The Planning Inspectorate

Appeal Decisions

Site visit made on 15 October 2019

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

Decision date: 31 October 2019

Appeal A Ref: APP/N5090/C/19/3227632
93 Waterfall Road, London N11 1BT

- 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 J Bomanji against an enforcement notice issued by the London Borough of Barnet.
- The enforcement notice was issued on 26 March 2019.
- The breach of planning control as alleged in the notice is the change of use of the property into as house in multiple occupation (HMO)(Sui Generis).
- The requirements of the notice are 1. Cease the use of the property as a house in multiple occupation; 2. Restore the property back into the state in which it was prior to the breach, as per pre-existing plan "Page 3 of 3" of planning permission reference 19/0355/RCU dated 20.3.2019, including the removal of all but 1 bathroom, and the removal of all but one kitchen'; and 3. Permanently remove all constituent materials resulting from the works in 2 above from the property.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/N5090/W/19/3225610
93 Waterfall Road, London N11 1BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr J Bomanji against the decision of the London Borough of Barnet.
- The application Ref 19/0355/RCU, dated 22 January 2019, was refused by notice dated 20 March 2019.
- The development proposed is conversion of the house to form a 6 person HMO.

Appeal C Ref: APP/N5090/X/19/3227661
93 Waterfall Road, London N11 1BT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr J Bomanji against the decision of the London Borough of Barnet.
- The application Ref 19/0416/192, dated 24 January 2019, was refused by notice dated 2 April 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is 'unlawful 6 person C4 to C3 (as the known lawful use)'.

Appeal D Ref: APP/N5090/W/19/3227662
93 Waterfall Road, London N11 1BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr J Bomanji against the London Borough of Barnet.
- The application Ref 19/0357/FUL is dated 22 January 2019.
- The development proposed is restoration of the property to C3 residential use.

Decisions

Appeal A Ref: APP/N5090/C/19/3227632

1. The enforcement notice is varied by the deletion of 'and the removal of all but one kitchen' in requirement 2 in section 5. Subject to this variation the appeal is dismissed, 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.

Appeal B Ref: APP/N5090/W/19/3227610

2. The appeal is dismissed.

Appeal C Ref: APP/N5090/X/19/3227661

3. The appeal is dismissed.

Appeal D Ref: APP/N5090/W/19/3227662

4. The appeal is dismissed.

Reasoning

Procedural matters

5. The Appellant has made applications for costs against the Council and the Council has made applications for costs against the Appellant. These applications are the subjects of separate decisions.

Background information

6. The change of use of a Class C3 dwelling house to a Class C4 house in multiple occupation (HMO) is development permitted under Class L of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 as amended (the GPDO). However, the Council issued a direction, under Article 4 of the GPDO, which came into effect on 29 May 2016 and which removed that permitted development right across the Borough. The change of use of a Class C3 dwelling house to a Class C4 HMO is therefore development, in the Borough, for which planning permission is required.

The ground (b) appeal in Appeal A

7. The appeal property was originally a two storey dwelling with four bedrooms and a bathroom at first floor level, and a living room, a dining room, a kitchen, a toilet and a conservatory at ground floor level. En-suite shower rooms have been installed in two of the first floor bedrooms and the ground floor dining room and

living room, and the first floor bathroom has been sub-divided to create an en-suite shower room in the third first floor bedroom and a separate but clearly dedicated shower room to the fourth first floor bedroom. The Appellant does not dispute that his intention was, in carrying out the works in 2018, to convert the Class C3 dwelling into a Class C4 six person HMO.

8. The Appellant maintains that, since the conversion works were carried out, the property has been occupied by a family and then by two individuals, and that, therefore, the change of use alleged in the notice has not occurred. This is incorrect. The use of a property, whether lawful or unlawful, is that for which it is laid and fitted out, after works associated with the change of use are substantially complete. The appeal property has been laid and fitted out, by the introduction of five en-suite shower rooms and one dedicated shower room, to be a six person HMO. The works associated with the change of use are complete. That the property has been occupied by a family and then by two individuals since the property was laid and fitted out, does not alter the conclusion that the breach of planning control has occurred. The ground (b) appeal thus fails.

The ground (a) appeal in Appeal A and Appeal B

9. The main issues are; first, whether there is an identified need for the HMO; and second, the effect of the use of the property as a six person Class C4 HMO on the character of the area and the amenities of neighbouring residents.

10. The Development Plan includes Barnet's Local Plan (LP). LP policy DM09 states, amongst other things, that proposals for new HMOs will be encouraged provided that they meet an identified need, can demonstrate that they will not have a harmful impact on the character and amenities of the surrounding area, are easily accessible by public transport, cycling and walking and meet relevant standards for HMOs. LP policy DM08 'Ensuring a variety of sizes of new homes to meet housing need' states that "…our dwelling size priorities are…", generally, homes with 3 or 4 bedrooms. The supporting text to this policy indicates that 1 and 2 bedroom homes will also be supported.

The first issue – need for the HMO

11. The Appellant has referred to the London Strategic Housing Market Assessment 2017 (LSHMA) which highlights that there is a specific need for single user rental property, and to the LP which, as referred to above, indicates that 1 to 2 bedroom homes will be supported. But the LSHMA indicates that there is a need for all sizes of homes across London and in Barnet. The supporting text to LP policy DM08 does not suggest that applications for HMOs or for 1 to 2 bedroom homes will be supported where they would result in the loss of 4 bedroom homes. It is this size of home, and the appeal property was formerly laid out as a 4 bedroom home, that is a priority in Barnet, as set out in policy DM08. There is no evidence to indicate that there is an identified need for an HMO in this location and the use of the property as a 6 person HMO results in the loss of a four bedroom home. The use of the property for this purpose is contrary to LP policy DM08.

12. The Appellant has suggested that the accommodation provided would be suitable to house otherwise homeless persons and those on low incomes who cannot afford ordinary rental accommodation. This suggestion can only be given any weight if it is secured by legal obligation, and the Appellant has not entered into a legally binding obligation, made under the provisions of Section 106 of the Town and Country Planning Act 1990.

The second issue – the character of the area

13. The neighbouring dwelling, no. 95, is an HMO; a Lawful Development Certificate for the use was issued in 2015 prior to the issue of the Article 4 Direction. Otherwise, all dwellings on this section of Waterfall Road are single family dwellings and the area has, consequently, a quiet and calm character, despite the traffic on this distributor road. The use of the property as a 6 person HMO would introduce a significantly higher level of comings and goings than is associated with a single family dwelling. This would undermine, and would have a harmful impact on, the character of the area. The use of the property as an HMO thus conflicts with LP policy DM09.

14. The additional activity at the front of the property resulting from its use as an HMO, given noise from nearby traffic, would not harm neighbouring residential amenity. The garden at the rear of the property is a significantly quieter outdoor area and the use of the property and its garden by six individuals rather than a family could result in noise and disturbance that would be harmful to neighbouring residential amenity. Any such harm though would not be significant.

Conclusion

15. There is no identified essential need for the HMO and the use of the property for this purpose would harm the character of the area. The HMO use thus conflicts with LP policies DM08 and DM09. Planning permission must therefore be withheld.

The ground (f) appeal in Appeal A

16. The pre-existing plan "Page 3 of 3" referred to in requirement 2 in Section 5 of the enforcement notice shows the layout of the dwelling prior to the works that were carried out to convert the property to an HMO. This plan shows the layout of the dwelling that is lawful. There was, originally, only one kitchen in the dwelling and there remains only one kitchen. The requirement of the enforcement notice to remove 'all but one kitchen' is therefore misleading and ambiguous. The ground (f) appeal succeeds in this regard and the notice has been varied by the deletion of 'and the removal of all but one kitchen' in requirement 2 in section 5.

Appeal C

17. Three drawings were submitted with the application – pre-existing plans, as built plans and proposed plans. The pre-existing plans show the original layout of the dwelling before any works were carried out to introduce shower rooms, and the as built and proposed plans are the same and show the layout of the dwelling with the shower rooms in place. The lawful layout of the dwelling is that shown on the pre-existing plans and the enforcement notice requires that the dwelling reverts to this layout. The application indicates that the last known use, with the date when this use ceased, was 'C3 – Dec 2017'. The layout of the dwelling in December 2017 is that shown on the pre-existing plans.

18. The Appellant's Agent was asked, in an e-mail, "…that the…application is asking the LPA to confirm that the use of the building as a single family dwelling (C3) laid out as shown on the drawing entitled pre-existing plans…would be lawful". His response was "…its for C3 use as laid out in the proposed plans. You know this and it is very clear". The only conclusion that can be reached from this 'clear' response is that the Appellant was seeking to establish, in submitting the application, that the lawful use of the dwelling is that shown on the proposed plans. The lawful layout of the dwelling is not that shown on the proposed plans but that

shown on the pre-existing plans. An LDC cannot be granted for the unlawful layout of the dwelling that is shown on the proposed plans.

19. For the reasons given above the Council's refusal to grant an LDC in respect of 'unlawful 6 person C4 to C3 (as the known lawful use)' at 93 Waterfall Road, London was well-founded and the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

Appeal D

20. An appeal has been submitted and validated and must therefore be determined. The three drawings referred to in paragraph 17 above were submitted with the application. Planning permission is not required to restore the dwelling to the layout shown on the pre-existing plans; this is the lawful layout of the dwelling and reversion to this layout is required by the enforcement notice. So the application must have been pursued, because "…it serves a purpose in the clients interest", to establish the layout of the dwelling as shown on the proposed plans. It is possible that the Appellant believes, incorrectly, that these show the lawful layout of the dwelling because it was occupied by a family.

21. The layout of the dwelling as shown on the proposed drawings, with, in particular, en-suite shower rooms to what were previously a living room and a dining room, is highly unusual for a family dwelling. It is not unreasonable for the Council to have observed that "…it is suspected that the purpose of this application is as a stepping stone to eventually achieve a lawful HMO use". Given that the LDC proposal, even though that application was seeking to establish a lawful C3 use, was for the same 'proposed' layout, there is good reason to suppose that the Council's suspicion is correct. The proposed layout of the dwelling is not a realistic or reasonable layout of a C3 residential use.

22. The appeal must therefore be dismissed and planning permission refused for the restoration of the property to a C3 residential use.

John Braithwaite

Inspector