The Planning Inspectorate

Appeal Decision

Site visit made on 12 July 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2ND AUGUST 2022

Appeal Ref: APP/Y5420/C/21/3276536
35 Graham Road, London, N15 3NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Teng Lin against an enforcement notice issued by the Council of the London Borough of Haringey.
- The notice was issued on 4 May 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use to a small House in Multiple Occupation (Use Class C4).
- The requirements of the notice are: 1. Cease the use of the property as a House in Multiple Occupation. 2. Remove from the ground floor the two HMO bedrooms, including their partitions and doorways. 3. Remove from the land all debris resulting from compliance with the above requirements.
- The period for compliance with the requirement is nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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. It is directed that the enforcement notice is corrected by in paragraph 4 at sub-paragraph 1 the substitution of "4 years" by "10 years" and varied by in paragraph 5 deleting step 2 in its entirety with a consequential renumbering of step 3 to step 2. Subject to the correction and 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.

Preliminary Matters

2. In s171B of the Act, the time limit for taking enforcement action where there has been a breach of planning control consisting of a change of use (other than to use as a single dwellinghouse) is ten years beginning with the date of the breach. The allegation is a material change of use to a small House in Multiple Occupation (HMO). Sub-paragraph 1 in paragraph 4 of the notice is therefore in error, as it should refer to the ten-year time limit. I shall use the power in s176(1)(a) of the Act to correct the notice to also refer to the ten-year time limit accordingly. There would be no injustice to the appellant or the Council, particularly as no ground (d) appeal has been made.

3. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal. The main parties have had an opportunity to comment on the implications of the Framework in respect of the appeal and I have taken it into account in my decision.

Ground (a) appeal

Main Issues

4. The main issues in this ground of appeal are:

    - The effect of the use as an HMO on the availability of smaller family housing in the Borough, having regard to the Development Plan and the Framework.
    - The effect on the living conditions of occupiers of adjoining residential property, having regard to noise and disturbance.

Reasons

Availability of smaller family housing

5. The appeal property contains an enlarged mid-terrace dwelling, with residential accommodation arranged over three floor levels. There is a kitchen and bathroom on the ground floor together with two vacant rooms, at least one of which I understand was previously used as a bedroom. There are three bedrooms on the first floor, one of which is currently unoccupied, as well as another bathroom. On the top floor are two further bedrooms, the larger room containing an ensuite bathroom also being unoccupied.

6. The property is located in the eastern part of the Borough, where a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) is in force. This has the effect that a change of use from a Class C3[1] dwelling to a Class C4 small HMO, otherwise permitted development by virtue of Article 3, Schedule 2, Part 3, Class L in the 2015 version of the GPDO, requires express planning permission.

7. Policy SP2 of the Haringey Local Plan Strategic Policies (HLP) aims to provide homes to meet the Borough's identified housing needs. Against this background, Policy DM17:A of the Haringey Development Management Development Plan Document (DPD) provides for converting a dwelling to an HMO where certain criteria are met. These include the property having a gross original internal floorspace in excess of 120 m^2.

8. The supporting text to the above policy acknowledges that HMOs play an important role in meeting particular housing needs but goes on to point out that there is a significant need for smaller family housing in the Borough. The "Family Housing Protection Zone" identified in the Haringey Development Management Development Plan Document (DPD) coincides with the area of the Article 4(1) Direction. Forming part of the DPD evidence base, the 2014 Strategic Housing Market Assessment recommended that in aiming to achieve a mix of all property sizes appropriate to localised requirements, there should be a particular focus on family-sized units with three or more bedrooms to meet a need for such properties. There is no tension between the above policies and Policy D9D of the London Plan (LP), which recognises the role of HMOs in meeting local and strategic housing need. In the context of significantly boosting the supply of homes, assessing the size, type and tenure of housing needed for different groups in the community including families with

[1] In the Town and Country Planning (Use Classes) Order 1987 (as amended).

children and reflecting it in planning policies, is consistent with the Framework paragraphs 60-62.

9. The DPD does not define what is meant by gross original internal floorspace. However, I interpret "original" as having the same meaning set out in the GPDO at Article 2(1), i.e., as existing on 1 July 1948 or if built after that date, as it was originally built. Otherwise, a dwelling could be enlarged to above 120 m^2 prior to applying for planning permission for conversion to an HMO. This cannot be what the DPD intended, as it would circumvent the relevant criterion in Policy DM17:A. The Council assessed the dwelling as having a gross original internal floorspace falling well below 120 m^2; the internal layout drawings provided do not show otherwise. Given that later enlargements do not form part of the dwelling as it existed on the above date, they are not part of its gross original internal floorspace. Accordingly, the property does not meet the minimum size threshold for conversion to an HMO set out in Policy DM17:A.

10. The property is therefore of a size that the DPD seeks to retain as family accommodation, so as to meet the local need for such housing. It is highly likely that the local need for family-sized dwellings has increased since the DPD was adopted in 2017; there was no firm evidence to indicate otherwise. There is nothing before me which would cast doubt on the continuing suitability of the property to provide family accommodation. The property is located in an established residential area. The definition of family housing in the LP is met, the dwelling by virtue of its size, layout and design being suitable for a family to live in with at least three bedrooms. The internal floorspace together with the private amenity space available is highly likely to meet the housing needs of a family with children. An HMO on the other hand generally provides relatively short-term residential accommodation primarily aimed at individuals or couples. This all supports a finding that the HMO has caused a net reduction in smaller family housing.

11. Two examples where permission has recently been granted at appeal for larger HMOs in nearby Boroughs were referenced[2]. However, in neither instance was there a loss of existing accommodation identified as a priority to meet local needs. As a result, I afford those decisions little weight.

12. Therefore, the HMO has adversely affected the availability of smaller family housing in the Borough by failing to accord with criterion in DPD Policy DM17:A. Also, the failure of the HMO to contribute to meeting an identified housing need is contrary to Policy HLP Policy SP2.

Living conditions

13. Although there are public transport facilities and shopping opportunities nearby, on the whole the property occupies a relatively quiet, residential setting. Whilst this and other residential streets nearby might be busier at other times of day, I observed limited levels of pedestrian or vehicular traffic in the immediate vicinity. Therefore, it would not be unreasonable to assume that the occupiers of adjoining residential property might typically expect to experience relatively low levels of noise and disturbance.

[2] Appeal Refs: Appeal Ref: APP/B5480/W/19/3220624 & APP/N5090/W/20/3251995.

14. A family with, for example, three children could occupy the property as a single dwelling utilising the four bedrooms on the upper floors. However, it is more likely that use as a dwelling would involve one or perhaps two bedrooms being used for other purposes, such as a study or for storage. Therefore, it is highly likely that the HMO has given rise to a significant increase in numbers of occupiers at the property. In turn, this has in all probability resulted in a considerable increase in activity compared to the use as a dwelling. This increase also includes several rooms, i.e., the bedrooms and kitchen, being utilised more intensively. For example, in an HMO the bedrooms usually form its occupiers' principal private space, meaning that those rooms are more likely to be in use for activities throughout the day with consequent effects in terms of noise and disturbance on adjoining occupiers. This is in marked contrast with a dwelling, where some rooms including bedrooms are for the most part unused during daytime hours. The significant increase in the number of occupiers is also likely to have led to a much greater frequency of individual comings and goings to and from the property compared to use as a dwelling.

15. Additionally, occupiers of an HMO can often lead largely separate daily lives, with differing work patterns, lifestyles and leisure interests. Relationships between the occupiers of different rooms in an HMO are generally absent. As a result, activities such as preparing food, washing clothing or socialising with visitors internally or in the external amenity space, as well as comings and goings to and from the property, are likely to take place at different times throughout the day, including late at night or early in the morning. This has had the effect of increasing the levels of noise and disturbance experienced by adjoining occupiers at times when they might otherwise reasonably expect to enjoy good levels of peace and quiet.

16. Due to the above factors, adjoining occupiers are highly likely to have experienced a significant increase in noise and disturbance, both from additional activity at the property as well as from extra comings and goings thereto, all as a result of the use as an HMO. The intensity of the HMO use and the associated extra incidences of noise and disturbance at and in the environs of the property is entirely at odds with the otherwise reasonably quiet residential context identified above.

17. Moreover, evidence supplied by the Council, including a 2017 report, points to a high concentration of HMOs in the eastern part of the Borough. This includes a cluster of what are highly likely to be HMOs in the vicinity of the property. It also shows a significant growth in HMO numbers, notwithstanding the Article 4(1) Direction. A Research Paper[3] and a Government report[4] referred to both highlighted the adverse impacts arising from clustering of HMOs including noise and nuisance. This evidence all indicates the high probability of the HMO as having contributed further to the levels of noise and disturbance already being experienced by adjoining occupiers as a result of other HMOs in the immediate and wider area.

18. Consequently, the HMO has, both individually and in accumulation with other such uses in the vicinity, led to a considerable and harmful erosion of the living conditions previously enjoyed by occupiers of adjoining property having regard to unacceptable levels of noise and disturbance. This fails to accord with DPD Policy DM1:D, by not ensuring a high standard of amenity for the

[3] Haringey HMO and Planning Policy Development Research Paper, Haringey Council 2012.
[4] Evidence Gathering Housing in Multiple Occupation and possible planning responses Final Report, DCLG 2008.

development's neighbours and not addressing issues of noise likely to arise from the use and activities. Furthermore, by having a significant adverse amenity impact on the surrounding neighbourhood, the HMO does not accord with criterion in DPD Policy DM17:A. However, I did not identify any specific failure to accord with HLP Policy SP11 in the above respect.

Other Matters

19. I am given to understand that the 2020 Housing Delivery Test figures show new housing in the Borough to be less than 75% of that required over the previous three years. In this context, the HMO makes a modest contribution to the supply of housing. Also, although I was not supplied with information concerning the level of need for low-cost housing in the Borough, it is highly likely that the HMO contributes to meeting an appreciable local as well as London-wide need for such accommodation. The above weighs in favour of granting permission.

20. There is no dispute that the HMO satisfies other relevant criteria in DPD Policy DM17:A, including in terms of its accessibility by public transport, cycling and walking, internal space standards, external amenity space and provision of convenient refuse storage facilities. I have found no reason to conclude otherwise. However, the absence of unacceptable harm in respect of those matters is a neutral factor and neither weighs in favour nor against granting permission.

Ground (a)-Planning Balance and Conclusion

21. The HMO does not accord with the Development Plan. In view of the shortfall in the supply of housing in the Borough referred to above, it is therefore necessary to assess the deemed planning application arising on ground (a) against the presumption in favour of sustainable development. In this respect, there is an economic benefit through increased trade to local businesses arising from additional occupiers at the property and an environmental benefit by making the effective use of land. There is also a social benefit from the contribution made to the supply of housing and in particular to what is highly likely to be an appreciable need for such accommodation.

22. However, the above benefits are small-scale. There is a considerable negative social impact arising from the adverse effect on the availability of smaller family housing, for which there is a significant identified local need. This fails to ensure the provision of a range of homes to meet the needs of present and future generations. There is also a considerable negative social impact due to the adverse effect on the living conditions of neighbouring occupiers and the consequent failure to foster a well-designed, safe place. Overall therefore, the adverse impacts of the HMO significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It follows that the HMO does not constitute sustainable development.

23. For the above reasons, the ground (a) appeal does not succeed.

Ground (f) appeal

24. The ground of appeal is that the notice requirements are excessive.

25. An enforcement notice can have the purpose of remedying the breach, including by restoring land to its condition before the breach took place.

Alternatively, it can have the purpose of remedying any injury to amenity caused by the breach. Whilst the notice does not state as such, its purpose must be to remedy the breach; the unauthorised use as an HMO has to cease in its entirety and any works that facilitate the use must be removed.

26. Step 2 requires the removal of two bedrooms on the ground floor including their partitions and doorways. Sales agent particulars dating from at or around 2014 showing the ground floor layout were supplied, as well as a layout drawing of the ground floor accompanying a 2015 prior approval application for a single storey rear extension[5]. This evidence indicates that some or all of the partitions and doors forming the rooms in question were installed at some stage after 2015. Therefore, it is highly likely that those works facilitated the use as an HMO. There is no firm evidence to indicate otherwise. Established case law confirms that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement action, so that the land is returned to its condition before the change of use took place[6].

27. Nevertheless, whether the ground floor rooms are used as living spaces or for sleeping purposes is of limited relevance provided the property reverts to use as a dwelling. Use of rooms for living or sleeping purposes as an integral part of a use as a single dwelling is not taken to be development. Similarly, works affecting only the interior of the building do not involve development. Both rooms are of a reasonable size in terms of use either for living or sleeping purposes. Moreover, it is highly likely that the partitions and doors at issue have reinstated a similar room layout at the property to that as originally built. The above all raises a realistic prospect of the ground floor partitions and doors being re-erected and the ground floor rooms being used either as living/dining areas or as bedrooms as a part of the dwelling immediately following compliance with the notice.

28. Therefore, in my view step 2 serves no useful purpose and goes beyond what is reasonably required to restore the property to its condition prior to the breach taking place. I shall vary the notice to delete this step accordingly. There would be no injustice. Steps 1 and 3 are sufficient for the purpose of remedying the breach. The ground (f) appeal succeeds to this limited extent.

Conclusion

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and 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.

Stephen Hawkins

INSPECTOR

[5] Council Ref: HGY/2015/0397.
[6] *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630; *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784.