



Appeal Decision

Site visit made on 13 February 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2020

Appeal Ref: APP/N5090/C/19/3233746

Land at 62 Kenilworth Road, Edgware HA8 8XD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mrs Francisca Onyeocha against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 4 July 2019 under ref. ENF/1755/18.
 - The breach of planning control as alleged in the notice is: "Without planning permission the change of use from a single dwellinghouse C3 to a House in Multiple Occupation C4 (Sui generis)".
 - The requirement of the notice is set out as follows:
"1 Cease the use of the property as a House in Multiple Occupation".
 - The period for compliance with this requirement is 5 months.
 - 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.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the text within paragraph 3 in its entirety and replacing it with the following text:
"Without planning permission, the making of a material change in the use of the property from a single dwelling house (Use Class C3) to a House in Multiple Occupation (Use Class C4)." Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended for the development already carried out, namely the making of a material change in the use of the property from a single dwelling house (Use Class C3) to a House in Multiple Occupation (Use Class C4) at 62 Kenilworth Road, Edgware HA8 8XD as shown on the plan attached to the notice and subject to the following condition: "No more than 5 persons shall be resident at the property at any one time."

Matters of clarification and the enforcement notice

2. In this decision I shall refer to a House in Multiple Occupation as a HMO.
3. The description of the alleged breach in the enforcement notice requires some attention. Development can only have taken place in this case if there has been a material change of use. The word "*material*" is missing from the notice. Secondly, it seems to confuse a small HMO in Use Class C4, which covers the use of a dwelling house by not more than 6 unrelated residents as a HMO, with

a larger HMO (*sui generis*) where a dwelling is occupied by more than 6 unrelated persons sharing basic amenities. My reading of the Council's delegated report for the enforcement notice (DR), the appellant's statement of case and the remainder of the enforcement notice leads me to believe that the alleged breach relates to the use of the property as a 5-person HMO. I shall consider the appeal likewise. Moreover, the text "*(Sui generis)*" should be omitted from the notice.

4. I shall correct the notice to reflect the matters covered in the paragraph above by rewriting the alleged breach. This will not alter the notice in substance, make it more onerous to comply with or cause any injustice to the parties.
5. The appellant strongly asserts that an Article 4 Direction has not been imposed in the area. The Council's questionnaire at 16. a. supports the appellant's stance. However, the Council's DR and section 15.10 of the Council's Supplementary Planning Document: *Residential Design Guidance* explain that from 29 May 2016 an Article 4 Direction came into force to remove the permitted development right to convert a dwelling house to a Class C4 small HMO. Even though both of those documents incorrectly label a dwelling house as Use Class C4, I consider that a relevant Article 4 Direction does exist.
6. There is no dispute that the lawful base use of the appeal property is as a dwelling house although I have noted that planning permission was granted in 2010 for a material change of use to a respite care home for up to 4 children at a time (Use Class C2). There is no evidence that this permission was ever implemented.
7. At my site inspection it was apparent that 6 rooms may well have been in active use for residential occupation. I saw 4 individual tenants in 4 of those rooms. The level of occupation may fluctuate from time to time but as I have said I shall examine the appeal case on the basis that the property is and would be a 5-person HMO (Use Class C4).
8. The development plan includes Barnet's Local Plan Core Strategy (CS) and Barnet's Local Plan Development Management Policies (DMP) both adopted in 2012. The most relevant development plan policy is arguably DMP Policy DM09, part 'a' of which covers HMOs.

This says that:

"The council will seek to retain existing HMO provided that they meet an identified housing need.

Proposals for new HMO will be encouraged provided that they meet an identified need, can demonstrate that they will not have a harmful impact 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 HMO."

It ought to be noted that whilst this policy is applicable, insofar as it relates to proposals for material changes of use from dwellings to HMOs the latter paragraph could only have been originally written with large (*sui generis*) HMOs in mind when it was adopted in 2012, before the Article 4 Direction came into force. There is no dispute that the policy applies to all HMOs now.

The appeal on ground (a) and the deemed planning application

9. In assessing whether planning permission ought to be granted for the use of the property as a small HMO, the main issue is the acceptability of that use taking into account its effect upon the character and amenity of the locality, its implications for local parking conditions and whether it meets an identified need.
10. The appeal concerns a sizeable, 2-storey, semi-detached residential property along a residential suburban street. This part of Kenilworth Road is characterised by predominantly semi-detached, single-family houses. No. 62 falls at the end of one such row of houses, with a wooded compound containing a substation on its southern side.
11. What has occurred at no. 62 has not involved the conversion of the dwelling house into flats. The house, in its pre-existing undivided form, is retained, albeit for shared multiple occupation. It seems to me therefore that clauses h. and i. of DMP Policy DM01, a policy aimed at protecting Barnet's character and amenity, are respected.
12. Whilst the character of the road is derived in part from houses of single-family occupation, this small-scale HMO retains the dwelling in an undivided form that is physically similar to the other semi-detached dwellings nearby. I have not been referred to any material external changes that were made to the property to accommodate the use. The property and its front and rear garden areas are well maintained. Neighbours and passers-by would find it hard to discern any notable differences between this property and the neighbouring ones in single-family occupation.
13. The house could easily have had 5 or 6 bedrooms before the change to a small HMO and could have accommodated a very large family. That would also be the logical fallback. I do not consider that this 5-person HMO is likely to materially harm the amenities of neighbours or of the area in general, since the use of this property by a large single family could generate the same amount of activity in and around it. I also observed that the front entrance door, which will be the focus for most of the external activity and comings and goings, is set well away from the adjoining semi-detached house at no. 64.
14. The use has persisted for some time yet the Council has produced no evidence of complaints about any increase in noise, disturbance or disruption from activity associated with this small HMO. The sole third party letter lodged in response to this appeal originates from a property some distance away and does not allege these types of problems. The Council's stated concerns are therefore somewhat anticipatory when the evidence indicates that no issues have arisen.
15. I have found no inherent reason why a well-managed 5-person HMO in this particular property should materially harm the character and amenity of this locality for any reason.
16. The enforcement notice says that *"In the absence of a parking survey the owner has failed to demonstrate that there is sufficient on street parking capacity for the potential parking overspill caused by the proposed development."* The Council's DR does not elaborate on this point and indeed no such reason for issuing the notice was recommended within it. I saw very clearly that the

property has space at the front to comfortably accommodate 4 on-site parking spaces and no doubt a fifth such space could be found if it was ever required. DMP Policy DM17 does not specify a residential maximum parking standard for HMOs. The closest such standard is probably the "1 to less than 1 space per unit for development consisting mainly of flats (1 bedroom)." This is not a very robust comparison. Even if the development was classed as 5 self-contained flats each with one bedroom, the site would comply with the relevant maximum parking standard. Even if parking in Kenilworth Road is congested, as suggested by the third party, there is no shortfall of off-street parking space for the small HMO and no basis to request a parking survey of on-street parking capacity.

17. The enforcement notice says that "*The detriment to character and amenity is not balanced by a robustly demonstrated need for additional HMO accommodation.*" This seems to be an incorrect approach since if no harm to character and amenity has been found, it could imply that there is no need to consider whether the new HMO meets an identified need. That is not how DMP Policy DM09 operates; the policy is permissive but all the criteria within it must be satisfied.
18. Whether by accident or design, the relevant part of the policy does not refer to an identified housing need and the supporting text to the policy offers no assistance as to what is meant by "*meet an identified need*". Still, the appellant identifies a lack of other HMOs in this street and the Council confirms that no planning permissions have been granted for one in this street. The appellant points to the fact that the converted rooms are all currently occupied and provide affordable accommodation particularly to low income key workers (single individuals) living in the area who earn below £1200 per month and who cannot afford to buy or even rent a small flat bedsit. It is said that most tenants over the past few years have included care workers, nurses, supermarket workers and cleaners. The appellant says there is also a high demand for individual rooms given the proximity of Edgware Hospital and Middlesex University.
19. There is nothing before me to seriously dispute this information provided by the appellant. I judge that it supports the view that this HMO meets an identified need. It would be almost disrespectful to the existing tenants and to any former tenants to suggest that the HMO is not meeting or had not met their identified or recognised accommodation needs for the duration of their occupation. The Council has not attempted to show that there is a greater priority for 6-bedroom single-family dwellings. In more general terms, there appears to be a need for HMOs in the borough, as demonstrated by the explanation to Policy DM09 and the requirement in the policy itself to retain them provided that they meet an identified housing need.
20. For the avoidance of doubt, I should add that the Council has not sought to argue that the HMO is not easily accessible by public transport, cycling and walking or that it fails to meet the relevant housing standards for HMOs. I am aware that the introduction of the Article 4 Direction was a recognition that HMOs need to be controlled and that a proliferation of them can be harmful to established residential character. However, it does not follow that each small HMO should be resisted and of course there is no proliferation of HMOs in this

locality. I see no conflict with the Supplementary Planning Documents titled *Residential Design Guidance* and *Sustainable Design and Construction*.

21. Drawing these threads together, I find on the main issue that the use of the property as a small HMO is acceptable taking into account its effect upon the character and amenity of the locality and its implications for local parking conditions and because it meets an identified need to an extent which would not justify the withholding of planning permission. No material planning harm arises and there is no obvious conflict with CS Policies CS1, CS5 and CS9 or with DMP Policies DM01, DM02, DM09 and DM17.
22. The Council has not suggested any planning conditions in the event of the appeal on ground (a) succeeding. A condition limiting the number of occupants to a maximum of 5 is necessary as a more intensive level of occupation could have different planning consequences. Such a condition should not come as a surprise to the parties as it reflects the written submissions in front of me. The Council will be able to enforce against such a condition and to avoid any future confusion and to ensure compliance, the appellant would be best advised to attend to the layout of the property I saw on my site visit. In particular and by reference to the layout plans submitted with the appeal papers, it seems obvious to me that the box room/office on the first floor and the reception room and room 2/storeroom (with doors off the kitchen and laundry room) should not be put to use as individual letting rooms. Such a course of action would leave 5 rooms for letting (4 on the first floor and one on the ground floor) and a good range of communal facilities, rooms and outdoor spaces.
23. My finding on the main issue determines the outcome of the appeal. For the reasons given above and having taken into account all other matters raised and the National Planning Policy Framework, I conclude that the appeal should succeed on ground (a). I shall grant conditional planning permission for the making of a material change in the use of the property from a single dwelling house (Use Class C3) to a House in Multiple Occupation (Use Class C4) as described in the corrected notice.

The appeal on grounds (f) and (g)

24. The enforcement notice has been quashed after the success of the appeal on ground (a). Grounds (f) and (g) no longer fall to be formally considered.

Andrew Dale

INSPECTOR