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/21/3276935
21 Buller Road, London N17 9BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nazir Yousaf against an enforcement notice issued by the Council of the London Borough of Haringey.
- The notice was issued on 17 May 2021.
- 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 (Sui Generis use).
- The requirements of the notice are: 1. Cease the use of the property as a House in Multiple Occupation; 2. Remove from the property any internal door locks into habitable rooms facilitating the use of the property as a House in Multiple Occupation; 3. Remove any partitions facilitating the use of the property as a House in Multiple Occupation; and 4. Remove from the property any resultant debris.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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. 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 Matter

2. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeal. The main parties 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 (c) appeal

3. The ground of appeal is that the matter alleged in the enforcement notice does not constitute a breach of planning control. The appellant has to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.

4. The appeal property contains an enlarged end of terrace dwelling in which the residential accommodation is arranged over three floor levels. I was unable to view the interior of the property. However, I am given to understand that there are a total of seven bedrooms, together with a kitchen and three bathrooms. I also understand that approximately eight people forming around six households are currently residing at the property, sharing the kitchen and bathroom facilities.

5. There is no dispute that the property is used as a large House in Multiple Occupation (HMO). This has, as a matter of fact and degree, involved a material change in the use of the property from its lawful use as a single dwelling. The Act[1] at s55(1) includes the making of a material change in the use of any buildings or other land within the definition of development. Planning permission is required for the carrying out of any development of land by virtue of s57(1) of the Act.

6. There is no planning permission for use of the property as an HMO. The issuing of an HMO licence by the Council in January 2021 concerns separate legislation and is not equivalent to a grant of planning permission. Carrying out development without the required planning permission is a breach of planning control as set out in the Act at s171A(1)(a).

7. Therefore, the appellant has been unable to show that the use of the property as a large HMO does not constitute a breach of planning control and the ground (c) appeal fails.

Ground (a) appeal

Main Issues

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

    - The effect of the development 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 and on existing and future occupiers of the development, having regard to noise and disturbance.

Reasons

Availability of smaller family housing

9. Policy DM17:A of the Haringey Development Management Development Plan Document (DPD) provides for converting a dwelling to an HMO where certain criteria, which include the gross original internal floorspace of the property concerned being in excess of 120 m^2, are met. The DPD supporting text explains that the aim of this policy is amongst other things to prevent a reduction in the availability of smaller family housing, for which a significant need in the Borough exists. This reflects Policy SP2 of the Haringey Local Plan Strategic Policies (HLP), referred to in the Council's statement of case, which aims to provide homes to meet the Borough's identified housing needs. Both of the above policies are consistent with the Framework, which at paragraph 62 advises that the size, type and tenure of housing needed for different groups in the community, including families with children, should be assessed and reflected in planning policies.

10. The DPD does not define what is meant by gross original internal floorspace. However, I interpret "original" as having the same meaning as in Article 2(1) of the GPDO[2] 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

[1] Town and Country Planning Act 1990.
[2] Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

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 calculated that the dwelling had a gross original internal floorspace that fell below 120 m^2; there is no sound reason which would lead me to conclude otherwise. Given that the later enlargements do not form part of the dwelling as it was originally built, 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 DPD Policy DM17:A.

11. 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. 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 and the internal floorspace together with the ample private amenity space available is eminently suitable in terms of meeting the housing needs of a family with children. By contrast, the development most likely provides relatively short-term residential accommodation for individuals or couples. This all supports a finding that the HMO has caused a net reduction in smaller family housing.

12. I have considered whether the property could be used by up to six unrelated persons as a small HMO within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended), in the event the notice is upheld. However, an Article 4(1) Direction applies in the eastern part of the Borough, in which the property is located. The effect of this Direction is that a change of use from a Class C3 dwelling to a Class C4 HMO, otherwise permitted development by virtue of Article 3, Schedule 2, Part 3, Class L of the GPDO, requires express planning permission. As a result, the use of the property as a Class C4 HMO does not represent a realistic 'fallback' position. The reasonable likelihood of the property reverting to use as a single family dwelling following the appeal reinforces my findings set out above.

13. In conclusion therefore, the development has had an adverse effect on the availability of smaller family housing in the Borough by failing to accord with the relevant criterion in DPD Policy DM17. Also, the failure of the development to contribute to meeting an identified housing need in the Borough is contrary to HLP Policy SP2.

Living conditions

14. Limited information was provided regarding the proportion of HMOs on this or in nearby residential streets, or throughout the wider area. Few properties in the vicinity exhibited any obvious external characteristics which might generally be regarded as consistent with a use as an HMO, such as lower standards of repair and maintenance, extra waste and recycling storage, or increased pressure on on-street parking. My overall impression is that the property occupies a relatively quiet, well-ordered and largely well-maintained suburban residential setting, with a high proportion of properties in single family occupancy. 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, not dissimilar to those experienced by residents of areas mostly comprised of single family housing.

15. Having regard to the use as a large HMO, the number of occupiers at the property has in all probability increased significantly compared to the previous

use as a dwelling; no firm evidence was advanced which might have indicated otherwise. Use as a large HMO is therefore highly likely to have resulted in a considerable increase in activity at the property. This increase also includes several rooms at the property, i.e., the bedrooms and kitchen, being utilised more intensively. I understand that at least six bedrooms are currently occupied, in some instances by more than one person. Each bedroom forms 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 generally 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 the use as a dwelling.

16. 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 in all likelihood 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.

17. Due to the above factors the adjoining occupiers are highly likely to have experienced a significant increase in noise and disturbance, both from the additional activity at the property as well as from extra comings and goings thereto, as a result of the development. The intensity of the large HMO use and the associated extra incidences of noise and disturbance at and in the environs of the property is typical of a more urbanised setting and is therefore at odds with the otherwise reasonably quiet residential context.

18. There was little to indicate exactly how occupiers of the property might experience significantly greater levels of noise and disturbance compared to, for example, a similarly-sized HMO elsewhere. Therefore, I am not persuaded that the development provides unsuitable living conditions for the existing and future occupiers in this regard. Even if that had been the case, it would not have altered my overall conclusions in respect of this issue or the outcome of the appeal.

19. Consequently, the development has led to a considerable and harmful erosion of the living conditions previously enjoyed by occupiers of adjoining property. This fails to accord with criterion in DPD Policy DM1, by not ensuring a high standard of amenity for the 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 development does not accord with criterion in DPD Policy DM17. I did not identify any specific failure to accord with either LP Policy SP2 or Policy SP11 in the above respect. However, by not creating a high standard of amenity for existing and future users the development is also inconsistent with the Framework.

Other Matters

20. The development has involved an increase in the supply of housing and is highly likely to contribute to meeting a need for HMO accommodation, both in the Borough and throughout London. Nevertheless, as any benefits that arise in the above respect are small scale, I afford them limited weight.

Ground (a) conclusion

21. The development does not accord with the Development and is inconsistent with the Framework. Therefore, the ground (a) appeal does not succeed.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice 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