
Appeal Decision

Site visit made on 14 September 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/N5090/C/20/3246971

Land at 43 Macdonald Road, London N11 3JB

- 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 Andy Kelly against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 9 January 2020.
 - The breach of planning control as alleged in the notice is:
 - 1) Without planning permission, the division of the property into two dwellings: a self-contained flat in the two storey rear extension (Edged red in the attached plans); and one in the remainder of the property (the original dwellinghouse
 - 2) Without planning permission, the change of use of the original dwellinghouse into a (use class C4) House in Multiple Occupation
 - The requirements of the notice are:
 - 1 Cease the use of the property as a House in Multiple Occupation
 - 2 Cease the use of the two floor rear extension as a self-contained flat (Edged red in the attached plans)
 - 3 Remove all kitchen and bathroom facilities from the two storey extension, the works to include the removal of all toilets, showers, handwash basins, cookers, worktops and food preparation surfaces, sinks, draining boards and kitchen units.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (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 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the addition of a closing bracket after the word "dwellinghouse" in paragraph 3.1). Subject to this correction 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.

Procedural Matter

2. Since the appeal has been made the London Plan 2021 has been adopted and now forms part of the Development Plan. Both parties have had an opportunity to provide comments in relation to this matter and so have not been prejudiced. I have taken into account the policies in the LP in my decision.

3. I noted on my site visit that the ground and first floor of the original dwellinghouse was in use as a six bedroom House in Multiple Occupation (HMO), and as a self-contained flat within the second floor attic space. However, my considerations in this appeal are confined to the breach of control alleged in the notice only. No consideration has been given to the use of the flat within the attic space, which was not identified in the notice.

Enforcement Notice

4. There is a typographical error in paragraph 3. 1) of the enforcement notice which I shall correct. A closing bracket has been omitted. The correction is for precision purposes and there is no injustice to either of the parties.

Appeal on ground (d)

5. In relation to a breach of planning control consisting of a material change of use of any building to use as a single dwellinghouse, including the subdivision of dwellinghouses into flats, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach (s171B (2)). In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach (s171B (3)).
6. The main issues are whether the material change of use of the property into two dwellings took place before the 9 January 2016 with the use continuing as two self-contained dwellings for at least four years thereafter, and whether the material change of use of the original dwellinghouse to use as a House in Multiple Occupation (C4), (HMO) took place before the 9 January 2010 with the use as an HMO continuing for at least 10 years thereafter. The onus is on the appellant to prove his case on the balance of probability.
7. In summary, the appellant maintains that the self-contained dwelling that has been created in the rear two-storey extension has been occupied for a period of around eight years. However, the only evidence provided to support that claim are two utility bills addressed to 43 Macdonald Road. Those bills do not provide any substantive evidence that the flat has been occupied continually as a self-contained dwelling since January 2016. Furthermore, albeit the appellant states that a number of the rooms in the HMO have been occupied prior to May 2019 and in one case since 2013, the only evidence that has been provided are a bank statement, driving licence, tax bill and poll cards which give an occupier's name and address but do not provide evidence of continual occupation of the original dwellinghouse as an HMO for a period of ten years before 9 January 2020. No evidence in the form of payment of rent or statutory declarations have been provided to corroborate that claim.
8. Furthermore, the Council has provided details of an application for a certificate of lawful development for a summerhouse at the property in 2018, which identified and showed the property as a single dwellinghouse.
9. Consequently, taking into account the evidence produced by the local planning authority which contradicts and make the appellant's version of events less than probable, the circumstances of this case are such that I am not satisfied that the appellant's claim is sufficiently precise and unambiguous to conclude on the balance of probability that the uses in question are immune from enforcement action.

10. I conclude that the uses have not become lawful due to the passage of time. The appeal on ground (d) does not succeed.

Appeal on ground (a), deemed planning application

Main Issues

11. The main issues in this case are:

- The effect on the character of the area and impact on housing mix; and
- Whether or not the development provides for acceptable living conditions for existing and future occupiers.

Reasons

Character and housing mix

12. Macdonald Road is a residential street which, from my observations on my site visit, is generally characterised by family sized dwellings in the form of semi-detached properties and short terraces. The properties have enclosed front gardens with driveways and moderately sized rear gardens.
13. Policy DM01 of Barnet's Local Plan, Development Management Policies, Development Plan Documents, 2012 (DPD) criteria (h) and (i) state respectively, that the conversion of dwellings into flats and the loss of houses in roads characterised by houses will not normally be appropriate. Both the supporting text to Policy DM01 and the Council's Adopted Residential Design Guidance, Supplementary Planning Document, 2016 (SPD) advise that, whether or not a conversion is acceptable in principle, will depend on the character of the house and the street. The intention of the policy is to minimise the impact of conversions on the local environment, recognising that conversions can have a cumulative impact on environmental quality by changing the external appearance of areas and increasing activity, creating parking stress and more rubbish to be collected.
14. Furthermore, DPD Policy DM08 advises that Barnet's dwelling size priorities are 3/4 bedroom homes for all tenures. Policy DM09 of the DPD states that proposals for new HMO will be encouraged provided they meet an identified need, that they will not have a harmful impact on the character and amenities of the surrounding area, are easily accessible by public transport and meet relevant housing standards for HMO.
15. The appeal property forms the end of a short terrace of three. It is a substantial dwelling with four bedrooms at first floor level, a converted loft and additional accommodation in the two-storey rear extension. The property has a generous rear garden and off-street parking. It is clearly suitable as a family home and the type of property which the Council identifies as being as priority need. Moreover, although I observed on my site visit that a number of the properties in the street had been converted to flats and have taken into account the photographic evidence provided by the appellant, Macdonald Road is predominantly characterised by family housing.
16. In this case no external alterations have taken place to the front of the property, and there would appear to be adequate space to the side to accommodate refuse storage. However, the use of the property by six unrelated adults in the HMO and a further occupier in the self-contained flat at

the rear, not only increases the number of comings and goings from the property, but also results in a different pattern of activity than would be the case with a family, of mixed ages, living as one household.

17. Cumulatively, the use as a six bedroom HMO the self-contained flat results in an increase in the comings and goings from the property, including visitors and deliveries to the property. This activity takes place throughout the day and late evening. Furthermore, the general noise levels associated with the normal living conditions of a family would be significantly less than that expected of more than six adults, particularly if they are coming and going in cars.
18. I conclude that the use of the property as an HMO and self-contained flat has a harmful effect on the character of the area and on housing mix. The development conflicts with the development plan, and in particular with Policies DM01, DM08 and DM09 of the DPD and the SPD, the aims of which are set out above. I also find conflict with Policies CS1 and CS5 of Barnet's Local Plan, Core Strategy, 2012 which seek to protect and enhance the Borough's character, including its high quality suburbs.

Living conditions for existing and future occupiers

19. The self-contained flat is contained within a two-storey extension at the rear of the property and takes access from the rear garden. It provides accommodation in the form of a two-storey, one-bedroom dwelling. Policy DM02 of the DPD states that where appropriate, development will be expected to demonstrate compliance with national and Londonwide standards supported by the guidance in the council's suite of Supplementary Planning Documents.
20. Policy D6 of The London Plan 2021 requires high quality design for new housing development which provide adequately sized rooms, with comfortable and functional layouts which are fit for purpose and meet the needs of all occupiers. Table 3.1 of LP sets out the minimum internal space standards for new dwellings (including new build, conversions and change of use). A one bedroom two-storey dwelling is required to have a minimum gross internal floor area of 58 square metres.
21. There is no dispute that the space available within the rear flat falls short of the minimum internal space standard. Furthermore, the accommodation within the flat is directly overlooked by the rear communal garden. Consequently, the occupiers of the flat have little privacy when the garden is in use by the occupiers of the adjoining HMO. There is no private amenity space available for the occupiers of the flat.
22. I conclude that the self-contained flat does not provide for acceptable living conditions for existing or future occupiers. There is conflict with the development plan, and in particular with Policy DM02 of the DPD and Policy D6 of the LP which seek to ensure, amongst other things, high quality design for new housing development.

Other matters

23. I have taken into account the growth objectives of the London Plan and recognise the need to provide accommodation to meet the housing needs of different sectors. However, those considerations do not outweigh the harm I have identified in the main issues set out above.

Conclusion

24. For the reasons given above and taking into account all other matters raised, the appeal on ground (a) fails.

Human Rights

25. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most fundamental rights and freedoms contained in the European Convention of Human Rights, and I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and the Appellant's rights under Article 1 of the First Protocol. However, given the harm identified in the reasons for issuing the notice, the action pursues the legitimate aim of regulating land use in the public interest and is necessary and proportionate to the situation.

Overall Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with a correction, and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR