



Appeal Decision

Site visit made on 14 June 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2022

Appeal Ref: APP/G5750/C/19/3228965

98 Hilda Road, Canning Town, LONDON E16 4NN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A R Chowdhury against an enforcement notice issued by London Borough of Newham.
 - The notice was issued on 15 April 2019.
 - 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 one and two.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (d), (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is varied by the deletion of the words "including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds" from item 2 in paragraph 5.
2. Subject to the variation, 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

3. Since the notice was issued The London Plan 2021¹ has been published and now forms part of the development plan. Superseded London Plan policies referred to in the notice have now been replaced and the parties were given an opportunity to comment on the new policies. I shall have regard to these new policies and any comments made in my determination of the appeal.

The Notice

4. An enforcement notice must enable every person who receives a copy to know exactly what in the Council's view constitutes the breach of planning control and what a person is required to do to remedy the breach of control. The appellant submits that Step 2 of the requirements is vague and uncertain and therefore the notice is invalid and arguably a nullity.

¹ The London Plan: The Spatial Development Strategy for Greater London March 2021

5. I find that the opening part of Step 2 meets the requirement of section 173(3) of the Act in that it is specific. It is the use of the word “including” and the words that follow that introduce a degree of uncertainty, implying that the appellant could be required to carry out more unknown actions.
6. It is open to me to vary the notice by directing that those words be deleted, on the basis that there would be no injustice. To remedy the breach of planning control it is sufficient to specify that the use should cease (as set out in Step 1) and to require the removal of fixtures and fittings that facilitate the use. As such, there would be no injustice to the parties if “including” and the words that follow were to be deleted. The notice is therefore not a nullity and not invalid as it is capable of correction. I shall proceed on this basis.

Background

7. The appeal concerns a mid-terrace three storey town house. This modern terrace of five units is situated in a small cul-de-sac overlooking a school car park at the end of Hilda Road. The surrounding area is largely laid out with Victorian terraced housing with small front gardens.
8. I saw that the appeal property is laid out as follows: on the ground floor there are two en-suite bedrooms; on the first floor there is one en-suite bedroom and a communal kitchen; on the second floor there are two bedrooms and a communal bathroom; and within the roof space there is an en-suite bedroom. This layout is also described in detail, with room sizes, in the appellant’s response to the Planning Contravention Notice (PCN) dated 10 January 2019.
9. However, the Council’s officer report dated 15 March 2019, prepared nine days after their last site visit, described the property as having only a communal bathroom in addition to the en-suite within the roof space bedroom. The 2018 houses in multiple occupation licence (HMO) lists four bathrooms at the property. The Council’s officer report may have contained a mistake but it was not subsequently clarified in their later submissions.
10. On the basis that it is an offence to give information knowingly or recklessly in response to a PCN which is false or misleading, and having regard to the granting of the 2018 HMO licence, I find that it is more likely than not that there were four bathrooms at the time the notice was issued. I shall proceed on that basis.
11. The property sits within an area that is subject to an Article 4 Direction² that came into effect on the 31 July 2013. This seeks to control the change of use of dwelling houses to HMO for use by not more than six residents, known as small HMOs³. The Council allege that there has been a material change of use to a *sui generis* HMO, where there are more than six residents. This is commonly known as a large HMO.

² Article 4 of the Town and Country Planning (General Permitted Development)(England) Order 2015 removes the permitted development right to change the use of a dwellinghouse (Use Class C3) to a house in multiple occupation (Use Class C4).

³ The Town and Country Planning (Use Classes) Order 1987 as amended, **Use Class C4. Houses in multiple occupation.** Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”. **Interpretation of Class C4:** For the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.

The appeal on ground (d)

12. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to show, on the balance of probabilities, that the use of the building as a large HMO began more than ten years before the notice was issued. In addition, that the use continued such that at any time during the ten year period the Council could have taken enforcement action against the use. The relevant date is 15 April 2009.
13. The appellant states he purchased the property on 24 February 2017 with the benefit of an existing HMO licence, which had been granted on 24 April 2014. At this point he states that the property was in use as a small HMO. He submits letters from three people of which two are former tenants and one is a contractor, who carried out regular work on the property, to show that the use has been "continuous" "as an HMO for at least 12 years". In addition, he applied for a new HMO licence in 2017 which was granted on 1 November 2018 for a period of five years. This permitted the occupation of the appeal site for a maximum of seven people.
14. The first of the former tenants states he rented an en-suite room on the third floor from 7 March 2009 for approximately three and half years. During his occupation he made friends with three other tenants who were renting rooms on the 1st and 2nd floor. He recalls which room he rented as it had a view of a football pitch.
15. The second former tenant rented two rooms on the second floor from 16 December 2008 for approximately 14 months. She states she shared a bathroom and the kitchen with other tenants. During her occupation she names a friend she made who occupied the first floor room next to the kitchen and two other friends who occupied the property, who are also mentioned by the first former tenant.
16. The contractor states in his letter dated 3 May 2019 that he has been a handyman attending the appeal property since 2006. Between 2007 and 2016 he carried out work at the property several times such as fixing/replacing door locks and fixing kitchen appliances and showers. He recalled several people lived in the building, that all the doors were self-closing, that there was an interconnected fire alarm and that it was let as rooms.
17. With regard to the HMO licences, there are only three pages of the 2014 licence appended to the appellant's Statement of Case. The appellant does though provide a full copy of the 2018 licence.
18. The Council's evidence is limited to the information they gathered at two site visits and the response to the PCN. On 12 December 2018 the Council found ten individuals living at the property and on 6 March 2019 there were seven people. The response to the PCN given on 10 January 2019 states that the property is used as a small HMO by six unrelated people, whose names are provided. It is laid out as six bedrooms (some with en-suites) with a communal kitchen and shower. However, three of the names provided by the tenants during the March 2019 site visit were not recorded on the PCN.

19. An appeal made under ground (d) is seeking to demonstrate that the alleged breach of planning control is immune from enforcement action, due to the passage of time. The allegation in this case is that there has been a material change of use to use as a large HMO. The Planning Practice Guidance advises that if a local planning authority has no evidence itself or from any others to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probabilities.
20. It is not clear whether the evidence from the former tenants is in relation to a large HMO use or a small HMO use. There are also some inconsistencies in relation to how each tenant recalls who occupied which room/floor of the building, though this is not unusual when remembering details from a few years ago. However, both former tenants do actually name the same tenants who are occupying the property during their time. This adds weight to their recollections.
21. The contractor's letter was not accompanied by any supporting documents to show that he attended the property, such as invoices. He may not have been asked to produce them or he may no longer have them but in any event, his evidence also does not distinguish between whether the use that was occurring was a small HMO or a large HMO.
22. The copy of the 2014 HMO licence appears to be incomplete and does not state the total number of people that the property was licenced for. As such it is unclear whether it permitted more than six occupiers. The 2018 HMO licence stipulates a maximum of seven occupiers, which does support the ground (d) appeal.
23. However, the response to the PCN in 2019 stated that the property was being used as a small HMO with six tenancy agreements when it was purchased and that that use has continued. Due to the penalties attached to a false response to a PCN, I attach significant weight to the appellant's response.
24. Notwithstanding this response, at two site visits by the Council, they found more than six occupiers and I note that at the March 2019 site visit three of the names provided by the tenants did not match what had been stated in the PCN in January 2019. There may have been a turnover of tenants during that short time frame but this is not clear from the appellant's case.
25. Finally, I have noted that the appellant repeatedly states that the property is used as a small HMO but also that if for a period seven people lived there, that this does not automatically result in a material change of use. I agree, such a conclusion would need to be the subject of an assessment and would be a matter of fact and degree. Nonetheless, for the appeal to succeed on ground (d), the onus is on the appellant to show that a large HMO use has been in existence at the property for a 10 year period before 15 April 2019. It is not for the Council to provide the individual names to support their allegation, though it is their responsibility to carry out an investigation which satisfies the expediency test to issue a notice. Notwithstanding the appellant's claim, no appeals have been lodged on either grounds (b) or (c).
26. From the limited material before me, I conclude that the appellant has not satisfied the requirement to submit evidence that is sufficiently precise and

unambiguous, on the balance of probabilities. Moreover, the Council's evidence contradicts the appellant's statement. Consequently, he has not discharged the onus of proof that the use of the property has continued such that at any time during the ten year period the Council could have taken enforcement action. The appeal on ground (d) therefore fails.

The ground (a) appeal and the deemed planning application

Main Issues

27. The main issues are the effect of the development on i) the stock of family houses in the borough; (ii) the living conditions of the existing occupiers, having regard to the standard of accommodation; and (iii) the living conditions of neighbouring occupiers, having regard to noise and disturbance.

Reasons

Housing stock

28. For the purpose of my determination under the planning Acts I am required to determine the appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan in this instance is the London Borough of Newham Local Plan (LP) adopted in 2018.
29. LP Policy H4 seeks to safeguard existing housing in the borough and, in particular, 3 bedroom and 4+ bedroom family housing are singled out for specific protection. LP Policy H3 requires large and small HMOs to be purpose built or converted from premises other than family size dwellings. LP Policy H1 requires the delivery of a mix and balance of housing types including a significant increase in family housing to replace that lost to conversions.
30. The appellant submits that the size of the property means it is not sensible to use it for family housing as it has six bedrooms. It would be more effective if the space was used as a licenced HMO. This overlooks the fact that one of the bedrooms was formerly a lounge, which would make it a 5 bedroom property. In addition, LP Policy H4 refers to the protection of 3 bedroom and **4+** (my emphasis) bedroom housing.
31. The appellant's limited response to this issue also overlooks LP Policy S1, which sets out the Council's spatial strategy and strategic framework. The provision of jobs and homes is a strategic priority with an emphasis on the provision and protection of family housing. In addition, prior to the adoption of these policies, the Council was also seeking to protect its family housing with the making of an Article 4 Direction in 2013.
32. Therefore, I find the use of the appeal property has resulted in the loss of part of the stock of family housing, which does not accord with the Council's policies.

Standard of accommodation

33. The Council are concerned that there is insufficient space within the property to accommodate a large HMO use. In particular, they refer to a lack of bathrooms but, as I found at my site visit, this is not the case with most bedrooms having an en-suite and only the occupiers of two bedrooms would make use of the communal bathroom. This concern is therefore not supported by what I found on site.

34. However, there is no lounge within the property as all available rooms are used as bedrooms, which does not accord with Policy SP8 of the LP. This requires, amongst other matters, that in order to promote neighbourliness, provision should be made for communal spaces, including in HMOs. The only communal space within the appeal property is that occupied by a small dining table and four chairs in the kitchen. This leads to all occupiers making use of their bedrooms for living as well as sleeping and as the property is used as a large HMO this means that many of the rooms are occupied by two people.
35. The appellant relies on the issue of the 2018 HMO licence to support his case that the standard of accommodation is recognised as being acceptable. This though limits the number of occupiers to seven people which means that only one room would have two occupiers. The Council's evidence shows that the licence has not been complied with and, as such, the accommodation provided has resulted in cramped living conditions for the occupiers.
36. I therefore conclude that the development has resulted in harm to the living conditions of the existing occupiers, having regard to the standard of accommodation. This does not accord with Policies D4, D6 and GG4 of The London Plan and Policies SP1, SP2, SP8 and H1 of the LP. These require amongst other matters, high quality development and improvements in housing quality.

Noise and disturbance

37. The Council are concerned that use as a large HMO has resulted in more comings and goings from the property resulting in increased noise and disturbance, in comparison to use as a large family dwelling house. I find that generally patterns of behaviour from individual householders in an HMO property are different from the typical occupants of a family dwelling. Furthermore, I saw that the property is part of a small terrace with a largely open plan frontage area and, as such, it is likely that activities would be more noticeable in this area. However, the Council have submitted no evidence that the potential to generate significant noise and disturbance has actually occurred and it is not known whether the remaining dwellings in the terrace are all occupied as family dwellings.
38. The Council referred to other appeal decisions to support their case but it is not known whether the design and location of those properties are similar to the appeal before me. I therefore only give limited weight to these decisions.
39. I therefore conclude that the Council's concerns on this matter have not been substantiated and therefore there is no conflict with Policy D14 of The London Plan and Policy SP8 of the LP. These policies seek to achieve, amongst other matters, the management of noise to improve health and the quality of life in residential development.

Overall conclusion

40. To summarise, whilst I have found no harm from noise and disturbance, this does not outweigh the material harm the development has on the stock of family housing in the borough and the standard of accommodation. The large HMO use is contrary to the development plan when read as a whole and no material considerations have been submitted to indicate that the appeal should

be determined other than in accordance with the development plan. I therefore conclude that the appeal on ground (a) fails.

The ground (g) appeal

41. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to carry out the work or actions specified in the steps.
42. The appellant submits that six months is a more reasonable period, given the time it can take to secure compliance with a notice served on the tenants under the Housing Act 1988. He takes no issue with the period in terms of the removal of the fixtures and fittings that facilitate the use.
43. However, he has provided no details to support his claim, such as details of the tenants' agreements or the nature of their occupation and I therefore find an extension of time has not been justified. Having regard to the standard of accommodation and the current number of occupiers, which appeared to be nine at my site visit, I find the compliance period is reasonable and, as such, I see no reason to vary it. The appeal on ground (g) therefore fails.

Conclusion

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

D Fleming

INSPECTOR