



Appeal Decision

Site visit made on 12 October 2020

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 30 November 2020

Appeal Ref: APP/T5150/C/18/3214508

29 Mora Road, London NW2 6SJ

- 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 Mr Nabil Rassam against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 14 September 2018.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to an eight bed House in Multiple Occupation (HMO) Sui Generis.
- The requirements of the notice are
 - STEP 1: Cease the use of the premises as a House in Multiple Occupation (HMO) for more than six occupants
 - STEP 2: Remove all beds in excess of six from the premises and alter the internal layout of the premises on the first floor level to provide a lounge, kitchen, toilet and not more than four bedrooms
 - STEP 3: There shall be no more than six bedrooms contained within the premises
 - STEP 4: Do not use the premises for any other purpose, except as a single family dwellinghouse or a House in Multiple Occupation with no more than six occupants.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(f) and (g) 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 determined.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variation.

Procedural matters

1. The appeal was originally made on ground (d) as well as grounds (a) (f) and (g), and was to be determined by way of public inquiry so that evidence submitted in connection with ground (d) could be tested on oath. However, in July 2020 the Appellant withdrew the ground (d) appeal, and it was agreed that the appeal on the remaining grounds should be determined via the written representations procedure.
2. In order to help limit the spread of Covid-19, I undertook the site visit on an "access required" basis. The tenants vacated the premises for the duration of my visit, and the doors to their rooms were left unlocked. The Appellant unlocked the front and back doors of the property, and waited outside while I viewed the letting rooms and communal areas, including the garden.
3. An application for an award of costs was made by the Council against the Appellant. That application is the subject of a separate Decision of even date.

The relevant legislation

4. The *Town and Country Planning (Use Classes) Order 1987* provides that use as a dwellinghouse by not more than six people living together as a single household falls within Class 3, while use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO) falls within Class 4 (this is commonly termed a "small HMO"). The use of a dwellinghouse by more than six residents as a HMO (commonly termed a "large HMO") does not fall within any designated Use Class, and so is regarded as sui generis. The *Town and Country Planning (General Permitted Development) (England) Order 2015* as amended ("the GPDO") provides that the change of use of a building from Class 3 (dwellinghouses) to Class 4 (small HMOs) and vice versa is Permitted Development.

The terms of the notice

5. The Appellant has suggested that the breach alleged by the notice be varied to "use as a large HMO (sui generis)", such that if I were to grant planning permission on the deemed planning application, the permitted planning use would be as an unrestricted large HMO, with the number of people accommodated a matter to be regulated by the HMO licensing provisions.
6. However, the breach alleged here is use as an eight-bed HMO, and as prescribed by s.177(1)(a) of the 1990 Planning Act, planning permission may only be granted for the matters stated in the enforcement notice. It would not be appropriate to vary the terms of the breach alleged by the notice to (effectively) widen its scope, simply to enable a grant of planning permission in different terms to those which correctly define a breach of planning control.

The appeal on ground (a)

7. The ground of appeal is that planning permission should be granted for the matters alleged by the notice. The main issues are (i) the effect of the development on the provision of family housing in the Borough; (ii) the living conditions of the occupiers of the HMO; and (iii) the effect of the development on the living conditions of neighbouring residents.

The provision of family housing

8. Policy 3.8 of The *London Plan* (2016) seeks to provide Londoners with a choice of homes which meet their requirements for different sizes and types of dwellings, and its supporting text recognises that HMOs are a strategically important part of London's housing offer. The *London Borough of Brent Core Strategy* (2010) identifies a wide range of housing needs to be met within Brent. These include family-sized housing, and accommodation with shared facilities (such as HMOs). Policy CP 21 seeks to maintain and provide a balanced housing stock, by protecting existing accommodation that meets known needs. Policy DMP 20 of the *London Borough of Brent Local Plan Development Management Policies* (2016) ("the DMP LP") is supportive of proposals for non-self contained residential accommodation (such as HMOs) provided they meet the specified criteria. However, the Local Plan also notes that the provision of family housing to meet local needs is a Brent priority, in recognition of which Policy DMP 17 sets out the limited circumstances in which the conversion of family-sized dwellings would be acceptable.

9. No. 29 Mora Road is a two-storey terraced house, in an established residential area. It was originally constructed as a dwellinghouse, and no grant of planning permission has been made for any change of use. The Council is concerned that granting planning permission for its use as a large HMO would result in the loss of a self-contained family-sized dwellinghouse, which would conflict with the policy approach summarised above.
10. However, the requirements of the notice are that the use as a HMO for *more than six occupants* [my emphasis] should cease, and the premises be used for no other purpose than as a single dwellinghouse *OR a HMO with no more than six occupants* [again my emphasis]. The consequence of this is that refusing to grant planning permission for the deemed application would not prevent the loss of a self-contained family-sized dwellinghouse, since its future use as a small HMO is permitted under the terms of the enforcement notice.
11. I conclude that while permitting the use of No. 29 as a HMO would conflict with Development Plan policies CP 21 and DMP 17, which seek to protect existing housing capable of meeting the Borough's need for family-sized dwellings, such use is sanctioned in this particular case by the terms of the enforcement notice. The policy conflict that I have identified does not, therefore, weigh against granting permission for the use of No. 29 as an eight-bed HMO. Put simply, the requirements of the notice mean that the principle of converting No. 29 from a single-household dwelling to a HMO has already been accepted.

Living conditions of the occupiers

12. The provisions of DMP LP Policy DMP 20 are that proposals for accommodation with shared facilities or additional support will be supported, where four criteria are met. There is no dispute that the development accords with criterion (a), which requires it to be located in an area with good access to public transport and other amenities. Criterion (d) requires the demonstration of need for the use proposed, and since the requirements of the notice make provision for the future use of No. 29 as a HMO, that criterion cannot be in dispute.
13. Criterion (b) requires the development to be of an acceptable quality, meeting appropriate standards for the needs of its occupants. The Council alleges that the use of the premises as an eight-bed HMO results in the provision of an over-intensive and over-crowded form of residential accommodation, which lacks amenity, outlook and adequate waste and storage facilities. It contends that the Appellant has consistently failed to meet HMO licensing standards.
14. The Appellant points out that the Council has now granted a five year HMO licence for the occupation of the property as a 10 person, seven-bed HMO, which effectively certifies that in the Council's opinion the house is reasonably suitable for occupation by the maximum number of households or persons specified. The Appellant contends that this is inconsistent with the Council's attempt, through the Enforcement Notice, to limit the use of the property to a small HMO, and that it conflicts with case law which emphasises the importance of regarding planning control and licensing as connected spheres.
15. The Appellant has drawn my attention to the judgment of the Lands Tribunal in *Waltham Forest v Khan*¹. The issue in that case was whether a local housing authority which has designated an area as subject to selective licensing may

¹ *London Borough of Waltham Forest v Mohammad Afzal Khan* [2017] UKUT 153 (LC)

have regard to the planning status of a house when considering an application for a Part 3 licence, so it has little relevance to the present circumstances, but I am happy to accept the Appellant's attendant proposition that the presence of a HMO licence is a material consideration in determining an application for planning permission.

16. I also note that the close relationship of the planning and licensing regimes is recognised in the Housing Chapter of the DMP LP. This advises that Brent has a high proportion of overcrowded dwellings, and some very poor quality private rented accommodation. It states that the Council is taking measures, through its statutory roles related to housing, to improve the quality of residential accommodation in the Borough and reduce the incidences of poor properties. It advises that "Planning has a complementary role to play in reducing the opportunities for overcrowding to occur", and goes on to advise that HMOs must meet the standards of Brent's HMO licensing scheme, including minimum room sizes.
17. In this case, the evidence provided by the parties is that a HMO licence was granted in 2015 for 10 persons, subject to the condition that any set of shared kitchen facilities should only be used by a maximum of 5 persons (until 2019 there was only one kitchen in the property), and limited to a one year period rather than the usual five because of the "major deficiency" of having 11 persons occupying a property only suitable to accommodate 10. In 2016 a HMO licence was granted for a maximum of 5 persons, again limited to 1 year because 12 people were at that time occupying the property. Further HMO licences were granted in 2017 and 2018, each restricting occupancy to a maximum of 5 persons, and each limited to a one-year period due to the premises being occupied by more than double the maximum considered suitable, resulting in overcrowding.
18. The Appellant's evidence is that in May 2019 a tenant moved out of the property and the smallest bedroom, on the first floor, was then converted to provide a second kitchen. On 20 January 2020 the Council granted a five-year HMO Licence for occupancy by a maximum of 10 persons, occupying a total of seven bedrooms.
19. This accords with what I saw at my site visit. I also saw that improvements had been made to the general condition and repair of the property, when compared to the photographs taken during a 2015 Housing Inspection by the Council. The modest area to the front of the property appeared to provide sufficient space for waste storage, the rear garden was tidy and accessible, and bathrooms and separate WCs were provided on both the ground and first floor. Rooms 1 – 4 and 6 – 8 were in use as bedrooms, and were of adequate size, with an acceptable level of outlook.
20. Taking all of this into account, it seems to me that the issue of whether the living conditions at No. 29 are acceptable in planning terms turns on two considerations. The first is how the layout of the property is configured, and the second is how the property is managed and maintained.
21. Looking firstly at the layout of the premises, it is apparent that the floor space provided by Room 5 (identified as "First Floor Middle Right" on the HMO licences) is less than the minimum considered acceptable for a single bedroom under the HMO licensing scheme. In each of the one-year HMO licences summarised at paragraph 18 above, the maximum permitted number of

- occupiers for that room is listed as “0 persons”. The Appellant makes no secret of the fact that this room was nevertheless used as a tenanted bedroom in that period.
22. The Appellant’s own evidence is that Room 5 was converted to form a second kitchen in May 2019, some eight months after the enforcement notice was issued. It was only after this reconfiguration of the accommodation – to a seven-bed HMO with two kitchens – had taken place that a five-year HMO licence for up to 10 occupiers was obtained. This reflects the fact that in this revised configuration, all of the bedrooms at No. 29 meet the minimum floor area requirement of the HMO licensing scheme, and the licensing condition that any set of shared kitchen facilities should only be used by a maximum of 5 persons can also be met.
23. Importantly, the breach alleged by the notice (and so the subject of the deemed planning application that is before me) is the use of No. 29 as an eight-bed HMO. As discussed above this entails the use of the sub-standard Room 5 as a bedroom, and the provision of only one kitchen. There is no suggestion by either party that an alternative, more acceptable means of configuring the property to provide eight bedrooms could be achieved.
24. Turning to the matter of management and maintenance, criterion (c) of Policy DMP 20 concerns the provision of management arrangements suitable to the use and size of the proposed development. I appreciate that there is the potential for overlap here with the requirements of the HMO Licensing Scheme. But as the DMP LP recognises, the planning system has an important and complementary role to play in reducing opportunities for overcrowding and ensuring accommodation is of an appropriate standard. In circumstances where, as here, there is a history of overcrowding and the provision of sub-standard facilities (one kitchen in a house with more than 10 occupants), as well as evidence of a lack of proper management (HMO licensing inspection notes from 2014 records black waste bags on the public footway, and photographs from 2015 show broken fittings and damp patches in the house) it is not unreasonable to require some certainty as to how the proposed use will be managed in future.
25. The Appellant has not provided any information about management arrangements for the use of the property. There is, for example, no indication of any schedule for cleaning the communal parts of the building, or inspecting and maintaining its fabric. I note the Appellant’s contention that the 2020 HMO Licence demonstrates that the accommodation and management arrangements are of an appropriate standard. However, as discussed, that licence relates to the occupation of seven bedrooms and the availability of two kitchens; the Appellant has provided no indication as to how, if the premises were to operate as an eight-bed HMO with Room 5 in use again as a (substandard) bedroom, the necessary second set of kitchen facilities could also be accommodated.
26. Drawing all of this together, I find that with a floor area of less than 6.5m², room 5 is not suitable for occupation as a bedroom and its use as such would result in unacceptably cramped living conditions for the occupier. The ground floor kitchen, which is of modest size and does not include any dining space, is not adequate to meet the needs of the occupiers of eight bedrooms spread over two floors. The Appellant has not provided details of suitable management

arrangements for the HMO, such as could be secured by condition to provide planning control over their implementation.

27. I conclude that the use of No. 29 as an eight-bed HMO would not provide appropriate facilities or sufficient space to secure adequate living conditions for its occupiers, and so would conflict with criteria (b) and (c) of Policy DMP 20.

Living conditions of neighbouring residents

28. The Council's concern in respect of the impact of the development on neighbouring residents' living conditions appears to be that there would be increased noise and disturbance, as a result of increased comings and goings and general noise from the property.
29. It is fair to say that the occupation of a building by multiple households generally results in materially more comings and goings than would its occupation by a single household, and that being a more intensive form of residential occupation, use as a HMO can generate more general noise due to multiple usage of shared facilities. However, it is also material to note that the requirements of the notice permit the future operation of a small HMO at the premises. What this issue turns on, therefore, is not whether a significant increase in noise and disturbance would result from a change of use from a single household dwelling to a HMO, but whether use as an eight-bed HMO would generate significantly more noise and disturbance than use as a small HMO.
30. The evidence does not suggest that it would. It is common ground that No. 29 has not been used as a single-household dwelling since at least 1999, and for substantial portions of the subsequent period has been used as an eight-bed HMO. There is no indication that this use generated any unacceptable noise or disturbance, and the Appellant has provided a letter from the Council's Nuisance Control Team confirming that no statutory nuisance complaints have been received in respect of No. 29. Nor is there any indication that there is a high concentration of HMOs in this locality, such as might be regarded (per the supporting text to Local Plan Policy DMP 20) as more likely to result in adverse impacts. The undisputed evidence of the Appellant is that there are four other HMOs among the 120 residential buildings registered for Council Tax on Mora Road, and in the wider neighbourhood HMOs make up less than 4% of the residential buildings.
31. I conclude that the use of the property as an eight-bed HMO would be unlikely to generate significantly more noise and disturbance than its use as a small HMO. There would, therefore, be no conflict with the Development Plan in terms of its impact on living conditions for neighbouring residents.

Other matters

32. While I have assessed the deemed planning application on the basis that it seeks permission for use of the property as an eight-bed HMO, it is material to note that I have the power, under s.177(1)(a) of the 1990 Act, to grant planning permission for "any part of" the matters stated in the enforcement notice as constituting a breach of planning control. Since there is in this case an appeal on ground (f), I also have a duty to consider whether there is any obvious alternative to the requirements of the notice which would overcome the planning difficulties.

33. With these considerations in mind, I have given careful thought to the possibility of granting planning permission for the use of the premises as a seven-bed rather than an eight-bed HMO. There are two obstacles to this approach. The first is whether such a use could reasonably be considered "part of" the unauthorised development alleged by the notice. I am not persuaded that it could: the alternative use does not merely involve the provision of fewer bedrooms than the breach alleged in the notice, but the reconfiguration of the layout to provide additional facilities that were not part of the unauthorised development attacked by the notice.
34. The second obstacle is that there are no accurate plans, or suggested conditions, or any other documents that could be used to inform the parameters of a grant of planning permission for a seven-bedroom, two kitchen HMO. All of the layout plans provided by the parties show Room 5 as a bedroom, rather than a kitchen. Neither party has proposed any conditions that it considers should be imposed if I were minded to grant planning permission: the Appellant takes the view that conditions should not be used to limit the number of occupants, as this is better left to the HMO licensing scheme. It may be possible to draft conditions (or vary the requirements of the notice to achieve the same end) specifying that no more than seven bedrooms be provided, and that a second kitchen must be provided and retained on the first floor, but this would not overcome the problem of the absence of any agreed management arrangements.
35. In summary, I am not convinced that the use of the premises as a seven-bed two-kitchen HMO could properly be regarded as "part of" the use as an eight-bed HMO attacked by the notice. But even if it could, in the absence of documented arrangements for the management and maintenance of the premises, the implementation of which could be secured as part of the permission either by way of a S.106 deed or an appropriately worded condition, I am not satisfied that use as a seven-bed HMO would accord with criteria (b) and (c) of Policy DMP 20. It remains open to the Appellant to submit a planning application to the Council for the use of the premises as a seven-bed HMO.

The planning balance

36. I have found that in the circumstances of this particular case, the loss of a family-sized dwelling is not a consideration that weighs against granting planning permission, and there would be no significant adverse impact on the living conditions of neighbouring residents. However, for the reasons set out above, I consider that the use of the premises as an eight-bed HMO does not provide an adequate standard of living conditions for its occupiers, and that this conflicts with adopted Development Plan policy. I conclude that planning permission should be refused on that basis. I have had regard to the possible alternative of granting planning permission for the use of the premises as a seven-bed two-kitchen HMO, but have concluded that even if this were technically possible, it would not be appropriate because in the absence of further evidence I am not satisfied that an adequate standard of living conditions would be provided and maintained.
37. I therefore determine that the appeal on ground (a) should fail, and permission be refused for the deemed planning application.

The appeal on ground (f)

38. The ground of appeal is that the steps required by the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, it is clear from the terms of the notice that the purpose of its requirements is to remedy the breach of planning control, rather than to remedy any ensuing injury to amenity. S.173(4)(a) makes provision for this to be achieved by discontinuing any use of the land, or restoring the land to its condition before the breach took place.
39. The Appellant's case on this ground is that steps 2 and 3 are excessive, because they would unlawfully restrict use as a family dwelling. The Appellant also contends that steps 1, 3 and 4 are inconsistent with the property's recent (2020) HMO licence, and that step 2 is unduly prescriptive in requiring the provision of a lounge, which is rarely found in a HMO and is not required by the 2018 legislation. The Council's response is that it does not understand the Appellant's case, and has "under enforced" by permitting use as either a single dwellinghouse or a small HMO.
40. A notice (such as this one) directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, so that the land is restored to its condition before the change of use took place. There is no statutory power to require the Appellant to undertake works which would result in an improvement to that previous condition.
41. Looking firstly at step 2, there is no evidence of a first-floor lounge or first-floor kitchen having existed prior to the unauthorised change of use of No. 29; the current first-floor kitchen was not installed until after the notice was issued. The requirement to provide these facilities is therefore excessive, as it seeks improvement upon, rather than simply a return to, the previous condition of the premises.
42. I agree with the Appellant that the requirement to "remove all beds in excess of six from the premises" is excessive, in that it would unduly limit the future use of the property – which the notice authorises – as a single-household dwelling. The size of the house and the number of bedrooms it contains make it suitable for occupation by a large family, and the requirement as drafted could prevent all of the children from having their own bed, or render the family unable to accommodate overnight visitors. Indeed in the absence of any evidence to show that the former layout of the first floor was that specified in the requirement (lounge, kitchen, toilet and not more than four bedrooms), I consider the imposition of such a layout excessive as it could preclude single-household occupiers of the dwelling from configuring the accommodation to meet their needs.
43. I therefore conclude that step 2 should be deleted in its entirety.
44. Step 3 specifies that there shall be no more than six bedrooms contained within the premises. I appreciate that in drafting this requirement, the Council was concerned to limit any future use of the property as an HMO to that which the notice authorises; that is, a small HMO with no more than six residents. However, that aim is already achieved by step 1, which requires the cessation of use as a HMO for more than six occupants. Further, as discussed above,

restricting the number of bedrooms that the property may contain is excessive in that it may unduly restrict single-household occupiers of the dwelling from configuring the internal accommodation to meet their particular needs. I therefore conclude that step 3 should also be deleted in its entirety.

45. As to the Appellant's contention that steps 1, 3 and 4 are inconsistent with the 2020 HMO licence, I see no evidence of this. The four HMO licences granted in 2015 – 2018 all restricted occupancy of the premises to a maximum of five persons, and were each granted for a limited one-year period because the Appellant persisted in allowing the premises to be occupied by 10 or more people, resulting in overcrowding. As the Local Plan explains, the planning system has a complementary role to play in reducing the opportunities for overcrowding to occur, and in September 2018 the Council issued an enforcement notice attacking the use of the premises as an eight-bed HMO.
46. In the course of the appeal against that notice, the Appellant made alterations to the premises such that it is now configured as a seven-bed, two-kitchen HMO, and it is on that basis that the 2020 HMO licence was granted. The existence of that licence does not mean that the Council must now regard the use of No. 29 as a seven-bed HMO as acceptable: it still does not have planning permission for such a use. I have set out above the reasons why it would not be appropriate for me to consider granting planning permission for this alternative use in the context of the current appeal, and it remains open to the Appellant to make a planning application for a seven-bed HMO based on the current configuration of the premises.
47. In conclusion, I determine that the requirements of the notice should be varied by deleting steps two and three, and so the appeal on ground (f) succeeds to that extent.

The appeal on ground (g)

48. The ground of appeal is that the period allowed for compliance with the requirements of the notice falls short of what should reasonably be allowed. The notice specifies a compliance period of six months.
49. The Appellant seeks a longer period of one year, on the basis that this is needed to permit existing tenancies to run their full term; draw up notices to terminate tenancies; bring possession proceedings if resisted; and carry out the necessary works pursuant to the notice once vacant possession is obtained. The Council points out that the notice authorises the use of the premises as a six-bed HMO, so most of the existing occupants could remain, and it is likely that at least two of the tenancies will expire within the six month period, such that compliance could be achieved without disruption.
50. Since the notice was issued, the accommodation at the premises has been re-configured, such that there are now only seven bedrooms. I have not been provided with any details as to the terms, notice periods and expiry dates of the tenancy agreements currently in place. There is merit in the Council's argument that it is likely at least two of the tenancies will expire within the six month period, which was not disputed by the Appellant; given the change in layout, it is now only necessary for one tenancy to expire, and compliance with the requirements of the notice would thereby be achieved. I also note that the one year period requested by the Appellant included time to achieve vacant possession and carry out the works required by the notice. Since I have

determined that the notice should be varied by deleting steps 2 and 3, no works are required to be undertaken and so obtaining vacant possession will not be necessary.

51. The Appellant was critical of the Council's reference to the powers that are available to it to extend the compliance period, which it could exercise to avoid hardship to any tenant. It is important to be clear that this power is entirely at the discretion of the Council, but it is relevant to note that it would allow some flexibility, given the uncertainty of current circumstances surrounding the ongoing Coronavirus pandemic.
52. In conclusion, on the basis of the evidence currently before me, I am not persuaded that a period of one year is necessary to secure compliance with the remaining requirements of the notice. I am satisfied that the six months specified is proportionate to the breach of planning control that has occurred. I therefore determine that the appeal on ground (g) should fail.

Conclusion

53. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice with variation, and refuse to grant planning permission on the deemed application.

Formal Decision

54. It is directed that the enforcement notice be varied by

- At Schedule 4, deleting steps 2 and 3 in their entirety, and then re-numbering the current step 4 as step 2.

Subject to this variation 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.

Jessica Graham

INSPECTOR