
Appeal Decisions

Site visit made on 12 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17th January 2020

Appeal Ref: APP/G2625/3225666 & 3229222

4 Fieldview, Norwich NR5 8AQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Geoffrey Dunk (3225666) & Mrs Geoffrey Dunk (3229222) against an enforcement notice issued by Norwich City Council.
 - The enforcement notice, ref. 19/00034/ENF no. 1, was issued on 1 March 2019.
 - The breach of planning control alleged in the notice is without planning permission the material change of use of the above land from residential (Class C3)/House in Multiple Occupation (an HMO)(Class C4) to use as an HMO used by seven residents (*Sui Generis*).
 - The requirements of the notice are to permanently cease the unlawful use of the property as a large House in Multiple Occupation (*Sui Generis*) by:
EITHER
 - a) Returning the property to a dwellinghouse under use class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended), being use by a single person or by people living together as a family or by not more than 6 residents living together as a single household (including a household where care is provided for residents);OR
 - b) Returning the property to dwellinghouse under use class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended), being use by not more than six residents as a house in multiple occupation.
 - The period for compliance with the requirements is 133 days.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. This case is exempt from the prescribed fees, and the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
-

Decisions

1. The appeals are allowed on ground (g), and I direct that the enforcement notice be varied by:
DELETION of *133 days*; and,
SUBSTITUTION of *8 months* as the period for compliance.
Subject to this variation the appeals are otherwise dismissed and the enforcement notice is upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

2. The appeal property is a semi-detached two-storey house with an attic room standing on the southern side of Fieldview, within a group of broadly similar houses. It is set back from the road behind a paved hardstanding. On the ground floor there is a shared sitting room, a bedroom, and a shared kitchen within the main body of the building. There are a further two bedrooms, shower/WC, utility room and dining area within a substantial single-storey side/back extension. On the first floor are three bedrooms and a bathroom. In the attic is a further bedroom and a shower/WC off the landing.
3. I note that planning permission was granted for the single storey extension in 2013¹. A retrospective application for the change of use from a dwelling to HMO for up to 7 persons was refused in January 2019².

The appeals on ground (a) and the deemed planning applications

4. This ground is that planning permission should be granted for the matters alleged in the enforcement notice.
5. From my inspection of the site and surroundings, and all that I have read I consider the main issue in the case are:
 - The effect of the development on living conditions for occupants of dwellings in the vicinity of the appeal site in terms of noise and general disturbance.
 - The effect of the development on living conditions for occupants of the appeal property in terms of internal space standards and external amenity space.
6. As the appellants argue, the house could be returned to Class C4 use as a small HMO – that is, use as a dwellinghouse by not more than 6 residents. This would be the case since such a change would be to comply with option (b) of the enforcement notice requirements. I note however that this change would not benefit from the provisions of Class L of Part 3 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, since this would be a change from *sui generis* use rather than a C3 use.
7. In my view the first main issue turns upon the effect of introduction of a large HMO on the general environmental character of the area in terms of prevalent noise and activity rather than a comparison between the effect of the *sui generis* use and that of a C4 use.
8. Fieldview is a residential cul-de-sac of some 21 dwellings – mainly modest semi-detached bungalows and semi-detached two-storey houses. I understand a significant number of the bungalows are for disabled occupants – some using mobility scooters - and there are a number of occupants of pension age.
9. I also understand no. 3 is in use as a Class C4 HMO, and that no. 2 has been granted planning permission for a change of use from Class C3 to use as a 7-bedroom HMO. As far as I know, other dwellings in Fieldview are in Class C3 use. There is self-evidently no through traffic, and overall the street has an extremely quiet residential character

¹ Decision notice ref. 13/00329/F, dated 3 May 2013.

² Decision notice ref. 18/01278/U, dated 10 January 2019.

10. The house is occupied by seven unrelated individuals, who are likely to be of much the same age and have similar day to day activities. As a result it is likely that there will be considerably more trips to and from the property on each day than might arise from dwellings such as the semi-detached bungalows and houses, which can be expected to have fewer occupants, and generate fewer individual journeys. Although many of the journeys generated from the appeal property may be on foot or by bicycle, it can also be expected there will be a greater number by car or taxi. Furthermore, deliveries of, for instance meals and purchases are likely to be greater, social events and visitors are likely to be more frequent.
11. The outdoor amenity space is probably more intensively used than is likely for a Class C3 dwelling, a further increase in probable activity. Although the house to the west is partly shielded from this space by the extension to no. 4, the house to the east – the other half of the pair – is close by. The fact that a neighbouring house is in Class C4 use, and that there is another large HMO nearby, does not lessen the noise and disturbance likely to be caused by occupants of the appeal property. Indeed, a concentration of HMO uses may exacerbate the effects.
12. I consider that residents of this cul-de-sac can reasonably expect to continue their enjoyment of a good standard of peace and quiet. In my view the additional activity generated by occupation of no. 4 by seven unrelated people is likely to give rise to considerable noise and general disturbance that is disruptive to this expectation.
13. Overall, I conclude on the first main issue that use of the property as a large HMO causes significant harm to living conditions for occupants of dwellings in the vicinity of the appeal site in terms of noise and general disturbance. The development does not accord with the development plan, notably in respect of Policies DM2 and DM13 of the Council's Development Management Policies Local Plan of 2014, which include aims to prevent development that would cause harm to living conditions for existing occupiers, and to ensure that development such as larger HMOs should not harm living conditions for occupants of neighbouring dwellings.
14. Turning to the second main issue, the Council's document '*Private Sector Housing Amenity Standards*' of 2018 sets out minimum standards required in all HMOs licensed by the Council. In terms of bedroom floor areas this indicates there should be a minimum of 6.51 square metres for a single room where kitchen and dining facilities are provided elsewhere in the house, as is the case here. During my visit the dimensions of the small first floor bedroom at the front of the house were confirmed as 2.46 by 2.82 metres. That is, a floor area of slightly more than 6.93 square metres. This room clearly meets the minimum standard – a fact that the Council have acknowledged.
15. As to outdoor amenity space, I understand there is a total area of about 46 square metres at the back of the house. There is ready access to this from the dining room and bedrooms in the extension. Although some of this space is taken up with a greenhouse – used for bicycle storage – and a raised area of doubtful use, it appears to me the remainder is quite adequate for sitting out and everyday minor leisure activities.
16. I conclude on the second main issue that the use as a *sui generis* large HMO causes no significant harm to living conditions for occupants of the appeal

property in terms of internal space standards and external amenity space. The development accords with the development plan, particularly in terms of Policies DM2 and DM13 of the Council's Development Management Policies Local Plan of 2014, these seek to ensure satisfactory living and working conditions generally, and to provide a high standard of living conditions for occupants of HMOs.

17. Although I find that the accommodation provided, including the outdoor amenity space is suitable for the present use as a larger HMO, this does not overcome or in any way lessen the harm arising from noise and general disturbance. The appeals on ground (a) therefore fail.

The appeals on ground (g)

18. This ground is that the compliance period is too short. The appellants argue that the 12-month term of the current assured shorthold tenancy (AST) does not expire until August 2020, and it would not be reasonable for the current tenants to be made to leave until then. The Council say that at the time the tenancy agreement was made – on 6 December 2018 - the appellants were fully aware that the property did not benefit from planning permission for use of no. 4 as a larger HMO.
19. However, as at 6 December 2018, although the application for retrospective planning permission had been submitted, it not been determined, and enforcement action had not been taken. The possibility still existed that the use would be found lawful. It cannot now be held against the appellants that the tenancy agreement should not have been made.
20. Given the necessity to give notice to tenants for a landlord to regain possession of property at the end of an AST, and the possibility of requiring a court order it appears to me that it would be reasonable in the circumstances to extend the compliance period until the end of the current AST in August 2020. The appeals on ground (g) therefore succeed, and I will vary the enforcement notice accordingly.

Conclusions

21. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should succeed to the limited extent on ground (g) and that a reasonable period for compliance would be 8 months. I will vary the enforcement notice accordingly. Otherwise, the appeals on ground (a) fail and I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR