

Appeal Decisions

Site visits made on 6 and 7 May 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 May 2022

APPEAL A - Appeal Ref: APP/N5090/C/20/3263670
27 New Trinity Road, London N2 8EE

APPEAL B - Appeal Ref: APP/N5090/C/20/3263671
29 New Trinity Road, London N2 8EE

APPEAL C - Appeal Ref: APP/N5090/C/20/3263672
33 New Trinity Road, London N2 8EE

APPEAL D - Appeal Ref: APP/N5090/C/20/3263674
37 New Trinity Road, London N2 8EE

- The appeals are each made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are each made by Mr Matthew Palmer of Pacific Palmer LLP against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice in Appeal A was issued on 9 October 2020 under reference ENF/0816/20.
- The notice in Appeal B was issued on 9 October 2020 under reference ENF/0817/20.
- The notice in Appeal C was issued on 9 October 2020 under reference ENF/0854/20.
- The notice in Appeal D was issued on 9 October 2020 under reference ENF/0856/20.
- The breach of planning control as alleged in each of the notices is *Without planning permission, the use of the property as a (C4) House in Multiple Occupation (HMO)*.
- The requirements of each of the notices are to cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirements of each notice is seven months.
- The appeals are each proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: The appeals are allowed, the enforcement notices are quashed, and planning permissions are granted in the terms set out below in the Formal Decisions.

Preliminary Matters

1. A further appeal under reference APP/N5090/C/20/3263673 relating to the property at no. 35 New Trinity Road has been withdrawn.
2. Following my site visit I wrote out to the parties seeking their comments about the present tenancy and occupation arrangements and whether these matters might form the subject of planning conditions. Their responses, where received, are considered in my reasoning below.

Main Issues

3. Each of the notices was issued for two reasons; the first concerning the impact of the change of use on the character of the area and the adjoining neighbours, and the second concerning the sustainability of the location. Having regard to the relevant requirements of Policy DM09 of Barnet's Local Plan: Development Management Policies of September 2012 and other matters raised, the main issues in each case are:
 - (i) Whether the proposal meets an identified need;
 - (ii) Whether it will have a harmful impact on the character and amenities of the surrounding area (and in this I include the impact on neighbouring living conditions); and
 - (iii) Whether it is easily accessible by public transport, cycling and walking.
4. The further requirement of policy DM09 for any proposal to meet the relevant housing standards for HMOs is not in issue in any of the appeals.

Reasons

Identified need

5. Policy DM09 describes as a 'useful reference' the Barnet Housing Needs Survey of 2006, although I have not been provided with this or any later assessment of housing needs. Policy DM07 seeks to protect residential accommodation generally, although the policy itself does not expressly seek to protect particular housing types against loss to another type. The supporting text describes HMOs as being of a type of housing which is in short supply or serving a special housing need whose loss will normally be resisted.
6. An Article 4 Direction has been made which removes the general permitted development right to change between Class C3 and C4 uses (or at least, to change from Class C3 to C4). There is no dispute between the parties that permission is required here. The Council criticises the appellant for failing to 'robustly demonstrate' the need for the HMOs. I would expect the identification of need generally to arise from the housing needs assessment and/or annual monitoring reports, these but have not been provided. The appellant states that since marketing the properties in 2017, the vast majority of interest (and now tenants) has been from professional sharers attracted by the combination of property layout, relatively close proximity to East Finchley, and more affordable pricing. Further information from local estate agents and from the tenants is offered but has not been provided.
7. I am not informed further as to the marketing exercise conducted and consequently whether the properties were offered at a price reflecting the permitted C3 use, but nonetheless I accept the appellant's submission as to the interest in the properties. The Council say that demand is not evidence of need, but in the light of the supporting text to Policy DM07 that particularly resists the loss of HMOs it follows that, at the time of formulating that policy which was adopted ten years ago, there was an identified need for such properties in the borough. In the absence of any later information displacing that, I find that the proposals would meet an identified need for HMO accommodation and thus that this aspect of the policy is satisfied.

Impact on character and amenities of the surrounding area

8. I observed the properties and surrounding area over the course of a Friday afternoon and evening and subsequently on the Saturday morning. Four cars were parked in the communal car park throughout, with no vehicular movements to or from the site observed during my visits. Unrestricted parking was available to the street, with some spaces available. Vehicular traffic was observed to the nearby 'Tiddley Tots' nursery and to some other nearby residences.
9. Windows were open in three of the houses later on the Friday evening, evidencing occupation. No noise was heard emanating from any of the houses or gardens at any time during my visits, which took place during fine weather.
10. Obviously this is a snapshot but on the basis of my observations I find that on the current occupation of the properties the Council's concerns about activities at the properties causing noise and an increase in road parking are unrealised. The use of the properties appeared to be entirely in keeping with the character of the local area and I detected no activities that would be of any detriment to the occupiers of the surrounding residential properties. The appellant reports that no complaints have been received from neighbours over a three year period during which the properties have operated as licensed HMOs.
11. The appellant points out that the properties, each constructed as 4-bedroomed houses, have not been subject to internal alterations (to, for example, create extra bedrooms) and each is occupied by no more than four people. The properties are each let on single assured tenancy arrangements, with no bedrooms being individually rented.
12. I accept that these letting arrangements are likely to result in the occupants of the properties taking a common interest in their upkeep and maintenance. The present limit on the number of occupiers also serves to ensure that the use of the properties is in keeping with that of the family dwellings in the immediate vicinity. Subject therefore to imposing planning conditions that secure these arrangements, I find that this element of policy DM09, to avoid harmful impacts on the character and amenities of the surrounding area, will be satisfied.
13. Other development plan policies are aimed at creating a quality environment, and protecting and enhancing local character and amenity to create high quality places. For the reasons given above I do not find there to be any conflict with the development plan in these respects.

Suitability of the location

14. The properties are 25 minutes' walk from Finchley Central underground station and around 15 minutes' walk from the station at East Finchley, the latter walk being a pleasant one mainly along pedestrian footpaths or quiet roads. Both stations lie on the Northern Line around 20 minutes away from Charing Cross. A journey on foot to the centre of East Finchley takes a little over 10 minutes. More local facilities are available, with a small food shop on nearby King Street and a small parade nearby consisting of a pharmacy, a flower and gift shop, and a restaurant. Doctors' surgeries lie within a reasonable distance.

15. On observing the site on the Friday evening I witnessed substantial numbers of pedestrian commuters in the area (almost all coming from the direction of East Finchley). Bus stops are within striking distance on the A504 and A1000, each around 400-500m away. Secure cycle parking stands are provided as part of the development.
16. The relevant criterion of policy DM09 requires an assessment of whether a new HMO is 'easily accessible' by public transport, cycling and walking. Whilst accepting the PTAL rating as low, the overall journey time to central London is only around 45 minutes by walking and public transport, and there are adequate shops and services within a reasonable walking distance. Overall I find the policy requirement for the properties to be easily accessible by public transport, cycling and walking to be readily met.

Conclusions

17. For the reasons given above I conclude that no conflicts with the development plan for the area arise. Each of the appeals should succeed on ground (a) and planning permissions will be granted.

Formal Decisions

18. The appeals are allowed, the enforcement notices are quashed, and planning permissions are granted on the applications deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of each of 27, 29, 33 and 37 New Trinity Road, London N2 8EE as a (C4) House in Multiple Occupation, each subject to the following conditions:
 - (1) The property shall not be occupied by more than four persons.
 - (2) No more than one tenancy or licence to occupy the property shall operate concurrently.

Laura Renaudon

INSPECTOR