



Appeal Decisions

Site visit made on 8 December 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2021

Appeal A Ref: APP/N5090/C/20/3249451

Appeal B Ref: APP/N5090/C/20/3249452

2 Grampian Gardens, London NW2 1JG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Teddy Nazim and Appeal B is made by Mrs Maria Angela Nazim against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 20 February 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the property into a Sui Generis House of Multiple Occupation (HMO).
 - The requirement of the notice is: Cease the use of the property as a House in Multiple Occupation.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) 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.
 - Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act.
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Decisions

1. Appeal A 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.
2. Appeal B is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. In correspondence dated 21 October 2020 the grounds of appeal were confirmed as those I have set out in the heading above and appeal grounds (d) and (e) were withdrawn. I have dealt with the appeals on this basis.
4. The appeal documentation refers to an application for a certificate of lawfulness and a planning application. But the only appeals before me are enforcement notice appeals, details of which are set out in the heading above, which includes a deemed planning application for the breach of planning control.
5. The appellants question whether it was expedient to take enforcement action. But in accordance with section 172(1)(b) of the 1990 Act, it is entirely a matter for the Council to decide whether enforcement action is expedient or not and this is not a matter for me to consider in an appeal under section 174 of the 1990 Act.

The Notice

6. The appellants state that the notice merely alleges a change of use as opposed to a material change of use and therefore ask that I make a determination as to whether the notice is a nullity. But there is no need for an enforcement notice to specify that a change of use is material and this is implicit from the wording of section 172(1)(a) of the 1990 Act.
7. There is no evidence that the notice does not contain all that is required by section 173 of the 1990 Act and the relevant enforcement notice regulations¹, so I do not agree it is a nullity. Whether there has been a breach of planning control or not is a matter for the ground (c) appeal below.

Reasons

The ground (c) appeals

8. In a ground (c) appeal the onus is on the appellants to make out their case. It is the appellants' view that in this case the change from a single household occupied by a large number of adults from the same extended family to an HMO occupied by separate households is not material, ie that the allegation does not constitute a breach of planning control.
9. But as a matter of fact and degree, a change of use of the appeal premises from members of a family sharing a family life (ie from the same household) to unrelated individuals living independently and forming their own households but sharing facilities, results in a significant difference in the character of the activities on the land.
10. For the use which now exists, there is no evidence occupants have any reason to live together beyond a common need for accommodation. To my mind, this means there is likely to be a significant increase in the volume of movements to and from the appeal property compared with its use as a single family dwelling, taking into account matters such as individual occupants' travel needs, visitors and deliveries, at different times of the day.
11. The appellants do not accept that what they describe as a mere change of tenancy agreements from a single to multiple letting, and licensing of the property as an HMO, could amount to a material change of use. But I do not agree in light of the above.
12. The appellants consider there will be no change in the burden on services. But there is no precise evidence this is the case and I am not satisfied this is a determinative issue for the ground (c) appeal given the change in character identified above.
13. The courts have held that a change from use as a single private dwellinghouse to use for some form of multiple occupation may constitute a material change in the character of the use of the premises, even though both the former and the new use fall within the general category of 'residential'². No evidence has been provided which satisfies me this is not the case for this appeal, including the case law I have been referred to by the appellants and the information they have provided for a lawful development certificate application which is before the Council.

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

² *Birmingham Corporation v MHLG & Habib Ullah* [1964] 1 QB 178

14. For ground (c), it makes no difference in land use terms whether the property has been well run or subject to police incidents or anti-social behaviour. In addition, there is no evidence planning permission exists for the breach. Taking all of the above points into account, the appeals on ground (c) fail.

The ground (a) appeal

15. The appellant has requested that I consider ground (f) before ground (a). But logically it is necessary to consider the planning merits of a deemed planning application before determining whether the requirements of the notice are excessive. So ground (a) must be considered first.
16. Policy DM09 of Barnet's Local Plan Development Management Policies 2012, (the Local Plan) states that proposals for new HMO will be encouraged provided that they meet an identified need, can 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 HMO.
17. Taking into account the above policy and the reasons for issuing the notice, the main issues in the ground (a) appeal are:
- whether the appeal development accords with the Council's policies in respect of housing need and HMOs, including in respect of character and accessibility by public transport, cycling and walking; and
 - whether the appeal development provides a satisfactory standard of accommodation for occupiers, with particular regard to light and outlook.

Housing Need and HMOs

18. The appellant states that they find demand for the appeal accommodation is always strong and that they have no difficulty attracting tenants. But demand and need are not the same and Policy DM09 specifically refers to an identified need rather than demand. Beyond generalised assertions, there is no precise evidence which demonstrates that there is an identified need for the appeal development in this case.
19. There is no dispute that HMOs are an important source of low cost, private sector housing for students, those on low incomes and those seeking temporary accommodation. But this should not necessarily be provided at the expense of a single family dwellinghouse, which the appellant accepts is lost as a consequence of the appeal development.
20. The appellant considers this loss is not material in the context of the Council's overall housing supply position. But I do not accept this argument as it could be too easily repeated thus resulting in a material loss of this type of housing.
21. I have considered the representations made by Titus Royce which include a view that the appellant will never find a 'quality large family' who can afford such a house with market rent. But this has not been demonstrated by, for example, marketing information, to satisfy me that there is a lack of interest in the use of the appeal property as a single dwellinghouse.
22. I accept that the appeal development does not result in the loss of residential floorspace and that the appeal development and the former use both contribute to overall housing supply. But this makes no difference to my conclusion on

- housing need. Whether the area is expensive or not is not a basis for allowing the appeal in light of the specific requirements of Policy DM09 noted above.
23. Part i of Policy DM01 of the Local Plan states that the loss of houses in roads characterised by houses will not normally be appropriate. The appellant states this appears to be directed at operational development. But there is no evidence this is the case.
24. Grampian Gardens is characterised predominantly by houses in single occupation. In my judgement, the use of the appeal property as an HMO accommodating multiple separate households, rather than as a single house results in a harmful effect on the character of the area. This is because of the highly likely significant increase in the volume of movements to and from the appeal property compared with its use as a single family dwelling, taking into account matters such as individual occupants' travel needs, visitors and deliveries, at different times of the day.
25. My attention has been drawn to an appeal decision³ relating to another property. But that decision relates to a different use on a different road, at some distance from the appeal site before me. So I am not satisfied the circumstances of that case or the Inspector's conclusions on character are directly comparable to the case before me.
26. The appellant describes the appeal site as being minutes away from Brent Cross Shopping Centre and Golders Green High Street, doctors, dentists, chemists and shops, and with good access to amenities and public transport links. Details of bus, coach and rail routes have been provided.
27. But the Council identifies that the site has a Public Transport Accessibility Level (PTAL) of 2, ie 'low'. As PTAL takes into account service frequency and not just route availability, it is a more reliable indicator of how accessible a site is. I am not satisfied that a PTAL of 2 means the site is easily accessible by public transport and cycling and walking, for the purposes of Policy DM09 noted above.
28. Considering all of the above points, I conclude the appeal development does not accord with the Council's policies in respect of housing need and HMOs, including in respect of character and accessibility by public transport, cycling and walking. As such, it does not comply with Policy CS5 of Barnet's Local Plan Core Strategy 2012 (the Core Strategy) or Policies DM01 and DM09 of the Local Plan in respect of this main issue.
29. My attention has been drawn to Policy CS NPPF of the Core Strategy, Policy DM08 of the Local Plan and the Residential Design Guidance Supplementary Planning Document 2016. But it has not been explained how these are relevant to this main issue.

Standard of Accommodation

30. When entering the appeal property by the front door, there is a rear room at ground floor level on the left hand side, immediately behind the front room. On drawing 201991/2GG/01 which has been provided, this rear room is identified as bedroom 2. In exhibit TN2 of a Statutory Declaration provided by the appellant, this same rear room is identified as room 9.

³ APP/N5090/W/18/3219422 dated 9 July 2019

31. At the time of my site visit this room was laid out as a bedroom with a double bed and I have no reason to believe this would not continue to be the case. This room has no window. Instead, it has a door that leads to a corridor which opens on to the back garden. The appellant accepts that this layout is not ideal but states it was arranged this way on the advice of officers in the Environmental Health Department. Be that as it may, given that this room's access to natural light and outlook is significantly lacking, it does not provide a satisfactory standard of accommodation for occupiers.
32. The appellant has expressed a willingness to change the use of this room to a communal study, recreational area or possibly another bathroom. No alternative layout has been provided and nor has any specific wording for a condition to prohibit the use of this room as a bedroom or habitable room to address this main issue. But there is no evidence a suitably worded condition could not be utilised to address this main issue.
33. Subject to a condition to the above effect, I conclude the appeal development provides a satisfactory standard of accommodation for occupiers, with particular regard to light and outlook. So I am satisfied there is no conflict with Policies CS NPPF, CS1 or CS5 of the Core Strategy, Policies DM01 and DM02 of the Local Plan, the Sustainable Design and Construction Supplementary Planning Document 2016 or the Residential Design Guidance Supplementary Planning Document 2016 in respect of this main issue.

Other Matters

34. I accept that currently the property may be clean, well arranged, well run and popular with tenants. But this must be balanced against the Council's HMO planning policy requirements to which I attribute more weight in this case.
35. The appellant states that providing accommodation for up to 10 people is more efficient in planning terms than if the property were used by a single household comprising just 2 people. But the evidence provided indicates it has generally been occupied by a significantly larger household than this so I give this argument limited weight.
36. The appellant has asked that I consider the imposition of conditions relating to a trial run for the use, a limit on occupiers to 10 people and to mitigate against any subdivision. But there is no evidence such conditions would overcome the conflict with the housing planning policies identified above.
37. The appellant states that it is noteworthy that the Council's Environmental Health Department consider that the property is suitable to be used as an HMO and that the Council's Housing Department has concluded it is appropriate to house people in receipt of housing benefit. But these are separate regimes and they do not make the appeal development acceptable in light of the housing planning policies identified above.

Conclusion on ground (a)

38. Whilst I am satisfied the appeal development can provide a satisfactory standard of accommodation, it does not accord with the Council's policies in respect of housing need and HMOs, including in respect of character and accessibility by public transport, cycling and walking. I therefore find conflict with the development plan overall and the appeal on ground (a) fails.

The ground (f) appeals

39. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
40. Based on the single requirement of the notice, the purpose of the notice is to remedy the breach, ie pursuant to section 173(4)(a). The appellants consider the requirement is unnecessary. But no lesser steps have been suggested that would achieve the purpose of the notice. As such, the appeals on ground (f) fail.

The ground (g) appeals

41. The notice was issued prior to the Covid-19 pandemic. The appellants seek at least one year to comply with the notice as it would involve the tenants in significant disruption at a time of national crisis and would mean the appellants would be rushed into making changes and the property could be unused and unlet while different arrangements are put in place.
42. But no specific evidence has been provided to indicate why more than 6 months would be required to comply with the single requirement of the notice and for the tenants to look for alternative accommodation. I conclude the time period specified in the notice does not fall short of what should reasonably be allowed and so the appeals on ground (g) fail.

Conclusions

43. For the reasons given above I conclude that Appeal A does not succeed. I uphold the enforcement notice and refuse to grant planning permission on the deemed application.
44. Appeal B is dismissed and the enforcement notice is upheld.

L Perkins

INSPECTOR