
Appeal Decisions

Site visit made on 7 January 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 27 January 2020

Appeal A: Appeal Ref: APP/G5750/C/18/3214944 and Appeal B: Appeal Ref: APP/G5750/C/18/3214945

7 Elizabeth Road, East Ham, London E6 1BW

- 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. M. Yousuf (Appeal A) and Mrs Rubina Yousuf (Appeal B) against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 28 September 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a Use Class C4 house in multiple occupation (HMO).
 - The requirements of the notice are:
 - i) Cease the use as a Use Class C4 house in multiple occupation.
 - ii) 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.
 - iii) Remove from the site all debris arising from steps (i) and (ii).
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (d), (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 is proceeding on the grounds set out in section 174(2) (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: Appeal Ref: APP/G5750/W/18/3214656

7 Elizabeth Road, East Ham, London E6 1BW

- 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. M. Yousuf against the decision of the Council of the London Borough of Newham.
 - The application Ref 18/02093/COU, dated 3 July 2018, was refused by notice dated 17 September 2018.
 - The development proposed is retrospective planning application for retention of 6-person HMO (house in multiple occupation).
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Decisions

Appeal A: Appeal Ref: APP/G5750/C/18/3214944 and Appeal B: Appeal Ref: APP/G5750/C/18/3214945

1. The appeals are allowed on grounds (f) and (g), and it is directed that the enforcement notice be varied: by the deletion without substitution of "*and any additional mattresses and beds*" in requirement 2 in section 5 of the notice

“What you are required to do”; by the deletion of three months and the substitution of six months as the period for compliance. Subject to these variations the enforcement notice is upheld.

Appeal C: Appeal Ref: APP/G5750/W/18/3214656

2. The appeal is dismissed.

Procedural matter

3. The Council failed to arrive at the appeal site at the appointed time but with the agreement of the appellants’ agent I was permitted access to the property and carried out an unaccompanied site inspection. I was satisfied I was able to see everything I needed to determine the appeals and will proceed on that basis.

Appeals A and B: the s174 appeals on ground (c)

4. In an appeal on this ground the onus is on the appellant to establish the case on the balance of probabilities.
5. The change of use from a Use Class C3 dwellinghouse to a Use Class C4 house in multiple occupation (HMO) is development now permitted by Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 as amended. The same right was conferred by the predecessor 1995 GPDO as amended. However, the planning permission deemed to be granted by Article 3 of the GPDO may be withdrawn by a Direction made under Article 4 of the GPDO. The Council made such a Direction restricting this permitted development right on 31 July 2012 and the approved Direction came into force a year later on 31 July 2013.
6. The appellants’ case on this ground of appeal is that the development alleged began before the GPDO right was restricted. As such, deemed planning permission has been granted for the breach of planning control alleged.
7. On the application form for the development that is the subject of Appeal C (the s78 appeal), question 5 asks “...please state the date when the work or change of use started (date must be pre-application submission)” to which the answer “08/06/2013” was given. To the follow-up question “Has the work or change of use been completed?” the answer given is “no”. The date of the application is 3 July 2013.
8. Furthermore, the appellants have provided in evidence a limited number of Assured Shorthold Tenancy agreements (AST). The earliest is dated 11 August 2013 and thus after the date when the Article 4 Direction came into force. Moreover, the Council’s letter confirming the grant of a licence for the HMO under the provisions of s64 of the Housing Act 2004 is dated 8 August 2013, also after the Direction came into force.
9. Taking this evidence in the round, I conclude on the balance of probabilities that the development alleged began after the Article 4 Direction came into force. Express planning permission is therefore required for the development alleged. Since no such planning permission has been granted, the appeals on this ground must fail.

Appeals A and B: the s174 appeals on ground (d)

10. In appeals on this ground it is for the appellants to show that by the time the Council issued the notice, the period during which enforcement could have been taken had ended. Again, the onus of proof rests on the appellants.
11. Where a material change of use from a Class 3 dwelling to a Class C4 HMO is alleged to have taken place, a local planning authority has a period of 10 years from the date when the breach first occurred to take enforcement action. In this case therefore the appellants must show that the breach took place not later than 28 September 2008 and continued substantially uninterrupted thereafter for success on this ground of appeal.
12. On their own evidence the use started no earlier than August 2013. This ground of appeal therefore had no chance of success. Accordingly, these appeals fail.

Appeal A: the s174 appeal on ground (a) and the deemed planning application and Appeal C: the s78 appeal

Preliminary matters and main issues

13. The terms of the deemed planning application sought through Appeal A are defined by the breach of planning control alleged in the notice. As this is the same as the retrospective planning application that is the subject of Appeal C, the s78 appeal, I shall deal with the two appeals together.
14. In formally adopting the London Borough of Newham Local Plan (LP) on 10 December 2018, the London Borough of Newham Local Plan: Core Strategy (adopted January 2012) and London Borough of Newham Local Plan: Detailed Sites and Policies Development Plan Document (adopted 20 October 2016) have been formally withdrawn. The policies from both these plans cited in the reasons for issuing the notice and the reasons for refusing the application for planning permission are therefore no longer relevant to my determination of these appeals. Although both parties' appeal statements are early December, neither, and particularly the Council, refer to the impending adoption of the LP.
15. A consolidated version of the London Plan incorporating all the Mayor's suggested changes was produced in July 2019. The Panel's report was published in October 2019. It relates to the July 2019 version and recommends that all of the Mayor's minor and further suggested changes be incorporated within the published Plan unless recommended otherwise. Both the Council's and the appellant's statements significantly post-date the Panel report. Again, neither draw my attention to any implications for the determination of these appeals with respect to the London Plan policies cited. In the light of the advice given in paragraph 48 of the National Planning Policy Framework I give significant weight to the London Plan policies as they are to be approved.
16. Having regard to the reasons for the notice being issued and the planning application being refused, the evidence and my inspection of the property and the wider area within which it is located I consider the main issues for my determination of these appeals are:

- (a) The effect that the change of use of a small family dwelling to the HMO has had on the mix of residential accommodation in the area and community cohesion;
- (b) The effect of the development on the living conditions of the occupants with regard to the standard of accommodation provided; and
- (c) The effect on the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance.

Reasons

The effect that the change of use of a small family dwelling to the HMO has had on the mix of residential accommodation in the area and community cohesion

17. Elizabeth Road is residential in character. It comprises mainly two-storey dwellings arranged in terraces. Slightly further afield is the vibrant commercial area centred on Green Street. The property is a short walk from the both Upton Park underground station, giving rapid access to central London and several national rail stations, and from the many bus routes running along Green Street.
18. Whereas it is often possible to identify dwellings that have been converted to self-contained flats by the number of door bells or entry systems visible, HMOs do not readily identify in that manner. A tell-tale sign can be the number of waste bins in the front garden. In most cases along Elizabeth Road, there were only two evident; the general waste bin and the 'green' recycling bin. At the appeal property, there were two of each, making four in total. No case-specific evidence has been given about the number of HMOs in the immediate area but my 'rule of thumb' observation is that there may not be many.
19. London Plan policy H11 as it will be approved deals with ensuring the best use of (housing) stock. It is not referred to by the parties but seems to me highly material. It refers to new homes bought as 'buy-to-leave' properties, short stay housing, vacant and under-occupied properties and, at Clause CA, the need for Councils to take account of the role of HMOs in meeting local and strategic housing needs. It says that where they are of reasonable standard, they should generally be protected. Paragraph 4.11.2A goes on to say that HMOs are an important part of London's housing offer, reducing pressure on other elements of the housing stock.
20. LP policies H3 and H4 apply the London Plan policies in the local context. As very recently adopted policies they attract great weight. They take a more restrictive approach to HMO provision than the London Plan. LP policy H3 requires them to be provided through purpose-built schemes or conversions of premises other than family-sized dwellings while policy H4 specifically supports the de-conversion of flats and HMOs back to family dwelling houses. The supporting text for the latter policy refers to the high percentage of properties that are now HMOs and specifically identifies the West Ham and East Ham areas as 'hot spots'. It also notes that many have been provided from what were originally family-sized dwellings which are those that are in highest demand.
21. Although the appellant makes the point that this is a borough-wide policy objection rather than a site-specific matter, the unauthorised change of use

that has taken place is clearly contrary to the objectives and the letter of these two very recently adopted LP policies.

The effect of the development on the living conditions of the occupants with regard to the standard of accommodation provided

22. The accommodation provided at the date of my site inspection comprised, on the ground floor, two bedrooms, a lounge, a bathroom and toilet and a well-appointed kitchen with dining area and, at first floor, three bedrooms and a bathroom and toilet. The room in the loft was not in use, or indeed available for use. On both the ground and first floors there were storage facilities in communal areas although none, other than wardrobes, appeared to be provided in any of the bedrooms. Bedrooms were of modest size and generally comprised a single or double bed as appropriate, somewhere to sit and, in some, a desk or table. A door from the kitchen gave access to a small rear garden.
23. None of the LP policies cited by the Council in the reasons for issuing the notice and refusing the grant of planning permission appear directly relevant to this issue. That of most relevance is London Plan policy D4 as it will be approved which addresses housing quality and standards. Clause GA sets out the private internal space that all developments for all types of housing tenure should provide expressed as both minimum floor areas and minimum room widths. As far as I can tell, there is no requirement for a room within an HMO to provide private storage space.
24. The submitted plans do not show room dimensions. They do however show the measured floor areas and, in each case, this would appear to be in excess of the policy D4 requirement. However, important as the quantitative provision is, the quality of the accommodation is also material.
25. Except for one room on the ground floor, all had natural light through windows to the outside of the property. All were fitted with smoke alarms. The two bathrooms appeared to be of a reasonable size and not just squeezed into an inadequate space which can sometimes be the case. There was some evidence of damp in the corner of a first-floor room to the rear but, generally, the accommodation was in a good state of repair. As already mentioned, the kitchen area appeared to be well appointed with the requisite 'white goods' and the lounge area also seemed adequate with seating provided. Central heating was available in all rooms and, as I understand it, included within the rent payable.
26. Those choosing to live in an HMO would expect to occupy the house as a single household with the inevitable compromise and balance between privacy and communal living. In my view, the appeal property strikes an appropriate balance and provides a reasonable level of accommodation for each occupant.
27. I therefore see no conflict with London Plan policy D4 in this regard.

The effect on the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance

28. The Council's case on this issue is that the use of the property is of a higher intensity than that of others in the area and, as such, the increase in occupation density has the potential to generate significant noise and disturbance to local residents arising from increased comings and goings and

the considerably larger number of people living there. However, despite the use having persisted for at least six years, the Council has produced no evidence of complaints about the matters of concern to it. I note too that the Planning Inspectorate received no representations in response to the Council's notification of the appeal, although that is not, of itself, determinative.

29. I see no reason why, in principle, an HMO should generate more noise and disturbance than a family of the same size occupying the same building. Although there can be an argument that there will be more vehicle movements, this is an area where residents-only parking restrictions are in operation and the Council therefore has the power to limit the permits granted. In any event, as noted above, public transport options are very readily available.
30. The Council's concern is therefore anticipatory when the evidence indicates that no issues have arisen. The Council has provided two short quotes from other appeal decisions without providing the full decision for context. Having found them through the public Planning Inspectorate web site the enforcement appeal decision¹ relates to what appears to have been a much larger HMO than that before me. Moreover, the passage is within the section on the ground (c) appeal explaining why the development then alleged does amount to a material change of use. That is a completely different context, in my view, to an observation in relation to the planning merits.
31. The second passage is from a s78 appeal decision². In this case, the Inspector has made the same assumption about the effect that the development would have as the Council in these appeals. There is no evidence that the appeal related to a retrospective application. Therefore, unlike the case before me, the Inspector had no evidence before him of the effects of the actual use. In my view, that distinguishes the appeals before me from that referred to by the Council.
32. I therefore see no conflict in this regard with the development plan policies, the most relevant of which appears to be policy D13 of the London Plan as it will be approved.

Other matters

33. The Council refers in support of its reasons for issuing the notice and refusing the planning application to the effect that HMOs have on community cohesion given the churn of residents inherent from the generally short-lived residence of any particular individuals at the property. This contrasts with the community-building that generally results from occupation of family dwellings by families that stay in the area. To my mind, this important objective underpins LP policies H3 and H4. Under the first main issue I have found that the development carried out conflicts with these policies.

Conclusion

34. While I consider that the accommodation provided is of a standard consistent with use of a dwelling as an HMO and can see no evidence that the use of the property as such for at least six years has caused any unacceptable effects to the living conditions of neighbouring occupiers, the principle of this type of HMO development in this part of the borough is contrary to very recently

¹ APP/G5750/C/14/2225862 & 3

² APP/G5750/W/16/3154230

adopted development plan policy. The Council refers to other appeal decisions that have emphasised the need to apply such policies consistently in order for the Plan strategy to be delivered. Accordingly, I conclude that the appeal on ground (a) fails and both the application deemed to be made and the s78 appeal do not succeed.

The s174 appeals on ground (f)

35. The Council has confirmed that its purpose in issuing the notice is to remedy the breach of planning control. That will be achieved by the first requirement, namely ceasing the use as an HMO. However, the courts have held that works undertaken solely for the purpose of facilitating the unauthorised use may be required to be removed so that the building is restored to its condition before the breach of planning control took place.
36. The appellants specifically object to the requirement to remove the internal door locks arguing that these can still be appropriate in a single-family dwelling. I saw that the locks fitted are more like those which would be found providing security on an external door; to an extent, in an HMO that is what the individual room doors are. This view was reinforced by the wholly different and far less substantial lock on the room in the loft yet to be brought into use. In my view, the locks have been provided solely to facilitate the use and their removal is therefore reasonably required.
37. In contrast, the required removal of 'any additional mattresses and beds' is vague and uncertain in my view; I will vary the notice by the deletion of this part of the step.
38. The requirement to 'remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation' is consistent with the decisions of the court and therefore reasonably required. However, it seems to me that what those fixtures and fittings are will be exclusively within the knowledge of the appellants.
39. The appeals on ground (f) therefore succeed to a limited extent.

The appeals on ground (g)

40. The appellants state that the three months allowed is insufficient since the minimum contract length is six months although no copies of the current tenancy agreements have been provided in evidence to explain the actual situation at present. It is also argued without any supporting evidence that to revert back to what the Council requires will "...take a few more months." A compliance period of a year is therefore sought.
41. A year is tantamount to the grant of a limited period planning permission which would be inconsistent with my conclusions on the Appeal A ground (a) appeal and on Appeal C. The Council also draws attention to the provisions of s21 of the Housing Act 1988 which allow a two-month period of notice to be given. It does however effectively acknowledge that formal eviction procedures, if required, would be unlikely to be completed within three months.
42. Taking all this into account, I consider a period of six months would be more reasonable to secure the cessation of the use. To that extent, the appeals on ground (g) succeed.

Overall conclusions

43. With respect to Appeals A and B, for the reasons given above I conclude that the requirements are excessive and that a reasonable period for compliance would be six months. I am varying the enforcement notice accordingly, prior to upholding it. The appeals under grounds (f) and (g) succeed to that extent.
44. For the reasons given above I conclude that Appeal C should be dismissed.

Brian Cook

Inspector