
Appeal Decision

Site visit made on 7 September 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Appeal Ref: APP/G5750/C/21/3269000

137 Prince Regent Lane, Plaistow, London E13 8RY

- 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 Ms Fatiha Begum against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 16 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a Sui Generis House in Multiple Occupation (HMO).
 - The requirements of the notice are:
 1. Cease the use as a Sui Generis house in multiple occupation.
 2. Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds.
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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.
-

Decision

1. 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.

Procedural Matters

2. During the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021 (London Plan), which was adopted on 2 March 2021. This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new London Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.
3. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.

4. An Existing Plan has been submitted with the appeal which attempts to show the existing layout of the building. However, a 'games room' and a 'laundry room' are shown on the existing plan within the basement, whereas I observed both rooms were laid out as bedrooms, each containing a bed and bedroom furniture. I also observed a communal lounge area and communal kitchen, providing laundry facilities within the ground floor, and I have no reason to believe the layout of the property has changed since the enforcement notice was issued. I have therefore determined the appeal on the basis of the existing layout of the building which I observed during the site visit.

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

Main Issues

5. Having regard to all the representations received I consider the main issues are:
- Whether the HMO use is acceptable, having regard to the effect on the supply of single family dwelling houses;
 - The effect of the use of the property as a HMO on the living conditions of neighbouring occupiers of Prince Regents Lane, with particular regard to noise and disturbance; and
 - The effect of the development on the living conditions of current and future occupiers of the HMO, with particular regard to floor space, light, outlook, and noise and disturbance.

Reasons

Supply of Single Family Dwelling Houses

6. Policy H4 of the Newham Local Plan, 2018 (LP) states that the Council will specifically protect 3 bed and 4+ bed family housing. The justification for this policy states that projected growth in the number of households over the Local Plan period up to 2033 effectively means there should be no (net) reduction in the housing stock, and a key element of the Local Plan is the very clear presumption against the loss of residential floorspace, with particular emphasis on protecting family housing. This support for larger family sized accommodation is also reflected in LP policies H1 H3, S1 and S6. These policies accord with the Framework, which indicates that planning policies should reflect the housing needs of different groups, including families with children.
7. The evidence indicates that prior to the current unauthorised change of use, the property comprised a three bedroom dwelling house. As such, the unauthorised change of use has resulted in a loss of accommodation suitable for a family, for which there is an identified housing need in the Borough.
8. I conclude on the first main issue that the development has an unacceptably harmful impact on the supply of family dwelling houses, contrary to Policies H1, H3, H4, S1 and S6 of the LP, which amongst other things seek the aforementioned aims resisting the loss of existing larger family sized homes. The development is also contrary to Policy GG4 of the London Plan, 2021 (London Plan) which seeks to create mixed and inclusive communities, with good quality homes that meet high standard of design and provide for identified needs.

Living Conditions of Neighbouring Occupiers - Noise and Disturbance

9. The properties in appeal terrace are in residential use and are fairly closely spaced. Therefore, there is a susceptibility for the living conditions of neighbouring occupants to be affected by the introduction of a more intensive use. The appellant argues that an HMO has no greater impact on the living conditions of neighbouring occupiers than if the property was occupied as a single family dwelling. However, during my site visit I observed seven separate bedrooms within the property (2 bedrooms in the basement; two bedrooms at ground floor level and 3 bedrooms at first floor level). As such, the existing HMO comprises up to seven unrelated individuals/couples, all of whom have their own separate work/domestic regimes and attract their own visitors and deliveries at different times during the day and evening. In this respect, the HMO use is more likely to have increased the volume of movements to and from the property, than a single family dwelling, and the range of times when these activities take place.
10. In addition, the HMO use, with seven separate individuals/couples using the rear garden for recreation and for entertaining visitors is likely to have resulted in a more intensive use of the garden than would be the case with a single family occupying the property. Consequently, it is likely that there has been an increase in noise and disturbance to neighbouring occupants.
11. I therefore consider that the introduction of the HMO use has resulted in levels of noise and disturbance which adversely affect the living conditions of neighbouring occupiers. This derives from noise generated from 'comings and goings' outside of the building, increased vehicular and pedestrian movements and intensified use of the rear garden. In reaching this conclusion, I note that an objection has been raised by a neighbouring occupier specifically referring to noise and disturbance issues which have resulted from the unauthorised change of use.
12. I conclude that the change of use of the property to a HMO has resulted in a harmful effect on the living conditions of neighbouring occupiers, with regards to noise and disturbance, contrary to Policies SP2, SP3 and SP8 of the LP and Policy D14 of the London Plan. Amongst other things these state that all development is expected to achieve good neighbourliness and fairness from the outset by avoiding negative and maximising positive social, environmental and design impacts for neighbours on and off the site and improve health and wellbeing and quality of life. Furthermore, the change of use is contrary to paragraph 130 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Living conditions of current/future occupiers of the HMO

Light and outlook

13. The basement contains two bedrooms, each room is served by a single window and a modest sized lightwell. During my site visit between 11:30-12:00 hours I observed that the existing windows and lightwells, resulted in restricted levels of natural light during the day, and as a result, current/future occupiers of these bedrooms would be highly reliant on artificial light. In addition, both windows serving these rooms are positioned below ground floor level, with views of only the lightwell walls itself, resulting in very poor outlook for occupants of these rooms. In this respect these bedrooms fail to provide acceptable living

conditions for current/future occupiers and results in a sense of enclosure that feels oppressive and claustrophobic for current/future occupiers of these bedrooms.

14. Furthermore, the ground floor rear bedroom is served by only one window which is surrounded by the small courtyard created by the original two storey back additions of Nos 135 and 137 and the single storey rear extension at No 137. Owing to the height and proximity of these original back additions and the single storey rear extension, current/future occupiers of this ground floor bedroom also suffer from restricted levels of light and outlook.
15. I therefore find that that the current unauthorised HMO use results in substandard level of accommodation for current/future occupants of the bedrooms within the basement and the ground floor rear bedroom with particular regard to light and outlook.

Noise and disturbance

16. The unauthorised change of use of the property has resulted in an HMO with seven bedrooms. Therefore, the HMO use comprises seven unrelated individuals/couples living within the property, all with separate work/domestic regimes and attracting their own visitors and deliveries at different times during the day and evening. I have already found that the HMO use has resulted in a harmful effect on the living conditions of neighbouring occupiers, with regards to noise and disturbance, from the increased number of 'comings and goings', increased vehicular and pedestrian movements and the intensified use of the property and rear garden. I also note that the two bedrooms at ground floor are situated close to the entrance of the property, and in this respect occupants of these rooms would be most susceptible from the increased number of 'comings and goings' associated with intensified use of the property as an HMO.
17. I therefore find that that the current unauthorised change of use results in substandard level of accommodation for current/future occupants of the ground floor bedrooms with particular regard to noise and disturbance.

Floor space

18. The unauthorised change of use has created a 7 bedroom HMO. The bedrooms range in size from 7.65sq.m to 17.87sq.m, and all exceed 2.15m in width. Therefore, all the bedrooms accord with the minimum size requirements of the nationally described space standards (2015) and Policy D6 of the London Plan. I also observed during my site visit that each of the bedrooms provided a bed, wardrobe/storage, a table, and sufficient space for circulation. Furthermore, the ground floor area also contained a communal lounge area, providing sofas and a television, and a good sized open plan kitchen/dining area containing various white goods including 2 cookers, a fridge, washing machine, microwave and a dining table. I therefore find, with regards to floor space, that the HMO use provides satisfactory living accommodation for current/future occupiers of the site.

Conclusion on living conditions of current/future occupiers of the HMO

19. Consequently, whilst the floor space of the accommodation is of an acceptable size in general conformity with Policies H1 and H3 of the LP and the nationally described space standards (2015), I conclude that the change of use has resulted in a poor standard of accommodation to the detriment of the living

conditions of current/future occupiers with regards to poor light, outlook, and noise and disturbance, contrary to Policies SP1, SP2, SP3 of the LP, and Policies D6 and D14 of the London Plan. Amongst other things these state that all developments are expected to achieve high quality of accommodation for living and provide sufficient daylight and sunlight. Furthermore, the change of use is contrary to paragraph 130 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Other Matters

20. The demand and benefits for providing affordable HMO accommodation, the absence of other nearby HMOs, the difficulty in renting larger properties and compliance with the space standards for all bedrooms are noted. However, these do not outweigh the harmful effects of the change of use outlined above, and therefore do not alter my decision. Nor am I convinced that conditions/management plans would be sufficient to overcome the harms identified above.

Overall conclusion and planning balance

21. The development results in the unacceptable loss of a single family dwelling house and provides unacceptable living conditions for neighbouring occupiers and current/future occupiers of the appeal site. The development is contrary to the development plan and the Framework and no material considerations indicate that planning permission should be granted. The appeal on ground (a) must therefore fail and the application for permission deemed to have been made will be refused.
22. Dismissal of the appeal will involve some interference with the occupiers' rights to respect for private and family life under Article 8 of the European Convention on Human Rights and the right to protection of property, including peaceful enjoyment of possession under Article 1 of the First Protocol. However, these are qualified rights. The interference will be the minimum necessary and a proportionate approach to the legitimate aim of protecting the supply of family housing and ensuring satisfactory living conditions.
23. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR