



Appeal Decisions

Site visit made on 23 June 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27 July 2020

Appeal Ref: APP/N5090/C/19/3243893

10 Gainsborough Gardens London NW11 9BL

- 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 Mohammed Zaynal Abedin against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 21 November 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)(b)(c)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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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 Town and Country Planning Act of the 1990 Act as amended.

Application for costs

2. An application for costs was made by Mohammed Zaynal Abedin against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

The appeals under grounds (b) and (c)

3. An appeal under ground (b) is that the breach of planning control alleged in the notice has, as a matter of fact, not occurred. The breach of planning control alleged is the change of use of the property to a C4 House in Multiple Occupation (HMO) Class C4. An appeal under ground (c) is that the matter alleged in the notice does not constitute a breach of planning control. The onus of proof is on the appellant to show that there has not been a breach. As the appellant relies upon the same argument for both of these grounds, I shall deal with them together.
4. An Article 4 Direction (the Direction) came into force on 29 May 2016 across the Borough which removed the permitted development right which allowed a change of use from Class C3 dwellinghouse to a HMO Class C4. As a result of the Article 4 Direction, any change of use of the appeal dwelling from Class C3

- dwelling house to a HMO Class C4 which occurred after the 29 May 2016 is therefore development for which express planning permission is required.
5. The appellant's argument is that the change of use to HMO Class C4 from Class C3 dwelling house commenced in 2013 before the Direction came into force and therefore benefits from PD as the Direction cannot operate retrospectively.
 6. The copies of tenancy agreements for March 2013, March 2014, March 2015 and March 2016 consist of one agreement signed by two tenants.
 7. Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (UCO) defines use of a dwelling by no more than six residents as a HMO. The UCO states that HMO has the same meaning as in Section 254 of the Housing Act 2004 (the Housing Act). However, Schedule 14 sets out a list of Buildings which are not HMOs for the purposes of the 2004 Act. Paragraph 7 of Schedule 14 excludes "Any building which is occupied only by two persons who form two households". Buildings occupied by 2 persons who form two households do not therefore fall within the definition of an HMO. The building was therefore occupied by only 2 persons prior to the Direction coming into force in May 2016, and therefore not in use as a HMO prior to that date. The earliest point at which the appeal property could have been assessed as falling within HMO use was in March 2017 when the tenancy agreement was signed by 3 tenants as a new tenant joined the original two tenants so that the previous exclusion which related to 2 persons no longer applied.
 8. To succeed under ground (b) the appellant would need to show that the breach of planning control has not occurred as a matter of fact. The breach of planning control is the change of use to an HMO. Details are provided by the appellant of the layout of the property which includes five lockable bedrooms with fire doors and a kitchen. To fall within the definition of an HMO, occupants would either need to share one or more of the basic amenities or the living accommodation would need to be lacking in one or more basic amenities. The occupants do share one or more basic amenities as they share a kitchen. As there is no dispute between the parties that at the time of the issue of the notice, the appeal property fell within HMO use, a breach of planning control has as a matter of fact taken place. The appeal under ground(b) therefore fails.
 9. With regard to ground (c), a material change of use has occurred after the Article 4 Direction came into force which requires planning permission. In the absence of planning permission, the material change of use to HMO (C4) use does constitute a breach of planning control. The appeal under ground (c) therefore fails.

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

10. 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 accessibility.

Identified Need

11. Policy DM01 of the Development Management Policies Development Plan Document 2012 (DMP) states that the loss of houses in roads characterised by houses will not normally be appropriate.

12. DMP Policy DM09 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. The Residential Design Guidance SPD (adopted October 2016) also refers to DMP Policy DM09.
13. There is no evidence before me to indicate what the identified need in relation to housing provision is in the surrounding area. The appeal property is currently let to a company but no details are provided as to how the HMO use relates to identified need. In the absence of evidence to show that there is a deficiency of HMO accommodation that is linked to an identified need, I find that the development in this respect does not comply with DMP Policy DM09.

Character and living conditions

14. The development is a two storey semi-detached property situated in a tree lined road which is characterised by similar dwellings. The Council states that there are only 2 conversions to self-contained flats and no other HMOs in Gainsborough Gardens and the established character of the area is therefore predominantly single family homes. The appellant confirms that the appeal property was originally a single dwelling house.
15. The appellant refers to being able to use the property for 3 unrelated occupants and taking this up to 5 unrelated occupants would not add harm to any neighbouring property or the street scene. However, there is no planning permission in force for 3 unrelated occupants to occupy the property as a HMO. Granting a planning permission for C4 use class would allow occupation for between 3 and 6 unrelated occupants and it is on that basis that the ground (a) appeal has to be determined.
16. The appellant states that professionals currently occupy the appeal property and that it is therefore quiet in the day although limited details are provided of current occupiers. In any event, any grant of planning permission would run with the land and not be linked to any tenancy agreement in terms of the occupations of existing or future tenants. A third party has referred to a large number of occupants at the property and other concerns including rubbish in the front garden. I accept that noise could be generated from a single dwelling house but nevertheless the comings and goings of up to 6 individual unrelated occupants with different schedules is likely to result in an increase in activity at the appeal property which is semi-detached and in proximity to other dwellings in a residential street.
17. On balance, I do consider that the development may cause harm to the living conditions of neighbouring residents with regard to noise and disturbance. The development would therefore conflict with Policy CS5 of the Local Plan Core Strategy (adopted September 2012)(the Core Strategy) and DMP Policies DM01, DM04 which together require development to safeguard the character and amenity of areas and respect local context.

Accessibility

18. The appeal site has a Public Transport Access Level 3 rating which the Council considers to be only reasonable rather than "easily accessible" by public transport and walking as referred to in DMP Policy DM09 of the Local Plan.

However, the nearest bus stop is around 2 minutes' walk away and provides access to other parts of London and the nearest underground station at Golders Green is around 7 minutes' walk away. Whilst the Council has provided walking distances to the university and the job centre, the routes provided are partially along the main road where there are bus services. On the evidence before me, I do consider that the appeal site does comply with DMP Policy DM09 with regard to accessibility.

Conclusion on ground (a) and the deemed planning application

19. Whilst I have found that the appeal property does comply with DMP Policy DM09 in terms of transport, I have also found that the appeal property may harm the character of the area and the living conditions of neighbouring properties and that it has not been demonstrated that there is an identified need for an HMO.
20. 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 (f)

21. This ground relates to whether the steps required by the notice exceed what is necessary to remedy the breach of planning control. An enforcement notice is required to set out the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in Section 173(4) of the 1990 Act. The notice alleges the change of use of the property into a C4 House in Multiple Occupation (HMO). The step required is to cease the HMO use. The purpose of the notice is therefore clearly to remedy the breach and no lesser steps would remedy that breach.
22. Under this ground, the appellant states that ceasing the use would not resolve the noise objection. However, that is a matter that I have already considered under ground (a). Whilst the appellant has stated that compliance "would be a time and financially consuming process, no further details are provided and the requirement is to cease the use rather than carry out any physical works.
23. In summary, the step required by the notice i.e. to cease the HMO use does not exceed what is necessary to remedy the breach of planning control. The ground (f) appeal must therefore fail.

The appeal under ground (g)

24. This ground relates to the time allowed for compliance with the notice which is 6 months. Whilst the appellant refers to finding alternative replacement home for current occupants, no details are provided of the current occupants as the property was let to a company in an agreement dated 9 October 2018. The company let agreement does have a 2 year break clause which would allow formal notice to be served in October 2020. In the absence of any further information, I do consider that the 6 months period is reasonable. The Council does, however, have 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. The appeal under ground (g) therefore fails.

Other Matters

25. The appellant has referred to the Council's policies supporting seeking a Lawful Development Certificate (LDC) but there is no LDC in force for the appeal property. There is therefore no evidence before me to indicate that the existing use is 'lawful' as a period of less than 3 years from March 2017, which on the evidence provided is the earliest date the HMO could have commenced, and the service of the notice in November 2019 would not be sufficient in any event to acquire immunity.
26. I note that the appeal property was granted a HMO licence in 2019. However, that licence is granted under separate legislative requirements and does not remove the need to comply with planning legislation. Similarly, compliance with other parts of legislation such as housing standards does not overcome my findings.
27. The Council received a response to a PCN notice but the appellant states that the replies sent by an agent were not verified by him. The appellant was particularly unhappy with the reply that a family had occupied the appeal property potentially breaking continuous HMO use. However, I have found that the earliest HMO use took place is 2017 rather than in 2013. I have not needed therefore to consider whether any HMO was continuous in making my findings as any HMO use did not begin until after the Direction was in force and would have required planning permission in any event.
28. The appellant has been critical of the Council's approach to the investigation that led to the issue of the notice but those are not matters that fall within my remit in determining the grounds of appeal.

Conclusion

29. 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