



Appeal Decision

Site visit made on 28 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 21 February 2020

Appeal Ref: APP/N5090/C/19/3231741

Land at 42 Princes Avenue, London N3 2DB

- 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 Jagjeet Singh Kent against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 28 May 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the property into a C4 House of Multiple Occupation (HMO).
- The requirement of the notice is:
 - 1 Cease the use of the property as a 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 (e) of the Town and Country Planning Act 1990 as amended. (the 1990 Act)

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

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. To ensure that the description of the alleged breach reflects the 'meaning' of development defined by section 55 of the 1990 Act and with the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) I consider that the wording '*change of use of the property into a C4 House of Multiple Occupation (HMO)*' within the description of the alleged breach should be deleted.
3. Section 55 of the 1990 Act states, amongst other things, that "development," means the making of any material change in the use of any building. Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) relates to a 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 6 residents as an HMO.
4. As such, I intend to replace the deleted wording with '*material change in the use of the property making it a (Class C4) House in Multiple Occupation (HMO)*'. I can carry out these corrections without injustice to the parties.

Preliminary Matters

5. 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 29 May 2016. The Article 4 Direction was introduced to remove the permitted development right (PD) relating to making a material change of use of a dwelling house (Class C3) into an HMO (Class C4), meaning that express planning permission must be granted on application for such development. There is no dispute that the property was used as a single dwelling house prior to its use as an HMO.
6. The appellant has stated that he can prove that the tenants have resided in the property for more than four years and that the tenancy began in 2009/10 and that documents to prove this have been provided. Nevertheless, the appellant has not made an appeal on ground (d) that, at the time the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning which may be constituted by those matters. The appellant was requested to clarify whether an appeal on ground (d) was to be considered and was given the opportunity to submit evidence in this respect. However, no response was received to that request and I have no evidence before me relating this matter. As such, I have dealt with the appeal on the basis that there is no ground (d) appeal.
7. For a property to be an HMO, it has to contain two or more households who occupy living accommodation and share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities. Basic amenities are a toilet, personal washing facilities or cooking facilities.¹ It is not disputed that at the time the enforcement notice was issued that the property was occupied by 4 people who appeared to consist of two or more households and who share one or more basic amenities.
8. I was not able to view one bedroom at the time of my site visit, but I have no reason to doubt that it is a relatively large double room similar to the other rooms currently utilised as bedrooms in the property. As such, even though there is no dispute that only 4 people are currently residing at the property there are 8 bed spaces potentially available. However, an HMO as defined in Class C4 of the UCO would have no more than 6 residents. Therefore, I have dealt with the appeal on the basis that the occupancy of the property could be up to 6 people.

The ground (e) appeal

9. Section 172(2) of the 1990 Act requires an enforcement notice to be served on the owner and the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
10. The appellant has stated as part of the ground (e) appeal that a licence for the HMO was applied for in 2018 and certain works were suggested but at no time was the requirement for planning permission mentioned. However, there is no evidence before me to indicate that the notice was not served on everyone as

¹ Section 254(2)(f) of the Housing Act 2004

required by section 172(2) of the 1990 Act. As such, the ground (e) appeal fails.

The ground (a) appeal and deemed planning application

Main Issues

11. The main issues are: -

- whether there is an identified need for the HMO;
- the effect of the use of the property as a HMO on the character of the area and the living conditions of neighbouring residents with regard to noise and disturbance.

Reasons

12. Princes Avenue is an attractive suburban road characterised by a mix of traditional semi-detached, terraced and detached houses standing in relatively generous plots. The appeal property is typical of the scale and type of properties in the surrounding area.
13. Policy DM09 of Barnet's Local Plan Development Management Policies (DMP) (2012) seeks to encourage HMOs provided that they meet an identified need, do not have a harmful effect on the character and amenities of the surrounding area, are easily accessible by public transport, cycling and walking, and meet the relevant housing standards for an HMO.

Identified need

14. Providing a range of different housing within a local area can contribute to housing need and offer a choice in living accommodation. However, no evidence has been submitted from either main party to indicate what the identified need, in relation to housing provision, is in the surrounding area or whether the HMO meets an identified need.
15. As such, I have not been provided with any evidence to demonstrate whether the HMO meets an identified need. Therefore, I have to find that the development, in this respect, does not comply with DMP Policy DM09.

Character and living conditions

16. Clauses h) and i) of DMP Policy DM01 seek to control the conversion of dwellings into flats and loss of houses in roads characterised by single houses. Nevertheless, the development does not contradict these clauses. It does not involve the conversion of the house to flats and the house in its pre-existing form, albeit in multiple occupation, would be retained.
17. However, as stated above DMP Policy DM09 seeks to encourage HMOs provided that they do not have a harmful effect on the character and amenities of the surrounding area. Furthermore, Policy CS5 of Barnet's Local Plan Core Strategy (CS) states, amongst other things, that the Council will ensure that development in Barnet respects local context. DMP Policy DM04 states, amongst other things, that proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted.

18. The Supplementary Planning Document: Residential Design Guidance October 2016 (SPD) explains that conversions of houses into flats or an HMO can harm the character of areas by changing external appearance and increasing activity. The Council have stated that in this case that the use of the property as an HMO results in additional comings and goings and an intensification of activity and in that way it changes the established character of the area as one of single occupancy houses.
19. Neither party has provided any evidence to indicate whether there are existing properties within Princes Avenue that are in use as an HMO or flats. I observed that the majority of properties within Princes Avenue appear to be in use as single houses as there is little evidence externally that any have been converted to flats or are used as an HMO. However, the layout of the appeal property remains almost entirely in its pre-existing form as a single undivided dwelling with occupants simply sharing facilities and outdoor space. The HMO use therefore retains the dwelling in a form that is physically similar to other dwellings in the road. As a result, there are not any significant changes to the character of the area in this respect.
20. Furthermore, in its pre-existing form the house was relatively large with 3 or 4 bedrooms. It could therefore be used as a dwelling to accommodate a reasonably large family that could consist of several adults/teenagers. Such a family could have a high level of car ownership with its associated parking demand and could generate considerable activity in the form of comings and goings not dissimilar to that arising from an HMO as defined in Class C4.
21. I accept that an HMO is a different type of occupation to the use as a single dwelling house but the level of activity involved in travel to work and for leisure and shopping purposes, etc would not be substantially different to the trip patterns of individuals in one large household or up to 6 residents occupying the building as an HMO. Therefore, any noise and disturbance that might result from the HMO would be unlikely to be significantly different to that from one large household that could occupy the property. In addition, the Council have provided little evidence as to how this HMO has had an unacceptable impact on the character of the area or the living conditions of neighbouring residents with regard to noise and disturbance.
22. Thus, I have little evidence to indicate that there is or would be any significant impact on the character of the area or the living conditions of the neighbours from the use of the dwelling as an HMO with up to 6 residents. I acknowledge that if a significant number of HMO uses or conversions to flats were permitted, then cumulatively over a period of time the character of Princes Avenue could change through more intensive use. However, allowing this appeal would not of itself result in this situation because of the specific circumstances of this case.
23. It follows that in these respects the development complies with DMP Policies DM04 and DM09 and CS Policy CS5.

Other matters

24. There is no dispute that with a PTAL rating of 4 that the occupants of the HMO can easily access public transport. Moreover, I observed that the site is within easy walking and cycle distances of services and facilities.

25. The Council have stated that it has not been demonstrated that the property meets the Barnet minimum floorspace standards for HMOs within its Statement of Case. The SPD indicates that for HMOs unit sizes should conform to the Councils adopted Housing Standards (Table 1.3) of the SPD. Nevertheless, I have not been provided with a copy of that table. In any event, internally the property has a good standard of fittings and furniture with a large communal kitchen, dining and living area. Each of the bedrooms is a relatively large double room and the dwelling has well maintained garden areas. The space and layout appear to be acceptable for up to 6 occupants. The property is licensed as an HMO and would appear to be able to meet any relevant housing standards.
26. In these respects, the development complies with DMP Policy DM09.
27. 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.
28. 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. The interference with the rights of individual occupiers and the appellant is necessary and proportionate to achieve the legitimate public end pursued. Moreover, given the time period for compliance with the requirement of the notice this would allow the appellant the time to obtain help and support to submit to the Council a planning application for the development if evidence in relation to how the HMO meets an identified need can be produced.

Conclusion

29. Whilst the development does not harm the character of the area or the living conditions of the neighbouring residents, is easily accessible by public transport, cycling and walking and appears to meet the relevant housing standards these considerations do not outweigh the conflict with DMP Policy DM09 in so far as it has not been demonstrated that there is an identified need for an HMO.
30. As such, the material change of use to an 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.
31. 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 uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

32. It is directed that the enforcement notice be corrected by: -

- Deleting the wording '*change of use of the property into a C4 House of Multiple Occupation (HMO)*' within the description of the alleged breach and replacing it with '*material change in the use of the property making it a (Class C4) House in Multiple Occupation (HMO)*'

Subject to these corrections the appeal is dismissed and 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.

D. Boffin

INSPECTOR