The Planning Inspectorate

Appeal Decision

Site visit made on 8 October 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal Ref: APP/G5750/C/18/3213389
Land at 131 Second Avenue, Manor Park, London E12 6EN

- 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 Khandkhar Uddin against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 7 September 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use to a Sui Generis house in multiple occupation (HMO).
- The requirements of the notice are: -
  1. Cease the use 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), (c) and (d) of the Town and Country Planning Act 1990 as amended (1990 Act).

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

1. Subsequent to the issuing of the enforcement notice the Newham Local Plan 2018 (LP) was adopted in December 2018. It replaces the London Borough of Newham Local Plan: Core Strategy (January 2012) and London Borough of Newham Local Plan: Detailed Sites and Policies Development Plan Document (October 2016). I have therefore dealt with the appeal on the basis of the up to date policies in the adopted plan. The policies in the LP were carried forward from the Newham Local Plan: Secretary of State Submission Version (February 2018) with Proposed Main and Minor Modifications (July 2018) (draft LP) as referred to in the enforcement notice.
2. The Council's reasons for issuing the enforcement notice refer to policies in the Draft London Plan (Draft London Plan). Given the current status of the Draft London Plan, I have given it minor weight in my consideration of the appeal.
3. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. However, the sections relevant to it have not materially altered. As such, in the circumstances of this case I do not consider that it is necessary to seek the further views of the parties. I am required to consider the appeal on the basis of the current Framework.

4. The evidence before me cites the Council's refusal of a certificate of lawfulness[1] (CoL) for the existing use of a house in multiple occupation (HMO). Nevertheless, the appeal before me relates to the issuing of the enforcement notice as specified in the banner heading above. The Council's Statement of Case highlighted that the appellant's evidence with regard to the ground (c) appeal may be better considered as a ground (d) appeal. The appellant was given the chance to comment on this matter and requested that his appeal be amended to include ground (d). Both parties have had the chance to submit evidence and comments on this matter and therefore, no injustice would be caused to them. I have dealt with the appeal on this basis.

5. Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) relates to the use as a dwellinghouse as set out in the Schedule to the UCO. Class C4 of the UCO relates to the use of a dwellinghouse by not more than six residents as a HMO. 'Sui generis' denotes a use which falls outside of any class described in the Schedule to the UCO – such as a HMO with more than six residents (large HMO).

6. The appeal building lies within an area that is subject to a direction made under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (Article 4 Direction) (GPDO) which came into force on 10 June 2013. The Article 4 Direction withdraws permitted development rights (PD) for a change of use from Class C3 to C4, meaning that express planning permission must be granted on application for such development. However, the alleged breach relates to the use of the building as a large HMO and the appellant contends that the building has been in use as a large HMO. I have dealt with the appeal on this basis.

The appeal on ground (c)

7. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof is on the appellant. For example, the appellant needs to demonstrate that development has not occurred for the purposes of Section 55 of the 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted' development.

8. When considering whether a change of use is material, the question is whether there is some significant difference in the character of the activities undertaken as a matter of fact and degree. There is no dispute that when the notice was issued that 7 people were residing within the building and that the previous use of the property was as a Class C3 dwellinghouse. In this case I consider that the use of the property as a large HMO is materially different from that as a Class C3 dwellinghouse. This is due to the amount of activity attributable to 7 unrelated individuals living in the building.

9. The only factor that could safeguard the lawful status of the use would be if it was too late to enforce against it due to the passage of time. This, however, is a ground (d) argument. An appeal on ground (c) is considered independently of the question of immunity periods, the relevant question being *'would the development have required planning permission?'*. The ground (c) appeal therefore fails.

[1] Ref : 18/01966/CLE

The appeal on ground (d)

10. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellant to demonstrate that the use as a large HMO had continued for a period of not less than 10 years before the notice was issued, that is from 7 September 2008.

11. The onus rests with the appellant to demonstrate, on the balance of probability, that the use has been continuous over this period with the exception of any non-material breaks in occupation.

12. The appellant provided various evidence, including tenancy agreements, letters and 192.com records, to the Council in relation to the CoL. However, I have not been provided with a copy of that evidence by the appellant. As a result, there is little evidence before me to demonstrate that the use has been continuous over this period. Nevertheless, based on the information within the Council's Officer Report relating to the CoL it would appear that there appears to have been a material break in the occupation of the building as a large HMO. In March 2014 the Council visited the property and was satisfied that it was in use as a family home at that time. I acknowledge that on what specific evidence the Council Officer's based that assessment on is not clear.

13. However, the evidence supplied in support of the CoL does little to counter that case as it would appear that there was no evidence submitted to indicate that for the majority of 2014 and 2015 that the property was in use as a large HMO. As such, it highlights the need for greater clarification in this area.

14. In conclusion, the appellant has not provided sufficient evidence to persuade me, on the balance of probability, that the property has been subject to continuous use as a large HMO over the key periods, or that the use was not interrupted by a further material change of use. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed planning application

Main Issues

15. The main issues are:-

- The effect on the living conditions of current and future occupiers with regard to the standard of accommodation;
- The effect on the living conditions of neighbours with regard to noise and disturbance;
- Whether the site is a suitable location for a large HMO with regard to development plan policies relating to housing.

Reasons

Standard of accommodation

16. LP Policy SP3 includes the importance of contributing to the creation of … an integrated range of high quality accommodation for living. LP Policy H1 states, amongst other things, that all new homes should meet the internal space standards of the London Plan as a minimum or if specialist housing those set out in LP Policy H3. This latter policy relates, amongst other things, to the provision of large and small HMOs and the design and technical criteria to be achieved. At point 3 b ii it states that proposals for housing other than

conventional single-family housing should demonstrate the achievement of Newham and Pan-London Private Sector Rental Licensing benchmark criteria (BC) for mainstream HMOs. I have not been provided with a copy of that document.

17. However, the appellant has stated that the space standards within Newham's Guidance on Accommodation Standards (NGAS) include that for 1 person (1 household) rooms should be 8.5sqm to 12.99sqm and that 6.5sqm will be allowed as a minimum providing there is sufficient communal space available in the property. The Council has stated NGAS is used by the Council's Licensing Team for assessing properties in relation to HMO licences. It is therefore not clear if the BC and NGAS require the same criteria/standards to be met.

18. The majority of the 7 bedrooms identified in the evidence before me meet the room sizes specified in NGAS and I acknowledge that some of the rooms could be of sufficient size to meet the NGAS for 2 persons (1 household). However, bedroom 6 does not meet the minimum size of 6.5sqm within NGAS. In addition, I noted that one of the bedrooms only had a relatively small high-level window within it. This means that the outlook from that room is substantially restricted.

19. LP Policy SP8 states, amongst other things that, development will be expected to promote neighbourliness in addressing the need to; make appropriate provision for communal spaces and private amenity spaces (e.g. bedrooms and places of retreat) in multiple-user buildings (including HMOs) and should take into account any losses incurred.

20. The intensive use of the property has resulted in crowded internal arrangements with very limited shared space other than the kitchen/dining room. Even though, that room appears to be of an adequate size functionally due to its location it also acts as a circulation space to a bathroom, bedroom, the garden and the room shown as a store. As such, there is little internal dedicated sitting and congregation space available for communal activity, such as general socialising. I consider that this forces the occupiers to spend more time in their bedrooms.

21. Overall, I do not consider that it has been demonstrated that the accommodation within this HMO meets the standards required by the above LP Policies. In addition, I consider that the internal arrangement of the property is sub-standard, providing poor living conditions for occupants especially those in 2 of the bedrooms. There is a reasonably sized rear garden area, but this does not outweigh my concerns with respect to the overall quality of the accommodation provided. The appellant has stated that he would be happy to convert one of the ground floor bedrooms to a living room. However, that would not resolve all of the issues I have highlighted in relation to the standard of accommodation.

22. I recognise that the appeal property benefits from a HMO licence issued by the Council. However, the granting of that licence does not equate to compliance with planning policy, which is an entirely separate matter. In that regard, I find that the accommodation in this HMO is not of an adequate standard as it does not provide satisfactory living conditions for the current or future occupiers. It follows that the development conflicts with LP Policies H1, H3, SP3 and SP8. It also conflicts with paragraph 127 of the Framework which states, amongst other things, that planning decisions should ensure that

developments create places with a high standard of amenity for existing and future users.

Noise and disturbance

23. The occupation of the property by residents independently of one another, is likely to give rise to a wide variation in movement patterns. Furthermore, it is likely that there could be a significant number of visitors, associated with the unrelated identities of the occupiers. The pattern of occupation could potentially give rise to a large number of comings and goings to and from the property, and potentially at times when neighbouring occupiers would reasonably seek to enjoy the peace and quiet of their homes.

24. In addition, the property is within a terrace and in this respect, the impact of the development upon occupiers of neighbouring properties is intensified by their close proximity. Furthermore, occupiers of neighbouring properties have indicated that there have been incidents arising from the use of the property including noise and disturbance late at night, raids by the police and a fire within the property.

25. I note that the Inspector, in respect of an appeal decision[2] at 31 Second Avenue, stated that *'a grown-up family of up to 6 people (with, for example, teenage children) could be equally capable of producing 'loud music' and just as much noise and disturbance as any other combination of 6 people living at the property'.* Nevertheless, in that case there was no significant evidence to suggest that nearby residents had been significantly and detrimentally affected by the HMO use. Whereas, in this case the evidence before me indicates that this large HMO has led to an unacceptable exposure to noise and disturbance for the neighbouring occupiers.

26. I conclude that it is likely that the intensity and nature of the occupation, at such close proximity to neighbouring dwellings, as a large HMO results in a level noise and disturbance that could adversely affect the living conditions of nearby occupiers. I have little evidence before me to indicate whether this noise and disturbance could be mitigated or minimised by means such as the application of planning conditions.

27. It follows that the development conflicts with LP Policy SP8 which states, amongst other things, that development proposals will be expected to promote neighbourliness in addressing the need to avoid unacceptable exposure to noise and disturbance. It also conflicts with Policy 7.15 of the London Plan 2016 and Policy D13 of the Draft London Plan which, seek development that, amongst other things, manage noise by mitigating and managing the existing and potential adverse impacts of noise. It also does not comply with paragraph 127 of the Framework.

Housing

28. I accept that LP Policy H1 states, amongst other things, that where the inclusion of purpose-built Build to Rent accommodation is justified as part of a broader housing mix, delivery should occur on Strategic Sites or, where units will operate as HMOs, be in HMO appropriate locations in accordance with policy H3. Its strategic principles also seek, amongst other things, to secure the delivery of a mix and balance of housing types. However, it also refers to a significant increase in family housing to replace that lost to conversion. In a

[2] APP/G5750/C/18/3207682 – 19 July 2019

similar vein, strategic principle 1c of LP Policy S1 refers to the provision and protection of family housing. Furthermore, LP Policy S6 states, amongst other things, that population will be stabilised with a greater focus on improving housing quality, protecting and increasing family housing, and restricting HMOs, encouraging de-conversion of family-sized homes that have been subdivided in the past.

29. Part of the spatial strategy contained in LP Policy H3 is that large and small HMOs should be purpose-built or converted from premises other than family-sized dwellings. It also states that purpose-built build to rent HMOs, and otherwise policy-compliant conventional HMO conversions should be directed to Town and Local Centres and along Key Movement Corridors, where compatible with other policies.

30. In order to protect and re-shape the existing housing stock LP Policy H4 states, amongst other things, that the Council will specifically protect 3 bed and 4+ bed family housing and it 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 and the resultant reduction in housing choice challenged the wider aspiration of stabilising communities.

31. LP Policy H4 recognises that there are circumstances where conversion can have multiple benefits or more desirable outcomes than retaining a family dwelling. However, 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 and even though it is within easy walking distance of Romford Road I have no evidence to indicate that it is in a location that meets the criteria of the above LP policies.

32. The appellant submits that the development is in an accessible location and I have no reason to dispute that fact. However, the LP emphasises and explains why it is necessary to retain family homes and why HMOs should be directed to the areas indicated within the policies. 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. In conclusion, the change of use of the appeal property into a large HMO conflicts with LP Policies H1, H3, H4 and S6.

Other matters

33. The appellant has drawn my attention to other HMOs that have been approved in the Council's area including a recent planning permission for 31 Second Avenue to be used as a HMO for 4 occupants. The Council's Officer's Report relating to the latter indicates that the issues highlighted by the Inspector in the appeal decision, cited above, were overcome by the proposal as more communal space was to be provided and a small bedroom was to be used as a study. Moreover, the HMO was only to be for 4 occupants. As such, it is not directly comparable to this case. In relation to the other HMOs that have been approved I do not have the details of the circumstances that led to their approval. As such, I cannot be certain that they are comparable to this case. In any case, I am required to determine the appeal on its individual merits.

34. I have considered whether conditions could overcome the identified harm. Whilst I recognise that conditions might adequately control matters relating to cycle and waste storage and could limit the maximum number of occupants to 7, this would not mitigate the harm identified.

35. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

36. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the appellant's and occupiers' rights under Article 8 and Article 1 of the First Protocol. Article 1 concerns enjoyment of possessions; Article 8 states that everyone has a right to respect for his home and private life, his home and correspondence.

37. However, those rights are qualified and my role in this appeal is to ensure that any interference with those rights is necessary and proportionate when also taking into account the wider public interest of remedying the harm arising from the unauthorised use. There are legitimate planning policy aims to manage housing uses in the interests of the community, protect the living conditions of neighbouring occupiers and current and future occupiers of the development. The interference with the rights of individual occupiers and the appellant is necessary and proportionate to achieve the legitimate public end pursued.

Conclusion

38. The Inspector in the appeal decision cited above considered that even though the change of use to a HMO was contrary to LP policies that the planning history showed, as a matter of fact, that the dwelling was being used as a HMO for many years. As such in that case, he concluded that the specific material considerations outweighed the aims of the LP Policies in relation to the protection of family housing. Nonetheless, as stated above it is not clear if the appeal property has been in use as a HMO for a long period or whether the property was in use as a family home in 2014/2015.

39. The material change of use to a large HMO is contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.

40. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal on ground (a) should not succeed. I shall refuse to grant planning permission on the deemed application.

Formal Decision

41. The appeal is dismissed and 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.

D. Boffin

INSPECTOR