
Appeal Decisions

Site visit made on 5 October 2020

by Alexander Walker MPlan MRTPI

appointed by the Secretary of State

Decision date: 22nd January 2021

Appeal A Ref: APP/N5090/C/20/3244805

12 Queens Way, London NW4 2TN

- 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 V Singhania against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0639/19, was issued on 18 December 2019.
- The breach of planning control as alleged in the notice is the use of the property as a large scale (Sui Generis) House of Multiple Occupation.
- The requirements of the notice are:
 1. Cease the use of the property as a House in Multiple Occupation.
 2. Remove all kitchens including kitchen units, sinks, cookers and food preparation areas from the property other than the kitchen shown on plan 1601.QUE-PL-006 Rev 4.1 from application 17/2857/HSE.
- 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), (e) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: No further action is taken.

Appeal B Ref: APP/N5090/C/20/3244801

12 Queens Way, London NW4 2TN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr VN Singhania against the decision of the Council of the London Borough of Barnet.
- The application Ref 19/5239/FUL, dated 25 September 2019, was refused by notice dated 6 December 2019.
- The development proposed is the change of use from residential dwellinghouse class C3 to House in Multiple Occupation (HMO) sui generis comprising 7No. Rooms for 12 persons.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. An accompanied site visit was scheduled for 5 October 2020. Unfortunately, neither the Council nor the appellant were made aware of the scheduled visit and therefore a representative of the Council did not attend. As the appellant was at the property at the time I made the visit, I proceeded on the basis of an access required site visit. I am satisfied that I saw everything I needed to in order to determine the appeals. Following the visit, the Council was given the opportunity to comment on how the visit was carried out and whether they had any objection to me proceeding to determine the appeal on this basis. No comments were received on this matter. Accordingly, I am satisfied that no

parties would be prejudiced in me proceeding to determine the appeal on the basis that the site visit was carried as an access required site visit.

Appeal A

Matters Concerning the Enforcement Notice

2. The enforcement notice (the Notice) was issued on 18 December 2019. Paragraph 2 of the Notice identifies the land to which it relates – “12 Queens Way London NW4 2TN, shown edged and hatched black on the attached plan...” However, no such plan was included with the Notice. The Council confirm that this was an administrative error.
3. Section 173(10) of the Town and Country Planning Act 1990 (the Act) states that an enforcement notice must specify such matters as may be prescribed in regulations. Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR) states that “*An enforcement notice issued under section 172 of the Planning Act shall specify— (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.*”
4. The lack of a plan does not make the notice a nullity. However, it would constitute a defect if the notice does not otherwise specify the precise boundaries of the land to which it relates.
5. Paragraph 2 of the Notice refers to the address of the property as “12 Queens Way London NW4 2TN”. However, the appeal building that the Notice purports to relate to in fact comprises two addresses – 12 Queens Way and 12A Queens Way. This is clearly evident on site as there are two front doors, one signed 12 and the other 12A. The appellant confirms that the doors have been signed as such since at least May 2019, prior to the Notice being issued. He also confirms that although there are two addresses, it remains as one property. There is internal access between the original portion of the building (No12), where the tenants of the HMO reside, and the extended portion (No12A), where the appellant and his family reside. There is also a shared front drive and rear garden.
6. The reference to “12 Queens Way” only and not “12A Queens Way” suggests that the Notice only relates to a breach of planning control taking place in the original portion of the building (No12) and not the extended portion (No12A). I note that the plan that should have been issued with the Notice encompasses that entire site, including 12A, and therefore would have provided greater clarity on the matter. However, as it was not included at the time of issuing the Notice it cannot be relied upon.
7. The Council contend that the address for planning application 19/5239/FUL was 12 Queens Way and the only reference to 12A Queens Way was on the block plan, which encompassed the entire site. However, the floor plans submitted with the application only included the 12 Queens Way side of the property and reference was made to seven bedrooms, which would not include those in the 12A side of the building. There is no evidence before me of the Council

questioning why the extended part of the property (No12A) was not included on the floor plans.

8. Much of the confusion over this matter appears to originate from the initial planning contravention notice that was issued to the appellant. As it was addressed to 12 Queens Way, the appellant, understandably, only answered the questions in respect of that side of the building and not 12A.
9. The Council argues that the appellant should have notified them sooner of the existence of 12A. However, it seems to me that the matter could have simply been resolved had a site visit been undertaken by a representative of the Council. The two front doors are both clearly signed and visible from the highway and it would have been evident that the floor plans submitted with planning application 19/5239/FUL do not include the 12A portion of the building.
10. It is vitally important that anyone served with a copy of an enforcement notice should be able to understand, from the outset, the land to which the notice relates. The reference to 12 Queens Way only and the plan referred to not being included with the Notice raises significant ambiguity as to whether or not the Notice also relates to 12A Queens Way. Consequently, the Notice fails to comply with the requirements of the Act and the ENAR. It is not possible to correct the Notice to include 12A Queens Way as to do so would widen its scope and therefore cause injustice to the appellant. The Notice is therefore defective on its face and a nullity.

Conclusion on Appeal A

11. I conclude that the Notice is a nullity. In these circumstances, the appeals on the grounds set out in section 174(2) of the 1990 Act as amended do not fall to be considered.

Appeal B

Main Issue

12. The main issues are the effect of the development on the mix and balance of housing in the area; the character and appearance of the area; and, the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance.

Housing supply and the character and appearance of the area

13. Policy DM09 of the London Borough of Barnet's Local Plan Development Management Policies (LPDMP) 2012 allows HMOs provided they meet an identified housing need, demonstrate that they will not have a harmful impact on the character and amenities of the surrounding area, are easily accessible by public transport, cycling and walking and meet the relevant housing standards for a HMO.
14. The appellant argues that the location of the site in relation to Middlesex University justifies the need for the HMO. The supporting text to Policy DM09 states that the student population of Barnet makes up approximately 1.9% of the households in the Borough, with over 75% of the students living in flats/maisonettes and nearly 70% of student households being located in the Hendon area. It goes on to state that Middlesex University has aspirations to

expand and consolidate its operations on the Hendon Campus as part of a new 1,000 bed student village in Colindale.

15. Whilst the supporting text to Policy DM09 clearly identifies a relatively high student population in the area, that does not necessarily equate with there being a need for more student accommodation. Furthermore, the aspirations of the University in providing a new 1,000 bed student village would seemingly go a long way in meeting any need.
16. I acknowledge that some students may not wish to live in student halls and private rental accommodation would be their preference. However, there is no evidence before me that there is a lack of private rental accommodation in the area available to them.
17. I also acknowledge that the appellant has been granted a five year license for the HMO. However, there is no evidence before me that this has been granted on the basis of a need for the accommodation.
18. The reasons for refusal as stated in the Council's Decision Notice state that the development "*has resulted in the loss of a single family dwelling house for which there is a known demand.*" The appellant argues that none of the policies cited by the Council specifically seek to protect existing single-family dwellings. However, the fact that Policy DM09 only allows HMOs subject to meeting specific requirements does in fact protect single-family dwellings, regardless of their size, otherwise there would be no need for these requirements, in particular the need to meet an identified need. This therefore indicates that the development plan seeks to prevent the conversion, and therefore loss, of single-family dwellings to HMOs, unless these requirements are met.
19. Accordingly, it has not been demonstrated that there is an identified need for the HMO.
20. Queens Way is a cul-de-sac comprising a total of twelve two-storey, detached dwellings. The appeal property is located at the entrance, on the corner with Queens Road. Although it is a corner property, its main frontage is with Queens Way and is clearly read within the context of the cul-de-sac more than the busier Queens Road. Whilst there is flatted accommodation further to the west on Queens Road, this has a frontage with Queens Road, overlooking the park, and is within a distinctly separate context to the appeal property.
21. With the exception of the appeal property, the other properties on Queens Way are single-family dwellings. In addition to the set-back position of the dwellings, their generous open frontages and that it is a cul-de-sac, this creates a quiet, peaceful residential enclave.
22. The use of the property as a seven-bedroom HMO results in a significant increase in the number of comings and goings that one would normally expect from a single-occupancy dwelling. As the occupants would be students, as suggested by the appellant, the hours of the comings and goings would also likely be different to those of a single family, with occupants potentially going out/coming home late at night/in the early hours.
23. In addition, the number of deliveries made to the property would also likely be significantly greater. There could also potentially be a significantly greater number of cars parked within the vicinity of the site. I note that there is space

on the driveway for a number of cars. However, given that the property would effectively be seven separate households, there is still likely a need for on-street parking.

24. Furthermore, HMOs typically have a high turnover of occupants. As a result, occupants generally do not integrate with the established community and therefore can have a detrimental effect on the social character of the area. In addition, student tenants may only occupy the property during term time and therefore the remainder of the year the property would be vacant, which would itself have a detrimental effect on the character area.
25. Overall, the appeal property represents an overly intensive form of residential development that fails to respect the predominantly single occupancy dwellings in the locality and the overall character and appearance of the area.
26. Policy DM09 also requires HMO development to be easily accessible by public transport, cycling and walking and meet the relevant housing standards for an HMO. The Council raise no objection to the proposal with regard to these matters. Based on the evidence before me and the observations I made on site, I find no reason to conclude otherwise.
27. Given the above, I conclude therefore that the HMO results in the loss of a family sized dwelling which unacceptably harms the supply of family homes in the Borough. Furthermore, the HMO significantly harms the character and appearance of the area. As such, it is contrary to Policies DM09 of the LPDMP. It is also contrary to Policies DM01 and DM08 of the LPDMP, which seek to ensure that new development preserves or enhances local character and development provides an appropriate mix of dwelling types. It is also contrary to Policies CSNPPF and CS5 of the London Borough of Barnets' Local Plan Core Strategy (LPCS) 2012, which, amongst other things, seek to ensure that new development is sustainable and respects local context. In addition, it would fail to comply with the guidance contained within the London Borough of Barnet's Supplementary Planning Document – Residential Design Guidance (Residential SPD) 2016, which provides guidance on the conversion of single-family dwellings into HMOs.

Living conditions of neighbouring residents

28. The use of the property as an HMO likely results in the overall occupation of the building, particularly by adults, being greater than neighbouring properties. As a result, the level of noise and disturbance, for example from people conversing inside/outside the property, multiple sources of music and televisions simultaneously playing, doors frequently closing and general comings and goings, could be readily discernible from neighbouring dwellings. Whilst the property is on the corner of Queens Way and Queens Road and therefore tenants are unlikely to travel along the rest of Queens Way, the noise and disturbance I have identified above would still be discernible from immediate neighbouring properties.
29. The appellant argues that as the properties on Queens Way are large, it provides a sense of separation that mitigates any increase in activity. However, this is counteracted by the proximity of the dwelling to the neighbouring property, 11 Queens Way, with only a narrow gap between the two buildings. As a result, the occupants of No11 would be particularly

sensitive to noise and disturbance emanating from the appeal property and its occupants.

30. I note the appellant's argument that the number of people the property could accommodate is commensurate with at least the same number of people if it was occupied by a single family. However, the demographic would be markedly different. A single family would likely have fewer adults and more children. More importantly, a single family would likely have far fewer comings and goings, with them more likely to do activities together as a family rather than several individuals, as would be the case with an HMO. Whilst children may be noisy, particularly if playing in the garden or in the street, such noise is likely to be kept to sociable hours. The occupants of an HMO, particularly one for students, would likely be young adults who would be more active late at night/in the early hours, than a single family would. Therefore, whilst the numbers of occupants may well be the same whether the property was used as a single-family dwelling or an HMO, the nature of their activities would not.
31. I find therefore that the development results in a significantly harmful effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance. As such, it is contrary to Policies DM01, DM02, DM04 and DM09 of the LPDMP, which, amongst other things, seek to ensure that new development protects the living conditions of neighbouring residents, with particular regard to noise. It would also fail to comply with the guidance set out in the Residential SPD, which states that subdivisions should avoid additional noise and disturbance to neighbours, and the London Borough of Barnet's Supplementary Planning Document – Sustainable Design and Construction 2016, which provides guidance on protecting residential amenity.
32. In their reasons for issuing the Notice, the Council also refer to Policies CS1 and CS5 of the LPCS. However, these are strategic policies that relate to protecting the character of the area. There is no evidence before me of how they are relevant with regard to living conditions of neighbouring residents. As such, I find no conflict with these policies in this regard.

Other Matters

33. I have had regard to the quality of the accommodation. However, this does not outweigh the harm I have identified above.

Conclusion on Appeal B

34. For the reasons given above, the appeal is dismissed.

Formal Decision

35. Appeal A - Since the Notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the 1990 Act as amended.
36. Appeal B – The appeal is dismissed.

Alexander Walker

INSPECTOR