
Appeal Decision

Site visit made on 8 September 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/A5840/C/19/3231571
95A Queens Road, London SE15 2EZ

- 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 Hilme Mustakalli against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice was issued on 14 May 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised use of the Property as 11 apartments used for temporary sleeping accommodation for more than 90 nights in the same calendar year in breach of section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973.
- The requirements of the notice are:
 - 5.1 Cease the use of the Property for use as temporary sleeping accommodation.
 - 5.2 Cease all marketing of the Property as temporary sleeping accommodation.
 - 5.3 Remove the cooking facilities so that there is no more than one cooking facility for the Property.
 - 5.4 Remove the bathrooms so that there is no more than one bathroom on each floor of the Property.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The enforcement notice relates to the property at 95A Queens Road that has an access door at 95 Queens Road and includes the whole of that property and the upper floors of no. 97. The building is identified on the plan attached to the enforcement notice. This comprises the 11 apartments referred to in the breach of planning control. Planning permission was granted under reference 13/AP/1549 for conversion of the ground floor of no. 95 from a shop into a house in multiple occupation. Three of the apartments described in the enforcement notice are located within the ground floor of no. 95 and, as such, are included within the planning unit identified within the enforcement notice. To the ground floor of no. 97 is a café that does not form part of the planning unit for the purposes of the enforcement notice. Consequently, the planning unit to which the enforcement notice relates comprises the whole of 95 and 95A Queens Road and the upper floors of no. 97.

2. The plan attached to the enforcement notice does not include the area to the front of the building. However, that is an open area that is not in use as part of the temporary sleeping accommodation.
3. The appellant suggests that the allegation described in the notice is unclear and should refer to a material change of use from residential or house in multiple occupation to a hotel under use class C1. The notice refers to section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973 that restricts the use of residential premises in London as temporary sleeping accommodation by making this a distinct and separate use in planning terms. This means that temporary sleeping accommodation, if it continues for more than 90 days in any calendar year, is a sui generis use, outside the use classes order and separate from other uses such as dwellinghouses and as a house in multiple occupation.
4. There is reference in the appeal documents to some occupants staying at the premises for more than 90 days, which would not fall within a temporary sleeping accommodation use. If this were the case, the use may have been a mixed use for temporary sleeping accommodation and either a house in multiple occupation or residential flats. However, there are limited details of this or whether any of the units had been occupied for more than 90 days on the date the notice was issued. In any event, on the balance of probability the units within the premises would be available for occupation as temporary sleeping accommodation for more than 90 days in any calendar year. Consequently, I consider the use alleged in the notice to be accurate and clear. I will consider the appeal on that basis.
5. The appellant suggests that the notice was not properly authorised and that it is not clear why it was expedient for the Council to serve the enforcement notice. However, I do not have jurisdiction to deal with submissions as to whether the Council acted outside their powers by issuing the notice. Section 172 (s172) of the Town and Country Planning Act 1990 as amended (the Act) states that the local planning authority may issue a notice where it appears to them that it is expedient for them to do so. These do not fall within the statutory grounds of appeal at s174 of the Act. As a result, these are not matters for me in this appeal.
6. The enforcement notice refers to policies contained within the New Southwark Plan. Limited information has been provided as to the stage of that plan or whether the policies concerned will be considered as consistent with the Framework. Consequently, I am only able to give it limited weight in my decision.

The Appeal on Ground (e)

7. S172 of the Act requires that a copy of an enforcement notice shall be served on the owner of the land to which it relates. In this case, the Council have issued the notice to owners and occupiers of nos. 95 and 95A Queens Road and the upper floors of no. 97. However, it was not issued to the owners or occupiers of the café on the ground floor of no. 97.
8. I understand that the café benefits from a lease which exceeds seven unexpired years. However, as set out above, this is outside the planning unit on which the enforcement notice has been issued. Consequently, the owners or occupiers of the café are not required to have been issued the notice. As a

result, I conclude that the method of service was sufficient to comply with s172 of the Act.

9. For these reasons, I conclude that the appeal under ground (e) should fail.

The Appeal on Ground (b)

10. An appeal on this ground is that the matters described in the notice have not occurred.
11. There is some dispute as to whether rooms in the property are let as self-contained apartments or in a similar manner to occupation as a house in multiple occupation. Nevertheless, it is clear from the evidence that the individual units have been let for short periods of time. Mostly, they have been occupied by the same person for less than ninety consecutive nights and by way of trade for money. As a result, the property has been used as temporary sleeping accommodation for more than 90 nights in the same calendar year as defined by section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973. This constitutes a sui generis use separate from either a house in multiple occupation or self-contained apartments. Consequently, the matters described in the notice have occurred.
12. For these reasons, I conclude that the appeal under ground (b) should fail.

The Appeal on Ground (d)

13. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be precise and unambiguous, even if there is no evidence to contradict it.
14. The date of issue of the notice was 14 May 2019. As the use of the property for temporary sleeping accommodation is sui generis, it would become lawful were it to have continued for a period of 10 years beginning with the date on which the use had started.
15. The planning permission reference 13/AP/1549 for the conversion of the ground floor of no. 95 from a shop into a house in multiple occupation was granted on 13 August 2013. Consequently, the use of that part of the property as temporary sleeping accommodation did not commence until sometime after that date. As that is part of the use of the property as temporary sleeping accommodation, the use has not continued for a period of 10 years since the date on which the material change of use commenced.
16. I understand that the remainder of the unit may have been used for a longer period, although there may have been periods when some or all of the rooms were occupied for periods longer than 90 days. In this regard, my attention has been drawn to *Fairstate Ltd v FSS & Westminster CC* [2005] EWCA Civ 283; [2005] JPL 1333 where it was concluded that temporary sleeping accommodation in London could become lawful after a period of time, but the use would be abandoned if the property was again used for lets in excess of 90 nights. In the period from 2009 to 2014 I understand that some guests stayed for over 90 nights. Whilst that comprised a small proportion of the guests, the

Council suggest that they each stayed for an average of approximately six months. From the evidence in front of me, it is not clear whether this would have meant the use had been abandoned and subsequently re-started. However, this does not affect my conclusion that the use has not continued for a period of 10 years since it commenced.

17. Taking all the above into account, at the date when the notice was issued, enforcement action could be taken in respect of the breach of planning control constituted by the use of 11 apartments used for temporary sleeping accommodation for more than 90 nights in the same calendar year in breach of section 25A (2)(a) and (b) of the Greater London Council (General Powers) Act 1973.

18. For these reasons, I conclude that the appeal under ground (d) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Background

19. The appeal on ground (a) and deemed planning application relate to the use alleged in the notice. In this case, this is use of the premises as temporary sleeping accommodation.

Main issues

20. The main issues are:

- the effect of the temporary sleeping accommodation on the supply of housing;
- whether occupiers enjoy satisfactory conditions;
- the effect of the temporary sleeping accommodation on the living conditions of occupiers of neighbouring dwellings with particular regard to outlook, noise and disturbance; and
- the effect of traffic and parking relating to the temporary sleeping accommodation on the safe and efficient operation of the highway network in the vicinity of the appeal site.

Reasons

Supply of housing

21. Policy 3.14 of the London Plan seeks to resist the loss of housing, including hostels and shared accommodation that meet an identified housing need. It also resists the loss of short-term provision, defined as lettings less than 90 days which would include temporary sleeping accommodation. Policy 4.6 of the Southwark Plan 2007 (SP) reflects that in resisting development that results in a net loss of residential floorspace except in certain circumstances, including that the environment is unsuitable for housing or the existing standard of accommodation is unsuitable. In addition, Policy 1.12 of the SP allows visitor accommodation only where it would not result in a loss of residential accommodation.

22. The use of the premises as temporary sleeping accommodation has led to a reduction in the supply of housing. Queens Road is a busy commercial route, but many of the surrounding buildings comprise residential accommodation.

Nothing has been submitted to suggest that the premises would be unsuitable for use as residential accommodation, particularly in the form of a house in multiple occupation that the Council indicates is the lawful use of the premises. Consequently, the environment and the standard of accommodation is suitable for housing.

23. For these reasons, I conclude that the use has led to a reduction in the supply of housing. As such, it is contrary to Policies 1.12 and 4.6 of the SP, Policy 3.14 of the London Plan and the National Planning Policy Framework (the Framework) that seek to maintain a supply of housing.
24. My attention has been drawn to Strategic Policies 5 and 7 of the Southwark Council Core Strategy (CS) that relates to new homes and family homes, but do not relate to the retention of existing dwellings. Consequently, these are not directly relevant to this development.

Conditions of occupiers

25. My attention has been drawn to Policies 3.2 and 4.2 of the SP, Policy 3.5 of the London Plan, the Framework and the Nationally Described Space Standards that relate to requirements to provide adequate residential living conditions. However, these relate to dwellings rather than temporary sleeping accommodation that is a separate use. As a result, these policies do not directly apply to the use in this instance.
26. The rooms within the building vary in size, but all provide basic facilities including some space for preparing food, along with en-suite bathrooms and some storage space. There are communal kitchen areas. As the use relates to temporary accommodation, the requirements of occupiers differ from those of dwellings.
27. Dedicated space has not been provided for recycling, composting and other waste disposal and storage. I understand this is currently kept on the frontage to the property.
28. For these reasons, I conclude that the occupiers enjoy satisfactory conditions in accordance with Policy 3.11 and 3.12 of the SP and the Framework that seek to ensure a satisfactory standard of accommodation. However, the lack of space for waste disposal and storage means that the accommodation does not comply with the requirements of Strategic Policy 13 of the CS and Policy 3.7 of the SP that require these facilities be provided and be easily and safely accessible.

Living conditions of neighbouring occupiers

29. Development neighbouring 95A Queens Road comprises flatted development, with commercial uses on parts of the ground floors including a café on the ground floor of no. 97. Occupiers of neighbouring properties most likely to be affected by noise and disturbance from occupiers of no. 95A would be occupiers of the flats at 91-93 and 99 Queens Road.
30. Queens Road is a busy main road with commercial premises at ground floor of a number of buildings. This results in this being a relatively noisy area, such that there is a significant amount of background noise and disturbance.
31. At present, I understand that wheelie bins are kept on the frontage to the property. The Council state that failure to provide proper facilities for refuse

disposal results in harm to the living conditions of occupiers of neighbouring dwellings arising from the effect on their outlook. The location of wheelie bins on the open frontage results in them being prominent within the street scene and, thereby, harms the living conditions of surrounding occupiers. However, it is unclear what would happen to these facilities were the use to cease and it would revert to its previous lawful use, in this case likely to be as a house in multiple occupation. That is unlikely to have a different effect on the outlook of occupiers of surrounding dwellings. On that basis, there is no material effect on the living conditions of occupiers of surrounding dwellings from the recycling, composting and other waste storage.

32. The use of the premises for temporary sleeping accommodation results in different movement patterns for occupants than a residential use, whether a house in multiple occupation or flats. The more transient nature of occupants means that they are less likely to be involved in the local community.
33. Nevertheless, given the location of the property on a busy commercial route, noise and disturbance from occupants of the temporary sleeping accommodation does not materially affect the living conditions of occupiers of neighbouring residential properties.
34. For these reasons, I conclude that the temporary sleeping accommodation does not result in material harm to the living conditions of occupiers of neighbouring dwellings with particular regard to outlook, noise and disturbance. As such, it would not conflict with Strategic Policies 12 and 13 of the CS, Policies 3.2, 3.7, 3.11 and 3.12 of the SP, Policy 3.5 of the London Plan and the Framework that seek a high standard of design, including protecting the living conditions of occupiers of properties in the surrounding area and that waste facilities be provided in a way that improves living conditions locally.

Highway network

35. 95A Queens Road is on a main road with good accessibility to public transport. However, there is no cycle storage or any other facilities provided for occupiers that may reduce reliance on the private car. Neither would there be cycle storage or other facilities if the use were to cease and the premises return to a residential use such as house in multiple occupation or flats. Consequently, on balance the lack of cycle facilities does not count against the use as temporary sleeping accommodation in this instance.
36. For these reasons, I conclude that traffic and parking relating to the temporary sleeping accommodation does not materially affect the safe and efficient operation of the highway network in the vicinity of the appeal site. As such, the use does not conflict with Strategic Policy 2 of the CS, Policies 1.12, 3.11, 5.2, 5.3 and 5.6 of the SP and the Framework. These seek to ensure smaller developments of visitor accommodation is located in areas with good access to public transport, adequate provision of cycle and car parking, there is not an unacceptable impact on highway safety and the cumulative impacts of development on the road network is not severe.

Other Matters

37. The appellant suggests that the use of the premises for temporary living accommodation over a substantial period should be taken into account in the ground (a) appeal. However, I have concluded, under the ground (d) appeal,

that the use as temporary sleeping accommodation at the property has not become lawful through the passage of time. Consequently, this carries little weight in the planning balance.

38. The premises benefits from a licence as a house in multiple occupation and has been used by Southwark and other Councils. I understand that it could be used as a bed and breakfast hotel for emergency housing, including for new mothers and their children. However, the appellant states that local authorities stopped using this accommodation in 2013, so this factor attracts only limited weight in the appeal process.
39. I understand that occupants of the temporary sleeping accommodation use the café in the ground floor of 97 Queens Road. If the use were to cease, this could lead to a reduction in customers for the café. However, limited evidence has been provided to determine what proportion of the custom for the café comes from occupiers of the accommodation. Consequently, I give this benefit modest weight in coming to my decision.

Conclusion

40. For the reasons given above and taking all matters into account, I conclude that the temporary sleeping accommodation would be contrary to the relevant policies of the Council's development plan. There are material considerations in favour of the scheme, such as the support of occupiers to the viability of the adjacent café and potential use for emergency housing. However, these are not of such weight, either individually or cumulatively, as to warrant a decision other than in accordance with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

41. An appeal on this ground is 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 any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to cease the use as temporary sleeping accommodation and remove kitchens and bathrooms, in order to remedy the breach of planning control.
42. The appellant suggests that the requirements to remove all the cooking facilities apart from one and remove the bathrooms other than one from each floor is excessive. They suggest that these requirements would require the owner to commit offences under the Housing Act 2004, breach the 2013 planning permission and possibly the Building Act. However, it is unclear in what ways these Acts and planning permission would be breached.
43. The rooms have each been provided with modest en-suite bathrooms and small kitchen areas. I understand that the en-suite bathrooms were formed in 2007, for which precise and unambiguous evidence has been supplied in the form of a Statutory Declaration and Building Regulations Completion Certificate. The Council accept that there are also three shared kitchens and two shared bathrooms. They indicate that the last lawful use of the property was as a house in multiple occupation and accept that the requirements could be varied to allow the shared kitchens and bathrooms to remain, if the requirements are considered excessive.

44. Section 254 of the Housing Act 2004 provides a definition of a house in multiple occupation. This includes that two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. Those basic amenities comprise a toilet, personal washing facilities and cooking facilities. Other than on the ground floor, the en-suite bathrooms were provided in excess of ten years before the enforcement notice was issued. It is, therefore, excessive to require their removal.
45. I consider that removal of the kitchen areas from the individual rooms would mean that they would share some basic amenities and removal of these is not excessive. My attention has been drawn to an appeal decision reference APP/F5540/W/19/3227226 that related to a proposal for "co-living accommodation" where kitchenettes were accepted as secondary cooking facilities. However, whilst such accommodation may be similar to a house in multiple occupation, it is clear they are not the same. Consequently, I do not consider that case is comparable to the requirements in this instance.
46. The requirement contained within the enforcement notice requires removal of all cooking facilities except one. This is excessive as it would also require removal of some shared facilities in addition to those within the individual rooms. If occupants shared cooking facilities, this would mean that a basic amenity was shared even if all the en-suite bathrooms were retained such that the accommodation would meet the definition of a house in multiple occupation. The requirement to remove the en-suite bathrooms is therefore excessive.
47. As a result, I conclude that the requirements of the notice exceed what is necessary in order to remedy the breach of planning control in requiring the removal of the en-suite bathrooms and all the cooking facilities except one. I will vary the notice such that the en-suite shower rooms and three shared kitchens can be retained. As such, the appeal succeeds on ground (f).

Formal Decision

48. It is directed that the enforcement notice is varied by deletion of requirements 5.3 and 5.4 and substitution of:
- 5.3 Remove the cooking facilities from the property so that there are no more than three cooking facilities for the Property.
49. Subject to the 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.

AJ Steen

INSPECTOR