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## Appeal Decision

Site visit made on 7 February 2022

**by Paul T Hocking BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 February 2022**

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**Appeal Ref: APP/Y5420/C/20/3261793**

**75 Woodlands Park Road, London N15 3SB**

- 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 Kaylesh Somaia of Zonebell London Ltd against an enforcement notice issued by the Council of the London Borough of Haringey.
  - The enforcement notice was issued on 17 September 2020.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use to a large house in multiple occupation (HMO) (sui generis).
  - The requirements of the notice are: 1. Cease the use of the property as a HMO; 2. Remove from the land all materials and debris resulting from compliance with the requirements of the notice.
  - The period for compliance with the requirements is four 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.
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### Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

### Preliminary Matter

2. Since the issue of the enforcement notice, the London Plan, 2021, has been adopted, which supersedes the previous version. The parties were therefore given the opportunity to bring to my attention any relevant matters from this development plan for the purposes of my assessment.

### The Enforcement Notice

3. The notice relates to the use of the property as a large house in multiple occupation (large HMO), being a sui generis use. The first requirement of the notice should therefore mirror the allegation in order to remedy the breach, and then go no further. Injustice to the parties however would not arise from making this correction.

## **The ground (a) appeal**

### **Main Issues**

4. The main issues are:

- i. whether the development results in the loss of a small family dwelling; and,
- ii. the effect of the development on living conditions.

### **Reasons**

5. The site relates to a two-storey end of terrace property, with accommodation in the roof space. There are both front and rear garden areas. The development enforced against relates to the use of the property as a large HMO comprising 7 bedrooms with en-suites as well as communal areas. The appellant says that he intends to convert 'bedroom 2' into a lounge and that the occupancy level has not been over 8 people.

#### *The loss of a small family dwelling*

6. Policy DM17 of the adopted Haringey DPD, 2017 (the DPD), states that the conversion of homes to HMO's will only be permitted where the gross original internal floor space of the existing dwelling is greater than 120 sqm.
7. I am firmly of the view that the use of the term 'original internal floor space' means the policy requirement relates to the property as it was originally built or created, as opposed its current size. This is because if a property could simply be extended to circumvent this stricture of policy, it would serve little planning purpose. Accordingly, I am not persuaded that subsequent extensions should override the historic context.
8. The appellant acknowledges that the size of the original property was 105 sqm. It is accordingly caught by this policy stricture irrespective of the concentration of HMO's in the immediate area.
9. The site is also located within an area that is subject to an Article 4 Direction which restricts an otherwise permitted change of use of residential properties from a dwelling to a small HMO. Whilst the development enforced against relates to a large HMO, which requires planning permission in any event, it provides evidence the Council is seeking to protect from the loss of small family homes.
10. This is in order to offer a broad housing choice and retain economically active families within the Borough. The prioritisation of small family housing therefore aids to build a stable, mixed and sustainable community. Moreover, the Strategic Housing Market Assessment 2011, is said to have identified a serious shortage of small family dwellings. This is not disputed by the appellant.
11. I conclude the development results in the loss of a small family dwelling in harmful contravention of Policy SP2 of the adopted Haringey's Local Plan Strategic Policies, alteration 2017 (the LP) and Policy DM17 of the DPD. These policies, amongst other things, require development to meet Haringey's housing needs and only permit the conversion of homes to HMO's where the gross original internal floor space of the existing dwelling is greater than 120 sqm. This is a matter to which I attach considerable weight.

### *Living conditions*

12. I have limited evidence before me that the size of the accommodation available to occupiers does not comply with relevant adopted space standards. Notwithstanding this, during my site visit I was able to inspect all the bedrooms and communal areas at the property. In my view, the bedrooms, even those within the roof space, provide adequate spaces for furniture and circulation. Bedroom 2 however has a particularly poor outlook, given the proximity of the window to adjoining parts of the building, but it is proposed to no longer be used as such. This could be secured by means of a suitably worded planning condition.
13. A satisfactory level of amenity space, including communal spaces with the kitchen providing dual facilities, outside spaces, and privacy is provided. I then have very limited evidence that the use represents an overdevelopment, generates other harms to the living conditions of occupiers or that there is parking saturation in the immediate area.
14. I appreciate the use has the potential to generate greater noise and disturbance owing to a higher intensity of use. However, whilst I appreciate the cumulative effects of other changes of use in the area, I only have limited evidence to persuade me that the use of this property results in significant adverse impacts to the living conditions or safety of neighbouring occupiers. Matters such as the provision of bin storage could be secured by means of a suitably worded planning condition, given the size of outside space available.
15. I conclude the development is not harmful to living conditions and therefore accords with Policies SP2 and SP11 of the LP and Policies DM1 and DM17 of the DPD. These policies, amongst other things, require development to have regard to space standards, be safe and easy to use, provide an appropriate amount of privacy, not give rise to significant adverse amenity impacts and provide a satisfactory level of amenity space for occupants. The absence of this planning harm is a matter to which I attach neutral weight.

### *Other Considerations*

16. I appreciate the property provides a housing option and the layout is modern and to a high standard. I however only have limited evidence relating to the demand for this type of accommodation and so this consideration attracts limited weight.
17. I appreciate the site is well located with good public transport links and has been used as an HMO for some time, although it is acknowledged this is not sufficient to claim immunity from enforcement action. It is also said the property has an HMO licence issued by the Council, albeit this is not a form of planning permission and different regulations apply. It is also said that cycle racks will be provided. However, these basic attributes, which are not contested by the Council, including the absence of other planning harms and a period of unauthorised use, only attract neutral weight.
18. Both parties have provided appeal decisions said to relate to comparable developments in support of their positions. However, I have considered the planning merits of the development before me and given reasons for my conclusions. I also do not have the full details of all those other schemes and

note some pre-date the adoption of current development plans. I therefore afford this evidence only neutral weight.

### *Planning Balance*

19. I attached limited weight to the accommodation that the property currently provides, namely as a large HMO. However, the development results in the loss of a small family dwelling, contrary to the development plan, for which I attached considerable weight. That the large HMO does not give rise to living conditions harms only attracts neutral weight, as do the remaining other considerations. Accordingly, the harm I have identified is not outweighed.

### *Conclusion*

20. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should be dismissed.

### **Overall Conclusion**

21. 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 deemed application.

### **Formal Decision**

22. It is directed that the enforcement notice be corrected by:

- substituting the words '*Cease the use of the property as a large house in multiple occupation (HMO) (sui generis); and,*' for those at section 5. 1. of the notice.

23. 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.

*Paul T Hocking*

INSPECTOR