The Planning Inspectorate

Appeal Decisions

Site visit made on 14 November 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date of decisions: 13th December 2019

Appeal A Ref: APP/G5750/C/18/3214946
3 Cabot Way, London E6 1QS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Moshiur Molla against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 28 September 2018 under ref. 18/00481/ENFC.
- The breach of planning control as alleged in the notice is "*Without planning permission the material change of use to short term lets (temporary sleeping accommodation)*."
- The requirements of the notice are to:
  "1. Cease the use as short term lets.
  2. Remove all fixtures and fittings that solely facilitate the use as short term lets, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds, and remove all resultant debris and materials from the site.
  3. Remove the advertisement of the property for short term lets from all booking websites."
- The period for compliance with these requirements is one month.
- 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B Ref: APP/G5750/W/18/3214919
3 Cabot Way, London E6 1QS

- 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 Moshiur Molla against the decision of the Council of the London Borough of Newham.
- The application ref. 18/02367/COU, dated 9 August 2018, was refused by notice dated 28 September 2018.
- The development proposed is "*Application for change of use of 3 Cabot Way, London E6 1QS from C3 (dwelling house) to C4 HMO (3-6) people (Re-Submission)*".

Decisions

Appeal A Ref: APP/G5750/C/18/3214946

1. 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/G5750/W/18/3214919

2. The appeal is dismissed.

Matters of clarification

3. As recorded in the papers with the Council's questionnaire for Appeal A, the Newham Local Plan was adopted in December 2018, shortly after the enforcement and planning decision notices were issued. As a consequence, the London Borough of Newham Local Plan: Core Strategy (January 2012) and the London Borough of Newham Local Plan: Detailed Sites and Policies Development Plan Document (October 2016) have been withdrawn. I have dealt with the appeals on the basis of these up-to-date Local Plan policies, which were simply carried forward from the Newham Local Plan Secretary of State Submission Version (February 2018) with proposed Main and Minor Modifications (July 2018) as referred to in the enforcement and planning decision notices. The Local Plan is part of the development plan alongside the London Plan 2016. Given the current status of the Draft London Plan, I have given it limited weight in my consideration of the appeals.

4. An updated version of the National Planning Policy Framework (the Framework) has been published since the appeals were lodged. However, the sections relevant to them have not materially altered.

5. The appeals concern a 2-storey, semi-detached residential property on the southern side of Cabot Way, a street which runs between Parr Road and Arragon Road and is within the Wakefield Controlled Parking Zone. The former house is in use for short-term letting for paying guests with 6 bedrooms being available. The facility seems to trade under the name of *Cabot Inn*. This use is the subject of the enforcement notice under Appeal A.

6. I refer to a house in multiple occupation as "*HMO*". Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended relates to the use of a dwelling house by not more than six residents as a HMO. The appeal building is in an area that has been subject to an Article 4 Direction since 31 July 2013. The Article 4 Direction withdraws permitted development rights for a change of use from Class C3 (dwelling houses) to Class C4, meaning that express planning permission must be granted on application for such development. Such a planning application is the subject of Appeal B.

7. Appeals A and B were linked together through the letter from The Planning Inspectorate dated 20 June 2019 (the starting date for the appeals).

Appeal A, ground (a) and the deemed planning application

8. The sole focus here must be on whether planning permission ought to be granted for what is alleged in the enforcement notice which is not the use as a C4 HMO. The **main issues** are the implications of the short-term lets for: the Council's economic, investment and regeneration objectives across the wider area; the supply of family homes in the borough; and the living conditions of local residents with particular regard to noise and disturbance.

9. **The economic, investment and regeneration objectives** for the Council, as set out in Local Plan Policy S1, start by seeking to focus development opportunities within the Arc of Opportunity, stretching from Stratford and the Olympic Park, down the Lea Valley and east through the Royal Docks. Read with Local Plan Policy S6, Urban Newham (beyond the Arc), which is where I believe Cabot Way is situated within, will see more incremental and smaller scale change focused on town and local centres and Crossrail stations. London Plan Policy 4.5 seeks to ensure that new visitor accommodation beyond the Central Activities Zone is focused in town centres and opportunity and intensification areas. Local Plan Policy J1 (supported by Policy INF5) hopes to develop the visitor economy by focusing quality accommodation in town centres proportionate to their function and character, together with various strategic sites and employment hubs.

10. No. 3 Cabot Way is embedded deep within a residential area, typical of many others in Urban Newham, some distance away from any town or local centre. Piecemeal, speculative schemes for short-term visitor accommodation outside the areas identified in the policies take investment away from the target areas and undermine the wider regeneration objectives for the area as a whole. I conclude that the short-term letting accommodation is in a location that is spatially out of step with and detrimental to the Council's economic, investment and regeneration objectives for the wider area, in conflict with the most relevant development plan policies set out above.

11. Turning to the **supply of family homes**, Local Plan Policy H1 seeks to secure the delivery of a mix and balance of housing types, including a significant increase in family housing to replace that lost to conversion. Policy S1 also refers to the provision and protection of family housing. Policy S6 states that population will be stabilised, with a greater focus on improving housing quality, protecting and increasing family housing, and restricting HMOs and flat conversions. In order to protect and reshape the existing housing stock, Policy H4 states 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 justification to the policy points out that 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 Council's aspiration to stabilise communities. The Council must also hold on to its existing stock of family homes as part of providing enough family housing according to needs.

12. Local Plan Policy H4 recognises that there are circumstances where conversion can have multiple benefits or more desirable outcomes than the status quo. However, I find nothing to show that providing short-term lets (temporary sleeping accommodation) is one of those defined circumstances. I conclude that the use as short-term letting accommodation has a harmful effect upon the supply of family homes in the borough, in conflict with the most relevant development plan policies set out above.

13. The use of some properties for short-term lettings can be disruptive to the **living conditions of local residents** as an Inspector found at 49 Milton

Avenue in the same borough (appeal ref. APP/G5750/C/15/3097736). However, I consider that much will depend on the nature of the property concerned and the surroundings. In this case, not all the 6 bedrooms are suitable for more than one person. Moreover, the property is not located in a residential terrace as stated by the Council or on a terraced street. Cabot Way is an exceedingly short street. There are garage courts directly opposite the appeal property and directly behind it. The main entrance, where most of the comings and goings will be concentrated, is separate and well set away from the semi-detached neighbouring house at 5 Cabot Way. I have not been made aware of any complaints about the use and the appellant says he has not received any negative feedback.

14. My views on this are reinforced by the lack of objection from neighbours in response to this appeal, and more pertinently by the positive support offered by several nearby residents in a petition dated 15 October 2018. Whilst I recognise that there may be some future guests whose behaviour may cause noise and disturbance, the same may be true of occupiers of any residential property. I find that on the facts of this case, the use for short-term lets would be unlikely to result in material harm to the living conditions of local residents, with particular regard to noise and disturbance. There would be respect for the most relevant development plan policies in this regard, those being Local Plan Policy SP8 and London Plan Policy 7.15.

15. I will consider the proposed C4 HMO and the affordability issues of the existing property in Appeal B. For the reasons given above under the first and second main issues and having had regard to all other matters raised, I **conclude** that Appeal A on ground (a) should not succeed. I refuse to grant planning permission on the deemed planning application for short-term lets.

Appeal B

16. The **main issues** for consideration are the implications of the proposed C4 HMO for: the supply of family homes in the borough; the living conditions of local residents with particular regard to noise and disturbance; and parking stress in the Wakefield Controlled Parking Zone. The format for my approach to these main issues is somewhat different as some of the ground has already been covered in my consideration of Appeal A.

17. I am not exactly clear how many bedrooms the house had before its change of use to short-term lets. Whether it had 8 bedrooms in total or 4 or 5 bedrooms on the first floor plus a good-sized bathroom, I do not consider that the proposed HMO for 6 persons is likely to materially affect the living conditions of neighbours in terms of noise and disturbance. This is because the use of the house by a single family, possibly with more than 6 persons, could have generated a similar amount of activity in it and around its front and rear garden areas. Moreover, most of the planning considerations and all of the planning policies I referred to in the third main issue in Appeal A above apply equally to this second main issue in Appeal B.

18. Likewise, the demand for on-street parking may be no greater, in part because HMO residents are less likely to make use of motor vehicles. I have not been pointed to any parking standards that would suggest a C4 HMO

requires more off-street parking spaces than a relatively large dwelling in this location. Upon close inspection of the dropped kerb and the available hardstanding in front of the appeal property, I consider that 2 off-street car parking spaces are available and can be utilized reasonably. This seems to me to be adequate. Space would be retained for cycle parking and waste storage facilities on the forecourt, matters which could be covered by planning conditions if the proposal was otherwise acceptable. Consistency in decision-making is important and despite what the Council says, the matter of parking stress was not raised in the reasons for refusal in the decision notice, issued only 6 months earlier, for the near identical planning application ref. 18/00115/FUL. I find no clear evidence for additional parking stress being caused in the Wakefield Controlled Parking Zone. The transport objectives within London Plan Policy 6.1 and Local Plan Policies SP1, SP2, SP3 and INF2 will be maintained.

19. However, the proposed use of the appeal property as a C4 HMO does not overcome the fundamental land use planning objections that arise with the loss of a family home. The parties are referred to my considerations set out under the second main issue of Appeal A. I have noted the thrust within paragraph 61 of the Framework for the size, type and tenure of housing needed for different groups in the community (which would include single person households and people who wish to rent) to be assessed and reflected in planning policies and I accept that London Plan Policy 3.8 recognizes that HMOs are a strategically important part of London's housing offer. However, these broader policies are reflected and implemented at local level by the recently adopted Local Plan and this also means that the appeal decisions mentioned in the Council's delegated report for ref. 18/02367/COU are now somewhat dated.

20. It is most important to record that the spatial strategy in Local Plan 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. There would be conflict with this policy as there would be again with Policy H4, since the circumstances included in the policy do not apply. In particular, the property has a rear garden as private amenity space and a well-defined entrance. The property is located on a residential street, rather than being above an existing occupied commercial unit or in a designated centre or along a designated roadway.

21. It is not clear if the property has been actively marketed for rent or sale as a single dwelling in the recent past. No details of a robust marketing campaign have been submitted. The claim that it would not be affordable or viable as a single dwelling has therefore not been properly tested. I have read the estimated rental yields and sales prices for the property provided by the lettings and sales managers respectively of *ludlowthompson*. However, they are confident of letting or selling the property for its lawful use.

22. The description of the property as a potential 8-bedroom dwelling is noted but I have no evidence to show that this was the layout planned for the property, as a single dwelling, when the extension works proposed under

application ref. 15/01782/HH were approved. The 8-bedroom layout could have come about as a result of the subsequent subdivisions to create the short-term letting facility. The property is not exceptionally large in sheer physical terms; sensibly divided it could provide an attractive 4-bedroom or 5-bedroom single family dwelling. However it is described, the need for 4-bedroom plus homes, whilst modest compared to other housing sizes is not insubstantial, thus any existing large units (4-bedroom plus) should continue to be protected as part of ensuring a broad market offer, especially as units of this size are rarely proposed in new developments. This is why Local Plan Policy H4 aims to protect such properties.

23. I have therefore **concluded** that planning permission should be withheld for the change of use to a C4 HMO, because it would result in the loss of accommodation suitable for occupation by single families contrary to the most relevant development plan policies, those being the Local Plan housing policies (H1, H3 and H4) and no material considerations of sufficient weight have been put forward to indicate that my decision should be otherwise than in accordance with these policies. Appeal B has therefore failed.

Appeal A, ground (f)

24. This ground allows arguments to be put that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach.

25. The way in which the Council has prepared the enforcement notice, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4) (a) of the Act. It is reasonable and not excessive to require the cessation of the unauthorised short-term letting use and the removal of all fixtures and fittings and advertisements that solely facilitate the use as short-term lets. As I see it, this would remedy the breach and nothing more.

26. The gist of the appellant's case on this ground is that he would be willing to cease the use of the property for short-term lets and use it instead as a C4 HMO as proposed under the planning application the subject of Appeal B. I agree with the Council that the appellant's submission here is misconceived. The requirements of the notice should not be altered so that one breach of planning control is solved by creating another. On Appeal B, I did not find a C4 HMO to be an acceptable use of the property. Upholding the notice would not prevent the appellant from entering into further discussions with the Council. In the light of all this, the appeal on ground (f) fails in Appeal A.

Appeal A, ground (g)

27. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed.

28. A period of one month has been given. The appellant suggests that although he could comply with the third requirement of the notice immediately, he would like 6 months to cease the use of the property as short-term lets. This

is so that the current tenancy agreements can be brought to an end, the current tenants can find alternative accommodation and the required changes to the property can be achieved. On the other hand, the Council points out that short-term letting facilities are unlikely to have guests staying for periods in excess of a month and that the appellant has already had chance to put any future bookings on hold pending this appeal.

29. I have also had due regard to the reasons for issuing the notice. Effective enforcement is important to maintain public confidence in the planning system. No tenancy agreements or booking records have been submitted to verify the typical pattern of the short-term lettings at the property. There is no conclusive evidence to show that the one-month compliance period is not an adequate period of time for any affected tenants to vacate the premises and seek alternative accommodation if necessary. In such circumstances, I am not persuaded that there is any need to extend the period for compliance with the notice. However, in the event that the appellant is able to convince the Council that a longer period is necessary, if genuine difficulties are encountered, the Council has the discretion to extend the period for compliance with the notice, regardless of this appeal decision, under the provisions of section 173A (1) (b) of the 1990 Act as amended. In the light of all this, the appeal on ground (g) fails in Appeal A.

Andrew Dale

INSPECTOR