The Planning Inspectorate

Appeal Decisions

Site visit made on 20 October 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Appeal A: APP/N5090/C/19/3239923
Appeal B: APP/N5090/C/19/3239924
94 Cumbrian Gardens, Golders Green, London, NW2 1EL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals A & B are made by Mr Teddy Nazim and Mrs Maria Angela Nazim respectively against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1853/18, was issued on 3 October 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 1. Cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirements is 5 months.
- Appeals A & B are proceeding on the grounds set out in section 174(2)(b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended. In respect of Appeal A only, the appeal on ground (a) and the application for planning permission deemed to have been made 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.

Ground (e)

2. The appellants have withdrawn this ground of appeal.

Grounds (b) and (c)

3. An appeal on ground (b) is on the basis that the matters stated in the notice have not occurred, and an appeal under ground (c) is that if those matters did occur they do not constitute a breach of planning control. The appellants' case is that there has been no material change of use of the property.

4. However, the appellants do seem to accept that the house was previously occupied as a single dwellinghouse under Class C3 and that following its renovation in 2018 and 2019 it was occupied by 5 residents living as separate households which falls within the definition of Class C4: *"Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"."*[1] A house in multiple occupation in this context has the same meaning as in section 254 of the Housing Act 2004 i.e. a group of people not living together as a single household and sharing some basic amenities. The

[1] Part C, Class C4 of the Schedule to the UCO

description provided by the Council regarding the arrangements of the appeal property accords with my observations during the site visit, that is 5 bedrooms with lockable doors (one of the rooms also had a small second room attached) sharing three bathrooms facilities and a large kitchen and garden. There is no evidence that the tenants in the separate bedrooms are connected to each other. On the evidence provided, the use falls squarely within the definition of C4. The matters as alleged in the notice, the change of use of the property to a House in Multiple Occupation, has occurred and the appeal on ground (b) cannot therefore succeed.

5. Whilst a change between use classes is not necessarily a material change of use, the use of the house as an HMO with 5 separate households is likely to have separate living patterns and routines with fewer linked trips and more visitors when compared to a single household which could lead to increased noise and disturbance for neighbours. This intensification of use is material and the appeal on ground (c) does not therefore succeed.

Ground (a)

6. The main issues in this ground are the effects of the development on;

    - the character of the area and the living conditions of the neighbours; and
    - whether the need for an HMO in this area has been identified.

Character of the area and living conditions of neighbours

7. The Council has provided evidence that most of the houses in the immediate vicinity are in use as single dwellinghouses. The use of the appeal property as an HMO will therefore be different in character to the predominantly residential street consisting of predominantly family housing. The introduction of 5 separate households within the appeal property is an intensification of use with additional noise and disturbance associated with separate living patterns and movements. The appellant's case is that the character of the area has changed in recent times but the evidence is not of wide-spread changes of use to houses in multiple occupation. I have taken account of the appeal decision provided relating to 104 Cumbrian Gardens but each case turns on its own facts and the inspector in that case made it clear that he was concerned with the character in the immediate vicinity of that particular property which is situated at the end of the street frontage, and not the character of the estate, or indeed the street, generally. I do not have all of the details of that appeal, but it is clear from the inspector's written decision that he was only considering the loss of a single family dwelling in that particular location and not whether the change of use was appropriate on Cumbrian Gardens more generally.

8. The appellant also raises the argument that the previous tenants, whilst apparently living as single household under one tenancy agreement, were inconsiderate and did not positively contribute to the character of the street. Irrespective of the behaviour of the previous tenants, it is the lawful use of the property that must be compared with the likely effects of the changed use. In this instance, a single dwellinghouse in Class C3 use is likely to be less intensively occupied and therefore create less noise and disturbance than accommodation with shared facilities. A Class C4 use as an HMO is still a dwellinghouse, but it is change to a different type of use in this location which

is not in accordance with Barnet's Core Strategy Policies CS1 and 5 and Barnet's Development Management Policies DM01 and DM09 (which are part of the local development plan) which, in part, seek to protect the character and amenity of the area.

Need for HMO

9. Policy DM09 of the Development Management Policies states that HMOs will be encouraged provided they meet an identifiable need. Whilst it is apparent that the house is currently fully let as an HMO, that fact in itself is not sufficient to demonstrate the need for a Class C4 use in the area. The letter from Titus Royce dated 14 June 2020 mostly concerns the benefits to the owners in letting the property as an HMO and does not provide detailed evidence regarding a need for this type of accommodation in the area. The information from Zoopla providing details about a range of different sized rented flats in various locations in the vicinity of Golders Green is also, when considered alone and without analysis, not evidence that there is a need for HMO properties in the area. The appellant has therefore not provided sufficient evidence of an identifiable need for HMOs in the area.

10. Notwithstanding the nearby transport links identified by the appellant, the appeal property is located within an area of Public Transport Accessibility Level 2 which is classed as relatively low and would not therefore be described as easily accessible by public transport, cycling and walking. For the reasons outlined above, the development is therefore not in accordance with Policy DM09 and conflicts with the local development plan.

Conclusion on ground (a) and the application for deemed planning permission

11. In light of the issues as set out, the development causes material harm to the character of the area and the living conditions of nearby residents, and the appellant has not proven the need for an HMO in that location in accordance with the local development plan policy. The development is not in accordance with the Core Strategy and Development Management Policies and the appeal on ground (a) and the deemed application for planning permission therefore fail.

Ground (f)

12. An appeal on this ground is on the basis that the steps required by the notice exceed what is necessary to remedy any breach of planning control. The appellants have not suggested any lesser steps and I am satisfied that the requirements on the notice do no more than to remedy the breach by seeking to cease the HMO use.

Ground (g)

13. The appellants have requested a longer period of time for compliance but 5 months is an adequate timescale taking into account the harm to the character of the area and the living conditions of the nearby residents and fact that no physical works are required by the notice. The appeal on this ground in therefore unsuccessful.

Zoë Franks

INSPECTOR