



Appeal Decision

Site visit made on 10 November 2020

by Sarah Dyer BA BTP MRTPI MCMJ

an Inspector appointed by the Secretary of State

Decision date: 20 November 2020

Appeal Ref: APP/N5660/C/19/3243388 6-8 Hinton Road, London SE24 0HJ

- 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 Menara Enterprises Ltd against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 19 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the intentional unauthorised material change of use of the premises from a (sui generis) children's therapy centre to a (sui generis) large house in multiple occupation (HMO) consisting of 3 self-contained bedsits at ground floor level and 11 non self-contained rooms on the upper floors (the unauthorised HMO use).
 - The requirements of the notice are:
 - a) Cease the unauthorised HMO use; and
 - b) Remove from the premises all internal partitions and divisions, all but one set of kitchen units, appliances and associated plumbing and electrical wiring, and any other fixtures and fittings that facilitate the unauthorised use; and
 - c) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.
 - The period for compliance with the requirements is four 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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Decisions

1. It is directed that the enforcement notice is corrected (i) by the omission of '(sui generis)' before the words 'children's therapy centre' and (ii) by the omission of the number '11' before the words 'non self-contained' and its replacement with the number '10'.
2. It is further directed that the time for compliance set out in section 6 of the enforcement notice is varied from '4' months to '8' months.
3. Subject to the corrections and variation, the appeal is dismissed, 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

4. During the site visit I was able to access all of the rooms in the building with the exception of one on the first floor for which keys were not available. The

appellants describe this space as 'just a room' and confirmed that there were no bathroom or cooking facilities within it, during the site visit.

The Notice

5. During the site visit I noted that there were 10 rooms in use on the upper floors not 11 as specified in the notice. Both parties are agreed that 10 is the correct number and neither have any objections to my correction of the notice accordingly. Consequently, I can correct the notice without causing any injustice to the appellants or the Council.
6. The appellants have queried whether the previous use of the premises as a children's therapy centre was a 'sui generis' use and if it should be more appropriately described as a Class D1 use. It is not necessary for the notice to state which use class the material change of use is from and I can correct the notice by removing the reference to the children's therapy centre being 'sui generis'. This correction can be made without causing injustice and will address any dispute regarding the use class within which the previous use of the premises fell.

Ground (a) and the Deemed Planning Application (DPA)

7. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

8. The main issues are:
 - Whether the development provides acceptable living conditions for occupiers with particular reference to the size and layout of internal space, outlook and privacy.
 - Whether the development provides an appropriate mix of housing types and tenures.
 - Whether the development makes appropriate provision for car and cycle parking, servicing and deliveries and waste/recycling storage and collection.

Reasons

Living conditions

9. There are three self-contained bedsits on the ground floor with bathroom and cooking facilities behind locked doors. Of the two bedsits at the front of the building the unit to the left of the entrance hall is compromised in size by the provision of a fire exit route which links the shared kitchen to the street. This results in the space available being significantly more cramped than in the other two bedsits on the ground floor. Furthermore, the windows onto the street have been blocked, to provide privacy from passers-by, but this has resulted in the bedsits both sides of the entrance having high level clear windows only which provides no meaningful outlook from these rooms.
10. The rear bedsit on the ground floor is also significantly compromised in terms of outlook and privacy. There is one large patio window and a door serving the

room and these open up directly onto the rear amenity space which is shared. Again, the patio window has been substantially infilled which reduces overlooking and provides improved privacy, but which substantially undermines the outlook from the room.

11. There is also a kitchen and lounge area on the ground floor with access to the rear amenity space. The kitchen accommodates a range of appliances to serve the residents of the upper floors and the residents of the ground floor bedsits are not excluded from using these facilities. However, access to the kitchen is convoluted, particularly from the second floor of the premises, involving negotiation of multiple staircases and corridors. There is no facility for eating meals in the kitchen and the size of the lounge is reduced by a large cupboard which accommodates the boiler. In terms of their size the communal spaces on the ground floor are inadequate to serve the needs of the residents.
12. The appellants argue that it is not unusual for residents of a three storey dwelling to have to walk to the ground floor to utilise a living room and they cite the example of a single family dwelling. However, a single dwelling generally accommodates fewer individuals and has more extensive shared spaces on the same level as the kitchen for eating and communal relaxation than are provided in this case. On these bases I do not find the analogy to a single dwelling compelling.
13. There is a utility room on the first floor which the appellants say is used by residents for ironing etc. There was a plug in hob in this room but no space for eating and it does not provide a viable alternative to the ground floor facilities.
14. The appellants observe that the London Plan 2016 does not specify room sizes and that set against the Council's standards (Lambeth Houses in Multiple Occupation Standards 2016) those rooms that do fall below the standard do so by less than 10%. Notwithstanding whether or not the individual rooms achieve the standards set by the Council I have found that the outlook and privacy provided by the ground floor units is poor and the residents of the upper floors do not have satisfactory access to facilities by virtue of the size and layout of internal space. These findings are sufficient for me to conclude that adequate living conditions are not provided for the occupiers of the development.
15. I conclude that the change of use to an HMO does not provide acceptable living conditions for occupiers with particular reference to the size and layout of internal space, outlook and privacy. The development is therefore contrary to policies H9 and Q2 of the Lambeth Local Plan 2015 (the Local Plan) which require HMOs to provide a suitable standard of facilities and that development makes provision for acceptable standards of privacy and outlook.

Housing types and tenures

16. Policy 3.8 of the London Plan (2016) supports housing choice and policies H1 and H4 of the Local Plan also support housing mix. Policy H9 of the Local Plan recognises the contribution which HMOs can make to creating a mixed, balanced and inclusive community. The London Plan Housing Supplementary Planning Guidance (2016) also provides some support for HMOs.
17. The Council says that in this case the HMO does not provide a mix of housing types and tenures to meet housing need and a balanced mix of unit sizes, including accommodation for families. On the other hand, the appellants cite a

need for affordable homes of the type provided and the positive effect that this has on reducing the demand for local homes.

18. Neither the Council nor the appellants have provided substantive evidence to support their arguments and the evidence suggests that there is some consistency of view that this is not an appropriate site for accommodation for families given its context. The Council has not said that it has any objections to the tenure type. Notwithstanding the lack of information regarding housing need, the HMO does provide a mix of types of accommodation from fully self-contained bedsits to rooms with only shared facilities.
19. On the basis of the evidence before me I conclude that the change of use to an HMO provides for an appropriate mix of housing types and tenures. It follows that the development accords with Policy 3.8 of the London Plan and Policies H1, H4 and H9 of the Local Plan.

Car and Cycle Parking

20. Save for a fire exit, the only access from the street is provided in the form of a communal hallway which runs through the middle of the building. There is no vehicular access from Hinton Road and no on site car parking is provided.
21. At the time of my visits there were some cycles in the rear amenity area, but no formal cycle parking provision had been made. Furthermore, the storage of cycles in this area is not a practical solution given the additional adverse impact on the quality of the communal space derived from bringing cycles through the lounge area to access the rear amenity space.
22. With regard to car parking the appellants consider that this is unnecessary given the high level of public transport accessibility and the likelihood that residents will not be car owners. The Council does not object to the lack of car parking provision on site but requires a legal agreement to ensure that the HMO use will not have an unacceptable impact on on-street parking.
23. There is no evidence before me to show where any residents who are car owners park their cars and the effect that this is having on that location in terms of highway safety or living conditions. Furthermore, the site is very close to Loughborough Junction station, bus stops, shops and open space such that residents would not have to rely on private cars to make essential journeys. However, the lack of any practicable storage of sufficient cycle parking on site to serve all of the residents degrades the accessibility of the site by all non-car modes. Also, in view of the scale of the HMO and the number of residents it is more likely than not that some of the residents will own cars.
24. Drawing all of these points together I find that it has not been shown that adequate provision has been or can be made for the parking of cycles or any cars associated with the use as an HMO. Whilst the legal agreement requested by the Council may have overcome my concerns in relation to car parking provision, no such document is before me and the appellants have not indicated that they would be content to enter into such an agreement. The appellants have suggested that the Council's concerns, including lack of cycle parking, could be overcome by planning conditions but have not suggested any wording or shown that the provision of adequate cycle parking can be made without consequent adverse impacts on the living conditions of residents.

25. I conclude that the change of use to an HMO does not make appropriate provision for car and cycle parking. The development is therefore contrary to Policies 6.9 and 6.13 of the London Plan and Policies T3, T7 and Q13 of the Local Plan which require development to provide car parking and convenient and accessible cycle parking facilities.

Servicing and storage/collection of waste

26. The appellants note that Hinton Road is subject to controls to restrict vehicles parking in the daytime and there is a cycle lane as it approaches a complex junction with traffic lights and pedestrian crossings. Any vehicles that stop would block the road and cause obstructions and distractions to cyclists and motorists as they seek to negotiate the junction.
27. The Council is concerned that in the absence of a Delivery and Servicing Plan (DSP) and a Waste Management Plan (WMP) delivery and service trips could have an unacceptable impact on the safety and amenity of the surrounding area. Given the site context which I observed during my site visit and as described above, these are reasonable concerns which need to be addressed.
28. The appellants are of the view that the DSP and WSP could be secured by planning conditions. In its consideration of a planning application for change of use and the erection of an extension at the site to accommodate a 19 room HMO (Council Ref. 18/04801/FUL) the Council refers to the potential use of planning conditions to secure both a DSP and a WSP. This application and a similar one (Ref. 19/00293/FUL) were refused planning permission. However, it is clear that despite accommodating a larger number of rooms than the development which is the subject of the notice, the submission and approval of the DSP and WSP could have been resolved through the imposition of planning conditions.
29. I conclude that subject to the submission, approval and implementation of a DSP and a WSP, which could be secured by condition, the change of use to an HMO would make appropriate provision for servicing and deliveries and waste/recycling storage and collection. On this basis the development would accord with Policy 6.3 of the London Plan and Policies T6, T8 and Q12 of the Local Plan. These policies require that development does not have an unacceptable transport impact and makes adequate provision for servicing and refuse/recycling.

Other matters

30. The appellants argue that the change of use to an HMO is sustainable development and that there is a presumption in favour of its approval. Even if I were to agree with the appellants in this regard, such a finding would not outweigh my concerns regarding the living conditions of the residents and the inadequate nature of the car and cycle parking provision. Similarly, the absence of any adverse impact on neighbouring and other occupiers does not outweigh the harm which I have identified.
31. The Council has referred to Policy 6.1 of the London Plan and Policies T1 and D5 of the Local Plan in its reasons for serving the notice. These policies relate to the closer integration of transport and development, sustainable travel and the Council's approach to planning enforcement, respectively. As such I do not find them to be relevant to the main issues which I have identified, and they

have attracted no weight in my determination of this appeal. Similarly, I do not find the Council's Planning Enforcement Protocol (2007, revised 2016) to be of direct relevance to my determination.

Conclusion in respect of ground (a) and the DPA

32. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (g)

33. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that the compliance period of four months is too short because it provides inadequate time for the individual occupiers to find alternative accommodation and for the works to be carried out.
34. The appellants say that the building operations which are required would be noisy and disruptive, consequently all of the occupiers would have to leave before the works could be carried out. The layout of the HMO is such that it is necessary to avoid the situation where works are being carried out whilst some residents are still in occupation. Therefore, it is reasonable to allow sufficient time for the building to be vacated before works are commenced to meet the requirements of the notice. However, the appellants have not provided any evidence to support their contention that an extension of the compliance period to 12 months is necessary.
35. Nevertheless, the Council has suggested that in view of the effect of the Covid-19 pandemic the compliance period could be extended to 8 months. This seems to me to be a reasonable compromise and I shall amend the compliance period accordingly.
36. As the building is occupied as residential accommodation, the notice would cause the loss of someone's home or other accommodation. Therefore, the right set out under Article 8 of the Human Rights Act 1998 is engaged. However, save for the disruption that finding alternative accommodation would cause the residents, with which I have great sympathy, there is no evidence before me to suggest that such accommodation could not be found within the extended eight-month compliance period.
37. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Conclusion

38. For the reasons given above I conclude that the appeal succeeds in part. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Sarah Dyer

Inspector