



Appeal Decision

Site visit made on 7 September 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15th October 2020

Appeal Ref: APP/U5930/C/19/3242292

33 Ruckholt Road, London, E10 5NS

- 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 IROOM-UK Limited against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice, numbered 085055, was issued on 8 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a dwelling house (C3 use class) to a Large House in Multiple Occupation (Use Class Sui Generis).
- The requirements of the notice are 1) Cease the use of the property as a House in Multiple Occupation (Sui Generis Use Class); 2) Remove all fixtures and fittings associated with the use of the property as a House in Multiple Occupation (Use Class Sui Generis), including but not limited to, all signage, door locks and door numbers; and 3) Remove from the property all associated debris resulting from compliance with the above steps.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

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.

Grounds (c) and (d)

2. An appeal on ground (c) is that the matters alleged in notice do not constitute a breach of planning control. The appellant has not disputed that there has been the material change of use to a large HMO at some point (which would be classed as development and therefore a breach of planning control) but that this took place more than 10 years prior to the service of the notice. This is an argument under ground (d) and to succeed the appellant must show that there has been a continuous period of 10 years prior to the service of the notice during which the property has been used as a house in multiple occupation by more than 6 people.
3. The appellant's case is that the previous owner rented the property between 2007 to 2013 but, other than a name and a mobile telephone number, there are no details regarding the previous ownership and use or the people who

lived in the property at that time. The appellant has stated that the current landlord bought the property at some point during 2013 to 2014. The response to the planning contravention notice submitted by the appellant during the Council's investigation stated that the HMO use began on 15 October 2013 and that there were ten occupants in eight bedrooms, although it then went on to provide the names of only eight unrelated residents as of that date (23 October 2018). The onus of proof is on the appellant and only very limited details have been provided regarding the numbers of residents or time periods of the occupancies. There has not been sufficiently precise and unambiguous evidence submitted to prove on the balance of probabilities that there has been continuous use as an HMO from more than 6 people for a period of more than 10 years prior to the service of the notice and therefore the appeal on ground (d) cannot succeed.

Grounds (a) and the application for deemed planning permission

4. The main issues in the ground (a) appeal are the effect of the development on the provision of family housing in the Borough, the impact on the living conditions of neighbours in terms of noise and disturbance, and the effect on parking in the area.

Family housing

5. The property is a mid-terrace dwelling which at the time of the service of the notice was arranged so that it had eight bedrooms, a kitchen, a utility/cellar room and two bathrooms. It is located on a predominantly residential road with on-street parking in the council ward of Leyton. A direction under Article 4 of the General Permitted Development Order 1995 came into effect on 16 September 2014 which removes the permitted development rights for a change from a use under Class C3 of the Town and Country (Use Classes Order) 1987 ("the UCO") to a use under Class C4. Any proposal to convert the property into a small HMO falling within use class C4 would require planning permission.
6. The material change of use from a single dwellinghouse to an HMO is contrary to the development plan policy which seeks to improve housing quality and choice and meet a range of housing needs, and a key objective is to prevent the loss of larger family-sized homes. Leyton Ward is designated a "Restricted Dwelling Conversion, HMO and Building in Multiple Residential Occupation Ward" pursuant to DM6 of the Waltham Forest Development Management Policies which are part of the local plan. The conversion of larger homes, which includes this property, within such a ward is contrary to Policy DM6 and also contrary to policy CS2 of the Waltham Forest Core Strategy March 2012. In this case the conversion is defined under Policy DM6 as a change to a Building in Multiple Residential Occupation, which is an HMO with more than 6 unrelated people sharing a dwellinghouse with shared facilities. The alternative scheme raised in the ground (f) appeal would also be contrary to Policy DM6 as an HMO within Class C4 of the UCO.

Living conditions of neighbours

7. Multiple occupants living as different households are likely to have separate living patterns and routines, and to have more frequent comings and goings, when compared with a single household living in the same property. It is likely

that there would be fewer linked trips to and from the house and also more visitors. This would cause increased noise and disturbance to the neighbours (which accords with a third party representation received during the course of the appeal). The future occupiers of both the property and the neighbouring houses will no doubt change over time and also need to be considered. The alternative scheme raised by the appellant under the ground (f) appeal would be to reduce the number of occupants and rooms used as bedrooms so that the use would be within Class C4 of the UCO, i.e. an HMO with no more than 6 people. However, the use of the property as a smaller HMO would still cause the same type of harm to the neighbours' amenity as the more intensive use and, whilst this would be to a lesser extent, it would still be material.

8. The change of use to an HMO has caused material harm to the living conditions of the neighbours and is contrary to Development Management Policies DM23 and DM32, Core Strategy Policy CS13 and Policy 3.5 of the London Plan which are intended to provide high quality development and improve health and well-being. The alternative scheme would also be contrary to these policies.

Parking

9. The development does not have any off-street parking provision and it is likely that the use of the property as 8 separate households would generate more trips and an increased need for parking than of a single household. My observations during the site visit, which I accept is simply a snapshot in time but which does accord with the evidence submitted by the Council regarding a site visit undertaken during the course of their investigation, showed the on-street parking to be well-used with little free space, and this was when the appeal property was uninhabited. The use within Class C4 of the UCO would similarly cause an unacceptable increased burden on the on-street parking, albeit to a lesser extent. The development, and the proposed alternative scheme, are therefore contrary to Development Management Policy DM16 which seeks to effectively manage parking.

Conclusions on Ground (a) and the application for deemed planning permission

10. Overall, I conclude that the development fails to meet the identified housing needs and parking requirements of the Borough and is harmful to the living conditions of the neighbours. It is contrary to the development plan as set out above and since there are not material planning considerations to outweigh the conflict with the development plan, I conclude that the appeal on this ground should be dismissed and planning permission refused.

Ground (f)

11. To succeed on this ground the appellant must show that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by such a breach.
12. In this case the purpose of the notice is to remedy the breach of planning control which is the material change of use from a dwellinghouse to a Large House in Multiple Occupation. I have considered the merits of the suggested alternative scheme above and found that it would cause harm and be contrary to the development plan, and that there are not material considerations to

outweigh that conflict. I am satisfied that the steps required by the notice do not exceed what is necessary to remedy the breach and the appeal on this ground cannot therefore succeed.

Zoë Frank

INSPECTOR