



Appeal Decision

Site visit made on 23 June 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/N5090/C/20/3244391

Flat 8, Brent View House, North Circular Road, London NW11 9LE

- 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 Jeremy Kanzen against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 3 December 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, change of use of the property to a House in Multiple Occupation (Use Class C4)
 - The requirements of the notice are
Cease the use of the property as a House in Multiple Occupation
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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. 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 1990 Act as amended.

Procedural Matters

2. The site visit was arranged as an accompanied visit but the Council indicated on the morning of the visit that they were not able to attend due to their Covid-19 policies. However, as the appellant was present to provide access, the site visit took place. As there were no discussions during the site visit, no injustice was caused by continuing with the site visit.
3. The appeal property is in an area where a direction made under Article 4 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) is in force. The Article 4 Direction was made to remove the permitted development rights relating to a material change of use of a dwelling house (Class 3) into a HMO (Class C4) meaning that express planning permission is required where such a change takes place after the Article 4 Direction was made. To fall within the definition of a HMO, the property 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. Whilst some of the bedrooms had ensuite facilities, others

share a bathroom and all occupants share the kitchen. There is no dispute between the parties that the property is being used as an HMO.

4. The appellant refers to the appeal property having 5 occupants whereas the Council refers to 6. Whilst there are 5 bedrooms marked on the layout plan provided, an HMO as defined in Class 4 of the UCO would have no more than 6 residents and I have therefore dealt with the appeal proposal on the basis that occupancy could be up to 6 people.

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

5. The main issues are (i) whether there is an identified need for the HMO use (ii) 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 and (iii) whether the development accords with the Council's policies with regard to cycle provision.

Identified Need

6. Policy DM09 of the Development Management Policies Document (September 2012) (DMP) states that proposals for new HMOs 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 standards for HMO.
7. DMP Policy DM08 states that development should provide an appropriate mix of dwelling types and sizes with the highest priority for four bedroomed homes. The appellant refers to providing accommodation for people who cannot afford separate space, but there is nothing in the evidence submitted by the appellant to show that there is a deficiency of HMO accommodation that would equate to an identified need and justify the loss of a four bedroom single family dwelling.
8. 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 Policies DM09 and DM08. It would also not comply with Policy CS4 of the Core Strategy (September 2012)(the Core Strategy) which, amongst other things, seeks a range of dwelling types that meet identified housing priorities.

Character and living conditions

9. The appeal building is within one of two blocks of flats on the busy North Circular Road with four of the bedrooms fronting onto the road. There is an access between the two buildings to a rear car parking area with numbered spaces.
10. The Council states that occupation by a family as a single household would be used and function in a materially different way to six separate households and that the nature of tenants cannot be assumed or predicted and that their lifestyle would be more sporadic and disruptive than that of a family. However, there is no evidence to show that is the case or is likely to be the case. As a spacious 4 bedroom home, the appeal property could accommodate a reasonably large family with a mix of adults and teenagers. There is limited evidence to indicate that there is currently or would be any significant impact on the occupiers of other flats or that the presence of HMOs has caused issues

in the building or that the level of activity would not be substantially different to the trips patterns of a large family household. Neither party has provided any details as to whether of the any of the existing flats are in use as HMOs. The internal layout provides a generous space with double bedrooms off a wide corridor and there is no evidence that noise impacts upon neighbouring flats.

11. In the absence of evidence to indicate that there is or would be any significant impact on the character of the area or upon the living conditions of neighbouring residents with regard to noise and disturbance, in these respects the development complies with DMP Policy DM09. I find DMP Policy DMO1 to be less relevant to the development as it largely refers to the loss of houses in roads characterised by streets and design matters.

Cycle Provision

12. Policy 6.9B of the London Plan March 2016 refers to developments providing secure cycle parking facilities in line with the minimum standards set out in Table 6.3. Policies CS9 of the Core Strategy and DMP Policy DM17 are more general policies which refer to improving cycle facilities and making cycling more attractive for leisure, health and short trips.
13. The appellant has indicated a willingness to provide cycling facilities although it is not clear from the photographs provided where provision is proposed. Had I been proposing to grant planning permission this is a matter that I could have asked the parties to consider addressing by way of an appropriately worded condition. However, as I am upholding the notice, on the basis of the limited information before me, the appellant has failed to demonstrate that cycling parking and storage facilities can be provided in accordance with the policy requirements.
14. I therefore conclude that with regard to cycling provision, the development does not comply with Policy 6.9 of the London Plan, Policies CS9 of the Core Strategy and DMP Policy DM17 which collectively seek to improve and facilitate cycling provision.

Other Matters

15. The appellant has referred to the appeal property having a HMO licence and compliance with HMO rules. However, the granting of a HMO licence does not remove the need to comply with planning legislation.

Conclusion on ground (a) and the deemed planning application

16. Whilst I have found that the appeal property does not harm the character of the area and the living conditions of neighbouring properties, it has not been demonstrated that there is an identified need for an HMO and the development does not currently meet the cycling provision requirements.
17. I find that there are no material considerations to outweigh the conflict that I have identified with the development plan. The appeal on ground (a) and the deemed application for planning permission is refused.

The appeal under ground (g)

18. Whilst no appeal was lodged under ground (g) which relates to the period for compliance with the terms of the notice, I do have power to vary the period for compliance, should I consider it appropriate to do so. In view of the ongoing

Covid 19 crisis, I have asked the parties for their views. The period for compliance is 5 months. In response, the appellant has simply referred to the period of 5 months as being very short but has not provided any information such as any notice periods for tenants or their personal circumstances. The Council has referred to being able to exercise its powers under Section 173A of the Act which allows the Council to extend the compliance period should it be satisfied that there were justifiable reasons to do so. In the absence of any detailed information from the appellant, I do therefore consider the period of compliance to be reasonable. The appeal under ground (g) therefore fails.

Conclusion

19. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

E. Griffin

INSPECTOR