



Appeal Decision

Site visit made on 28 June 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2022

Appeal Ref: APP/N5090/C/21/3285142

Land at 155 Booth Road, London NW9 5JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr & Mrs K Patel against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/0177/21, was issued on 13 September 2021.
- The breach of planning control as alleged in the notice is Without planning permission change of use of the property to a House in Multiple Occupation (HMO) (Use Class C4).
- The requirement of the notice is to cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirement is 6 months.
- The appeal is proceeding on the ground 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out in the Decision.

Formal Decision

1. It is directed that the enforcement notice is corrected in paragraph 3 of the notice by the insertion of the word 'material' immediately prior to the wording 'change of use'. Subject to the correction, 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. The notice refers to the 'change of use' without planning permission of the appeal property to a house in multiple occupation (HMO). However, since the act of development referred to in statute is a 'material change of use' I shall correct the notice accordingly. I am satisfied that the correction is minor and can be made without injustice.
3. The Council's reasons for issuing the notice refer to policies from Barnet's Local Plan Core Strategy (CS) (2012) and Local Plan Development Management Policies (DMP) (2012), against which the Council confirm such matters should continue to be determined. However, reference is also made in the Council's statement of case to policies from the 'emerging' Draft Local Plan (Reg 19)¹, and specifically to policies HOU03 and HOU04. Although the Council state that 'substantial weight' may now be given to these policies as material considerations, no evidence has been provided in respect of the outcome of any

¹ Submitted for examination pursuant to Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (November 2021)

independent examination of the Draft Local Plan or its subsequent adoption. The weight that I give to these policies is therefore limited as a consequence.

The appeal on ground (a)

Main Issues

4. The main issues are:

- The effect on character of the surrounding area;
- The effect on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance arising from occupation of the appeal property as a house in multiple occupation; and
- Whether or not the appeal property is in an appropriate location for occupation as a house in multiple occupation, with particular regard to need and accessibility.

Reasons

Character

5. Although Booth Road takes on more of a bustling character at its junction with Colindale Avenue it seemed to me that, for much of its length between Montrose Avenue and the approach to Colindale Avenue, it is a typically quiet, suburban residential street. A small cluster of properties nearby previously converted to self-contained flats, identified by the Council as being those at Nos 163, 165 and 167, do not materially alter the prevailing character of what is otherwise an area primarily of housing in single household occupancy.
6. The occupation of the property in the manner set out in the Notice would not bring about any external changes to the property, whilst the appellant also states that the level of occupancy would not be materially different to that of a larger family were the property to be occupied as a single-family dwelling. Nor does it follow, the appellant suggests, that the level of comings and goings would be materially different.
7. However, five households occupying the property independently of each other would be likely to result in a more intensive pattern of comings and goings, visitors and deliveries than that which might be expected of a single-family dwelling, even a larger one. As such a level of activity or occupation does not appear to be typical of Booth Road, the occupation of the appeal property in this manner would amount to an overly intensive residential use out of keeping with the quieter residential character of the appeal property and its surroundings on Booth Road with the very real potential to cause harm to the living conditions of occupiers of nearby residential properties.
8. Whilst DMP policy DM09 is supportive of retaining existing, and encouraging new, HMOs this is qualified by, amongst other factors, proposals not having a harmful effect on the character of the surrounding area. CS policies CS1 and CS5 set out the Council's over-arching approach to ensuring that development protects and enhances Barnet's character whilst DMP policy DM01 sets out in further detail how the Council will ensure high quality design and development.
9. The Council's 'Supplementary Planning Document: Residential Design Guidance' (SPD) (2016) provides further guidance in this respect, noting both the

circumstances in which conversion of existing dwellings to HMO can be appropriate and setting out the considerations against which such proposals should be assessed. Together, these policies and the SPD seek to ensure that development should preserve local character and that the conversion of dwellings and loss of houses in roads characterised by houses will not normally be appropriate.

10. For the reasons I have set out therefore, the occupation of the appeal property as an HMO would be likely to result in a level and nature of comings and goings over and above that which might reasonably be expected at a single-family dwelling. This would be at odds with the quieter residential character of this part of Booth Road and thus conflict arises with CS policies CS1 and CS5 and DMP policies DM09 and DM01 as a result, as well as with the guidance set out within the SPD.

Living conditions

11. The appeal property is a typical suburban semi-detached property within the modest residential setting of Booth Road. As such, neither it nor its neighbours enjoy an excess of space around them and the effects of five households living independently of each other, such as the movements, deliveries and visitors associated with each, would be particularly keenly felt.
12. Even if the property were to be occupied as a single-family home by a larger family, the nature and intensity of movements associated with that occupation would not be uncommon within a street of similar properties. However, occupation in the manner and quantum set out within the notice would be likely to introduce a different, more intensive pattern of occupation, movements, visits and deliveries.
13. It is unlikely therefore that the resulting pattern of occupation, and the comings and goings associated with it, would be equivalent to those likely to arise from occupancy by a family unit. Within a typical suburban residential setting such as Booth Road the more intensive nature of this occupation would be disruptive to, and at odds with, the prevailing occupation of houses as single-household homes.
14. The appellant acknowledges that additional comings and goings could potentially cause noise. As per DMP policy DM09, I am not persuaded that the occupation of the appeal property as an HMO would not cause harm to the living conditions of occupiers of neighbouring properties. There would, as a consequence, be conflict with DMP policy DM09 and also with DMP policies DM01 and DM04 which together seek to ensure that development avoids a harmful impact upon the amenities of the surrounding area, with particular regard to noise and disturbance.

Location

15. DMP policy DM09 recognises the role that HMO can play in providing a form of specialist housing. Thus, it states that proposals for new HMO will be encouraged provided that they meet an identified need, are easily accessible by public transport, cycling and walking and it can be demonstrated that proposals will not have a harmful impact on character and amenities of the surrounding area.

16. The appellant argues that there is a clear and evidenced 'need' for HMO accommodation in the vicinity of the appeal site which the appeal site would contribute towards meeting. As such, my attention has been drawn to the site's location relative to Middlesex University as a source of potential residents, the appeal property's occupancy and viewing records since 2019 and the testimonies of two letting agents describing the demand and need for such accommodation. I have also been referred to approved schemes of conversion of dwellings to HMO² where the matter of demand and need for HMO was considered.
17. What I have been presented with however amounts to evidence of a market demand for HMO accommodation, not of an identified need. I have however carefully considered the reasoning behind the decisions in respect of other properties within the Borough by the Council³ and in an Inspector's appeal decision⁴, respectively which have been brought to my attention.
18. However, the appellant's reliance on these is misplaced. The appeal property is not located as conveniently as the Watford Way property in relation to Middlesex University or its student population who might be seeking local accommodation. Even if it were, there is nothing within the evidence to suggest that the occupants of the appeal property fall within such a group or groups in the manner found by the Inspector in respect of the proposal at 66 Sturgess Avenue⁴. Nor, from the evidence before me in this instance, does the current appeal property appear to be located in an area where HMO accommodation is prevalent to the extent that was described as being the case in relation to the Watford Way property.
19. The appellant has therefore sought to draw parallels with justification presented in respect of different properties, in different locations, with a different relationship to particular groups of people seeking accommodation where a shared workplace or place of education, way of life or other factors might generate a need for such housing. What has not been demonstrated are those factors with specific reference to the current appeal property and to the area within which it lies.
20. The occupation of individual rooms as part of an HMO may provide lower cost housing in comparison with flats and smaller single-household dwellings. The appellant notes references within CS policy CS4 to a need for lower cost housing in support of this approach. On the evidence before me I accept that there may be a demand for the type of accommodation provided within the appeal property, but I am not persuaded that this translates to a demonstrable and identified need. Nor has any evidence been put forward to indicate that there is not an equal demand, or indeed an actual need, for the occupation of the property as a single-household dwelling or that the current occupiers are students or others who may benefit from lower cost housing.
21. The appeal site's PTAL rating of 2 is considered by the Council to be poor in terms of accessibility to town centre services and public transport links. However, the bustling commercial area around Colindale station and its public transport links are a pleasant, if moderately lengthy, stroll away along Booth

² Appellant Final Comments Appendices A and B and Appendix C

³ Appellant Final Comments Appendices A and B – 230 Watford Way NW4 4UA and LPA Ref No: 20/0529/FUL

⁴ Appellant Final Comments Appendix C – APP/N5090/W/20/3261065

Road or through Montrose Park. Burnt Oak station and bus stops on Lanacre Road are also within reasonably easy reach.

22. DMP policy DM09 encourages proposals for new HMO where they are, amongst other factors, easily accessible by public transport, cycling and walking. 'Easily' accessible is not defined by DMP policy DM09. However, notwithstanding the appeal site's relatively low PTAL rating, the services and facilities noted above are accessible via level and well-lit residential streets. The site's location does not therefore present an insurmountable obstacle to accessing services, facilities or transport links in the manner envisaged by DMP policy DM09.
23. However, whilst that may be so, it has not been demonstrated that the occupation of the appeal property as an HMO would meet an identified need, as opposed to demand. Even if I were to conclude that the demand argued by the appellant amounted to an identified need for an HMO, I am particularly mindful that the encouragement of HMO offered by DMP policy DM09 remains qualified by assessments of impact upon both character and amenities of the surrounding area. Thus, as I have found harm in respect of both character and living conditions, the proposal would still be contrary to DMP policy DM09 even if need were to exist. However, for the reasons I have set out, I am not persuaded that need does exist and the proposal is contrary to DMP policy DM09.

Other Matters

24. The appeal was made only on ground (a) and not on grounds (f) that the requirements of the notice are excessive or (g) that the time given to comply with the requirements of the notice is too short. Nevertheless, the appeal property is home to its tenants and the notice's requirement to cease the use of the property as a HMO amounts to interference with the residents' convention rights under Article 8 of the European Convention on Human Rights⁵.
25. However, given the harm identified in the reasons for issuing the notice and my conclusions in respect of the appeal under ground (a), I am satisfied that the requirement set out pursues the legitimate aim of regulating the use of land in the public interest. The action is both necessary and proportionate. I am also satisfied that, in the absence of a specific (or hidden) appeal under ground (g) that the period of 6 months within which to comply with the notice is both reasonable and proportionate to the situation.

Conclusion

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

G Robbie

INSPECTOR

⁵ as set out within the Human Rights Act 1998