



Appeal Decision

Site visit made on 11 August 2020

By E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/N5090/C/20/3247544

61 The Vale, London NW11 8SE

- 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 Owen Samuels against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 16 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, change of use of the property into a C4 House of Multiple Occupation (HMO)
 - 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 6 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. It is directed that the enforcement notice be corrected by deleting the wording of the breach in full and replacing it with "*Without planning permission, the material change of use of the property into a C4 House in Multiple Occupation.*" The notice is also varied by the deletion of the words "*6 months*" from the period of compliance and the substitution of the words "*8 months.*"
2. Subject to these corrections and variations, 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 as amended.

Procedural Matters

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 permitted development rights allowing a material change of use of a dwelling house (Class 3) into a HMO (Class C4). Express planning permission is therefore required where such a change takes place. There is no dispute between the parties that the property is being used as a House of Multiple Occupation (HMO).
4. The alleged breach refers to a change of use of the property rather than a material change of use. In order for the description of the breach to reflect the

meaning of development defined by Section 55 of the 1990 Act, the word "material" is required.

5. The alleged breach also contains a typographical error as it refers to a "House of Multiple Occupation" whereas a "House *in* Multiple Occupation" is referred to in the requirements. I therefore intend to replace the existing wording of the breach with "*Without planning permission, the material change of use of the property into a C4 House in Multiple Occupation.*" I am satisfied that I can carry out these corrections without causing injustice to any party.

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

6. 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) the effects of the development on on-street parking capacity

Identified Need

7. Policy DM09 of the Development Management Policies Document (September 2012) (DMP) states that proposals for new HMOs will be encouraged provided that, amongst other things, that they meet an identified need.
8. The Council states that the northern part of The Vale is primarily made up of single family dwellinghouses with 5 conversions out of 29 properties that are flat conversions rather than HMOs. I have no evidence from the appellant to suggest that is not the case. The prevailing character is therefore of family housing and a change to HMO use would result in the loss of a single family dwelling.
9. The appellant states that he did try to find a single family occupant to rent his property when he and his family relocated overseas due to work secondment. The appellant believed that he was renting to a single family when the property was let in May 2017 after advertising for 5 months but the tenant sub-let in breach of his agreement. It was only after advertising again and being unsuccessful in finding a single family occupant that the appellant applied for a HMO licence. The appellant was unaware that separate planning permission was required for HMO use. The Council's reasons refer to the loss of a permanent single family dwellinghouse.
10. Whilst I note that the appellant's circumstances are that he intends to return to occupy the appeal property in late 2021 or early 2022, it is the case that the appeal property has been in HMO use since 2017 and circumstances may change. The appellant does therefore still have to comply with the policy requirement with regard to demonstrating that there is an identified need for a HMO in this location. Whilst the appellant has indicated that the current tenants are professionals but no other details in terms of meeting an identified need have been provided.
11. There is therefore nothing before me to show that that there is a deficiency of available HMO accommodation that would equate to an identified need. Therefore, I find that the development fails to accord with DMP Policy DM09 in that respect. I find Policy CS5 of the Barnet's Local Plan Core Strategy (CS) to be less relevant to the issue of identified need.

Character and living conditions

12. As previously stated, the prevailing character of the area is of single family dwellings. Policy DMP01 (i) states that loss of houses in roads characterised by houses will not normally be appropriate. Policy CS5 of the CS states, amongst other things, that development will respect local context.
13. 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. The Supplementary Planning Document: Residential Design Guidance October 2016 (SPD) explains that conversion of houses into flats or an HMO can harm the character of areas by changing external appearance and increasing activity. There is no dispute that the HMO use has not resulted in any external changes to the property but changes in character are not limited to physical changes.
14. The appeal site consists of a large semi-detached dwelling with a parking area to the front. The dwelling has been extended to the front with a porch and to the rear with a two storey rear/side dormer window extension. Internally, there is shared living space on the ground floor with a study, toilet, kitchen and lounge area and games area. There is also a bedroom on the ground floor together with four more bedrooms on the first floor and a shared bathroom. The top floor is made up of a double room with its own ensuite shower room.
15. The Council states that occupation by a family as a single household would 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 5 or 6 bedroomed home, the appeal property could accommodate a large family with a mix of adults and teenagers. A single family could have a number of cars and could generate a number of comings and goings and would not necessarily have a different level of activity to up to 6 residents in HMO use.
16. There is little evidence to indicate that there is currently or would be any significant impact on the occupiers of neighbouring properties or that the presence of the HMO has caused issues or that the level of activity would not be substantially different to the trip patterns of a large family household.
17. I therefore do not find that there would be any significant impact on the character of the area or the living conditions of neighbouring residents with regard to noise and disturbance, in these respects, the development complies with DMP Policies DM09 and DM01. For similar reasons, I find no conflict with the SPD or Policy CS5 of the CS.
18. Although referred to in the reasons for the notice, I find Policy CS1 of the CS and the Sustainable Design and Construction SPD (adopted October 2016) to be less relevant to the matter of character and living conditions than the other listed policies.

Parking Provision

19. DMP Policy DM17 of the Local Plan states that residential development may be acceptable with limited or no parking but only where it can be demonstrated through a parking survey that there is sufficient on street parking capacity. Whilst parking needs vary at different times of the day, at the time of my site visit, there was available on street parking. I also observed that a number of

properties have off street parking in the vicinity of the appeal site. For example, the detached house to the side of the appeal property has a generous frontage with three cars parked on it at the time of my visit. The prevalence of off street parking is likely to reduce the need for on street parking. The Council equates the parking provision with 6x1 bedroom flats which would have an expectation of 3 to 4 car parking spaces as there is no reference in Policy DM17 (g) specifically to the parking provision for HMOs. However, the requirements only apply where there is limited or no parking within a Controlled Parking Zone. The Council refers to the frontage of the appeal property providing for 2 car parking spaces whereas the appellant has referred to 3 parking spaces. Nevertheless, I saw no evidence that the development is likely to have resulted in additional on street parking detrimental to highway safety and pedestrian traffic and the free flow of traffic.

20. Although the Council states that the appeal site is only average in terms of access to public transport, the appeal property is not far from Golders Green underground station or a bus stop. There are therefore alternative modes of transport for tenants other than private vehicle. Whilst I acknowledge that individual tenant needs can change, only one of the current tenants uses a private vehicle.
21. Consequently, I find no harm to on street parking capacity or conflict with Policy CS9 of the Core Strategy which seeks safe effective and efficient travel or DMP Policy DM17.

Conclusion on ground (a) and the deemed planning application

22. Whilst I have found that the appeal property does not harm the character of the area and the living conditions of neighbouring properties and I have not found harm to on street parking it has not been demonstrated that there is an identified need for the HMO use.
23. 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)

24. 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. The period for compliance is 6 months. In view of the ongoing Covid 19 crisis, I asked the parties for their views and they have provided comments. In response, the appellant has not indicated a different period but has stated that one of the occupants has lost her job and is paying no rent whilst a second is paying significantly reduced rent. Although I have not been provided with details of tenancy agreements or notice periods, I must ensure that anyone who will be deprived of their home is given a reasonable period of time to look for other housing.
25. Until the 31 March 2021 under the Coronavirus Act 2020, landlords have to now give renters six months' notice if they intend to seek possession. With the statutory minimum notice of 6 months overriding any lesser period that may have applied, it is unlikely that compliance with the notice can be achieved in 6 months. 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. Nevertheless, with the existing statutory restriction currently in place, I do consider that 8 months is a reasonable period. The appeal under ground (g) therefore succeeds and I will amend the period of compliance to 8 months rather than 6 months.

Other Matters

26. I note that the appeal property has a HMO licence but the licencing regime is entirely separate to the need for HMO use to comply with any other legislation including planning. Whilst not a reason for serving the notice, the Council has referred to requiring further details to ensure compliance with HMO standards and that not all of the six bedrooms have separate shower or washing facilities. However, as I am dismissing the appeal for other reasons, compliance with any relevant HMO standards would be a matter for the parties to address if any further applications were made.

Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected and varied 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