unreasonably short. The notice provides for a period of two months.
14. The Appellant argues that six months would be a reasonable period and would allow the young family time to find alternative accommodation. But I am provided with no detailed information concerning tenancies or the availability of alternative accommodation. The works required by the notice are not complex.
15. The rights of an individual to a home must be taken into account. Interference with the way the Appellant uses the property must be proportionate taking into account the conflicting considerations of private and public interest. I have balanced the private interests of the Appellant and occupants and the public interest in bringing the identified harm to an end without unnecessary delay. I also have taken account of the occupation by children and balanced equality issues against all other material considerations. I consider that a period of three months would be a reasonable time in which to expect the requirements to be undertaken. It would strike an appropriate balance so as not to violate individual rights and take appropriate account of the particular circumstances in this case. To this limited extent the appeal on ground (g) succeeds.
16. For the reasons given I conclude that a reasonable period for compliance would be three months and I am varying the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

17. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the substitution of three months as the period for compliance. Subject to this variation the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector