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## Appeal Decision

Site visit made on 5 November 2019

**by L Perkins BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 November 2019**

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**Appeal Ref: APP/N5090/C/19/3225763**

**14 Brent Way, London N3 1AL**

- 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 Richard Bagwell against an enforcement notice issued by the Council of the London Borough of Barnet.
  - The enforcement notice was issued on 28 February 2019.
  - The breach of planning control as alleged in the notice is: Without planning permission the use of the property as a (sui generis) House in Multiple Occupation.
  - The requirement of the notice is: Cease the use of the property as a (sui generis) House in Multiple Occupation.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. 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 as amended.

### Reasons

#### Whether the change of use alleged has occurred

2. The appellant states that the property is a small House in Multiple Occupation (HMO) i.e. Use Class C4<sup>1</sup>. This is not the allegation specified in the notice and so I consider this amounts to an appeal on ground (b) i.e. that the matters which appear to constitute the breach of planning control alleged in the notice have not occurred.
3. The property contains five double bedrooms. At the time of my visit a sixth room contained a single bed. As such there are a total of 11 bed spaces in the property. I have no reason to believe the property was not laid out in this way when the notice was issued. The appellant states that only 5 people have been living at the property but limited information has been provided to satisfy me this is the case and I note the evidence indicates a licence has been granted for the property to be used as a 9 resident HMO.
4. Given the size and capacity of the building, particularly in terms of the number of bed spaces, I am satisfied that the use alleged had occurred when the notice was issued.

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<sup>1</sup> A dwelling house used by not more than six residents as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended)

The ground (c) appeal

5. The appellant has stated that the change of use which has occurred is permitted development. For the reasons given above, I am not satisfied the building is a small HMO and limited information has been provided to evidence that the change of use which has occurred is permitted development or that express planning permission has been granted for the use which has occurred.
6. In any event I note that the Council implemented an Article 4 Direction in 2016 which removed permitted development rights for dwelling houses to convert to small HMOs without the need for a planning application to be granted. As such the appeal on ground (c) fails.

The ground (a) appeal

7. The main issues in the ground (a) appeal are:
  - the effect of the change of use on the living conditions of neighbouring occupiers,
  - the effect of the change of use on the character of the area, and
  - whether the change of use accords with the Council's policy in respect of HMOs, particularly in respect of housing need, standards for HMOs and public transport accessibility.

*Living Conditions*

8. The appeal property is an end of terrace house. Every habitable room in the property is laid out as a bedroom i.e. there is no living room. No information has been provided which satisfies me that the use of the property which has been alleged has an occupancy less than or the same as it would if it were laid out as a single dwelling house with, for example, a living room and dining room. Laid out as it is, the building may be used more intensively than if it were used as a single dwelling and, in my judgement, this may result in more noise generating activities, including the comings and goings of unconnected occupants, than if the building were used as a single dwelling house.
9. The appellant states the occupants of the property are women who are out for much of the day. I appreciate it is possible they may make less noise than children who may occupy the property if it were a family home and that limited complaints may have been received about the use. But there is no evidence occupancy of the property would not change as current occupants move on and are replaced. I also note the appellant's statement that they never let rooms to couples or students. But limited information has been provided to satisfy me this is the case or that there is any enforceable mechanism to secure this or that it necessarily makes a significant difference to the effect on neighbours' living conditions.
10. I conclude on this main issue that use of the property as a (sui generis) HMO may harm the living conditions of neighbouring occupiers. This does not comply with Policies DM01, DM04 and DM09 of the Barnet Local Plan Development Management Policies Development Plan Document, adopted September 2012 (the DM Plan). Together these resist development likely to generate unacceptable noise levels or which may have a harmful effect on amenity.

### *Character*

11. The road in which the appeal site is situated is characterised by terraced and semi-detached houses with front and back gardens. It appears to me that the houses are used predominantly as single dwelling houses and I have seen limited evidence which satisfies me this is not the case. The establishment of a large HMO in this context is therefore out of character with the area, notwithstanding that the property may be clean and tidy.
12. The change of use harms the character of the area and therefore does not comply with Policy CS5 of the Core Strategy, Policy DM01 of the DM Plan, the Residential Design Guidance Supplementary Planning Document or the Sustainable Design and Construction Supplementary Planning Document. Together these resist the loss of houses in roads characterised by houses and seek that development preserves or enhances local character.

### *HMO Policy Requirements*

13. The evidence indicates the site is in an area with a Public Transport Accessibility Level of 2. Amongst other things, Policy DM09 of the DM Plan seeks that an HMO meets an identified need, is easily accessible by public transport and meets relevant housing standards.
14. In respect of each of these matters particularly limited information has been provided. The appellant comments that whenever a room becomes vacant it is easily filled but this indicates demand rather than housing need. Considering the above points I am not satisfied the change of use accords with Policy DM09 of the DM Plan noted above.

### *Conclusion on the ground (a) appeal*

15. Considering each of the main issues for the ground (a) appeal, the appeal on ground (a) fails.

### **Other Matters**

16. I appreciate the use of the property as an HMO may not be permanent. But the evidence indicates the use is intended to continue for around 3 years. I do not consider the use should be allowed to continue for this length of time given the harm identified above.
17. I also appreciate the property may previously have been in a run down condition and use of the property as an HMO may assist in funding repairs. But this does not change my overall conclusion in light of the harm identified above. Finally, the granting of a licence for the use of a property as an HMO does not provide relief from the need to comply with planning legislation and so I give this consideration limited weight in my decision.

### **Conclusion**

18. For the reasons given above the appeal is dismissed and the enforcement notice is upheld.

*L Perkins*

INSPECTOR