



Appeal Decision

Site visit made on 11 March 2020

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 24 March 2020

Appeal Ref: APP/G5750/C/19/3236191

246 Victoria Dock Road, Canning Town, London E16 3BT

- 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 Ms Vanesa Breuer (Breuer Limited) against an enforcement notice (EN) issued by the London Borough of Newham (the LPA).
 - The enforcement notice, numbered 19/00343/ENFC was issued on 9 August 2019.
 - The breach of planning control as alleged in the notice is the material change in use to a Use Class C4 house in multiple occupation (HMO).
 - The requirements of the notice are as follows:
 1. Cease the use as a Use Class C4 house in multiple occupation.
 2. Remove all fixtures and fittings that solely facilitate the use of the house in multiple occupation including (but not limited to) all internal locks on bedroom doors and additional mattresses and beds.
 3. Remove from the site all debris resulting from compliance with steps 1 and 2.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on ground (a) only as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed. See formal decision below.

Background information

2. The appeal property is a two storey, terraced, dwelling house located on the north side of Victoria Dock Road between Custom House Station and Royal Victoria on the Docklands Light Railway. It is not a listed building and nor is it located within a conservation area. Victoria Dock Road is a mix of residential and commercial uses although, to the north, the area is characterised by residential uses. It is common ground that this part of the Borough does not have a high percentage of HMOs.

3. The house was originally constructed as a 2 bedroomed house but has been altered significantly. In particular a large rear extension has been constructed and, as a result, it is noticeably larger than the adjacent houses and others within the terrace. The property has been split into four ensuite bedrooms with a large, back to front, living, dining and kitchen area. At the time of my site visit the ground floor comprised a kitchen, living and dining area with two ensuite bedrooms and the first floor comprised two ensuite bedrooms. The layout is shown in the Council's Delegated Enforcement Report (CDER) dated 30 July 2019.

4. The Council, through Newham Private Rented Housing, issued a licence (19/03134/HOSELE) for the occupation of the property on 1 August 2019 for 8 persons living as 1 household. That would be a large house in multiple occupation and would be in Class C5 as opposed to accommodating up to 6 people as a Class C4

HMO. The licence applied for and granted was a '*Selective Licence*' for a family. A previous similar licence had been issued in 2012 (12/03137/HOSELE).

5. Following a complaint, the Council's Planning Enforcement Team visited the property on 27 June 2019 and this confirmed that the layout was as described above. However, instead of being occupied by 8 persons living as a single household, the property was shown to be occupied by 4 separate tenants and as such was being used as a Use Class C4 HMO.

6. At the time of the CDER, an e-mail from one of the tenants had referred to the names of the 3 other tenants. Council service requests, relating to a car parking permit and a collection of bulk waste, had indicated that several other unrelated individuals occupied the property. Council Tax (CT) records indicate that the appellant, as landlord of the property, is currently responsible for paying the tax. Previous CT records show that between 2010 and 2016 the house was in family occupation.

7. On 31 July 2013 the Council introduced an Article 4 Direction (A4D) which removes permitted development rights Borough-wide (LLDC land excluded) for the change of use Class C3 dwelling houses to Use Class C4 HMOs. The Council contends, therefore, that the lawful use of the property remains that of a dwelling house in Use Class C3 and that its current use as a Class C4 HMO is unlawful.

8. The most relevant development plan policies are: policies 3.8, 7.1 and 7.15 of the London Plan and policies H1, H3, H4, S1, SP1, SP2, SP3 and SP8 of the London Borough of Newham Local Plan (LBNLP). Relevant policies within the National Planning Policy Framework (NPPF) and the Council's Housing Supplementary Planning Guidance (SPG) are also major material considerations.

The main issues

9. The main issues are the effects of the Class C4 HMO use in terms of:
- The loss of a family sized house in this part of the Borough;
 - The quality of the accommodation as provided and,
 - The effect on residential amenity.

The loss of a family sized house

The gist of the appellant's case

10. On behalf of the appellant it is stated that the Council's assertion that the use has resulted in the loss of a family dwelling house is fundamentally incorrect and that this view has prejudiced the entire enforcement matter. Reference is made to the NLP and that it consistently refers to family homes as being of 3 bedrooms or more. It is stressed that the property in question was originally a two-bed property and thus has never been a family home as per the LPA's understanding of the term. It is also indicated that when the appellant purchased the property the sales information described it as having two bedrooms.

11. It is submitted, therefore, that the Council has acted and unreasonably in taking enforcement action on the basis of the loss of a family home when this is simply not the case. It is contended that the policies referred to in the enforcement notice cannot apply and are irrelevant.

The gist of the Council's case

12. In response to the case put forward by the appellant, the Council refers to the Delegated Report and recommendation for service of the enforcement notice (dated 26/07/2019). This details the Council's position on the use of the property as a HMO. These details initially set out the complaint to the Council and the manner in

which the property was being occupied in June 2019. This showed that a total of 5 persons occupied the property as 4 households. There is also evidence that prior to 2017 the property had been formerly occupied as a family home prior to the rear extension being built (12/03137/HOSELE).

13. The Council also refers to the fact that the appellant had applied for a housing licence (HL) in June 2019 and had indicated that the property comprised 4 bedrooms. The HL (19/03134/HOSELE) was granted on the basis that the property could only be rented to a family with 4 bedrooms eligible for use. It is contended, therefore, that the property is lawfully a family home and that its use as a Class C4 HMO represents the loss of a family home.

14. The Council further indicates that the property is located within a residential terrace characterised by family homes and that, by the appellant's own admission, the area does not contain a high number of HMOs. It is contended that the HMO use is out of character and that it does not fall within one of the designated areas (Town and Local Centres and Key Movement Corridors) to where the Council seeks to direct such uses (Policy H3 of the NLP). It is also indicated that the use fails to meet other HMO criteria set out in Policy H4 which would deem a property unsuitable for family occupation and better suited to a HMO use.

15. The Council also indicates that because the property is not located above a commercial unit; because it benefits from an external rear amenity space and has a well-defined entrance, in all practicable terms it is well suited for use as a small family home. On the other hand the conversion of the ground floor space to bedrooms to accommodate two tenants represent an intensification in the use of the site for which the property is not designed.

My assessment

16. It is evident that the original house provided just 2 bedrooms and thus would not have fallen into the category of being a '3 or 4 bedroom family house'. However, the fact is that, in 2017 (Building Control reference 17/51122/A1), a full width single storey rear extension was constructed which added a considerable amount of space to the ground floor. Works were then carried out to provide a long through, kitchen, dining and living room and the 4 ensuite bedrooms as the current layout.

17. In effect, therefore, the house has been converted into a four bedroom property that was clearly capable of providing family accommodation. It is not clear how it was occupied following completion of the conversion works in 2017, until the application for the HL was made in August 2019. However, at that time the HL applied for (and granted) was a '*Selective Licence*' (Family) for 8 persons living as a single household. It is not clear why this type of family house HL was applied for, if it had been the intention that 4 separate households would occupy the 4 bed roomed house which had been created.

18. On the basis of the above and from my inspection of the property, I agree with the Council that that it currently comprises a house that is capable of providing family accommodation of 3 or 4 bedrooms. In carrying out the conversion works it is my view that the original small family house of just 2 bedrooms became a larger family house capable of providing up to 4 bedrooms. The Council treated it as such in granting the '*Selective Licence (Family)*' and this is what the appellant had applied for in August 2019. I consider that policy H4 is applicable, therefore, in this case.

19. Its subsequent use as 4 separate households with lockable rooms (albeit sharing the ground floor kitchen, dining and living room facilities) contravened the HL and, in my view, was also contrary to the NLP policies which aim to protect 3 bed and 4 bed

family housing. Policy H4 seeks to protect family housing generally and I agree with the Council and previous Inspectors' views that the Council has a *'bold and challenging strategy to bring a step change in housing provision and to prioritise family housing'* which has been found to be sound and that the housing policies *'need to be applied consistently in order for the strategy to have the best chance of being delivered'*.

20. In this case, therefore, I consider the Council is correct to resist the loss of this family sized house to a Class C4 HMO use. Clearly it could still be used in conjunction with the *'Selective Licence'* (Family) to provide accommodation for 8 persons living as 1 household. But, as being currently being used, I find it to be contrary to, and in clear conflict with, Policy H4 of the Council's Core Strategy.

The quality of the accommodation provided

21. I agree with the Council that the loss of downstairs living accommodation to two ensuite bedrooms could result in cramped and potentially crowded accommodation. However, having seen the accommodation, I consider that it is of high quality with a reasonably sized living, dining and kitchen area and 4 good bedrooms. Although an unusual arrangement, I also acknowledge that the use can meet Newham's standards for *'Private Rented Property Licensing Guide for Landlords and Managing agents'* with regard to the kitchen and bedroom sizes. It is also evident that the appellant has ensured that the property complies with all other HMO requirements. On this issue, therefore, I do not consider that the accommodation is sub-standard or contrary to housing policies and guidance.

The effect on residential amenity

22. Although the appellant indicates that no complaints have been received about the way in which the property is being used, it was a complaint to the Council in the first instance which led to the enforcement action being taken. However, having considered all of the submissions, and having inspected the property, it is my view that its use as a 4 person HMO is not likely to be significantly different (in terms of noise and disturbance being caused) to use as a family house or for a household of 8 persons as allowed for by the SL. Again, therefore, on this issue I do not consider that a Class C4 use would have a significantly detrimental effect on the living conditions of the other families living in close proximity to No 246.

The planning balance and my overall conclusion

23. I have found in the appellant's favour in relation to the quality of the accommodation; the size of the bedrooms and the likely impact with regard to noise and disturbance. However, these favourable findings are far outweighed by the principle of the loss of a property which is clearly capable of providing at least 3 or 4 bedrooms and thereby family accommodation. It remains capable of providing accommodation for a single household of up to 8 people as licensed by the Council and, indeed, as applied for by the appellant.

24. My conclusions on the first issue are reinforced by the fact that the property is located in a residential terrace characterised by family homes. A use for a single household of up to 8 people would not be out of place in this part of the Borough, being surrounded by other family sized homes. The argument that there are no other nearby HMO uses goes against the appellant's case, rather than being in support of such a use in this location. I accept that it is sustainable due to its proximity to public transport. However, it is contrary to the Council's aims of seeking to direct HMOs to Town and Local Centres and along Key Corridors within 400m of these centres.

25. I conclude therefore that planning permission should not be granted for the change of use of the property to a Class C4 HMO. The appeal fails, therefore on ground (a) as pleaded.

Other matters

26. In reaching my conclusions I have taken into account all of the other matters referred to in the submissions made on behalf of the appellant and by the Council. These include the planning history; all references to policy; the initial grounds of appeal; the detailed statements; the Council's delegated report and the appeal questionnaire.

27. However, none of these carries sufficient weight to alter my conclusions on the main issues and nor is any other factor of such significance so as to change my decision that planning permission should be granted for a change of use of the property to a Class C4 HMO use.

Formal Decision

28. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Anthony J Wharton

Inspector