



Appeal Decisions

Site visit made on 4 October 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH NOVEMBER 2022

Appeal A Ref: APP/A5270/C/20/3255140

53 Carlisle Avenue, Acton, London W3 7NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr S Janjuha against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 13 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a ground floor rear extension, a two storey side extension, a single storey (first floor) rear extension and the material change of use of the premises to a mixed use of self-contained flats and a large HMO (sui generis use).
 - The requirements of the notice are to:
 1. Cease the mixed use of the property as a large HMO (sui generis use) and self-contained flats.
 2. Remove the kitchen and drainage connections from the self-contained flats;
 3. Remove the bathroom and drainage connections from the self-contained flats;
 4. Remove all internal doors, locks and partitions which facilitates (*sic*) the mixed use of the property as self-contained flats and a large HMO;
 5. Demolish the ground floor rear extension;
 6. Demolish the two storey side extension;
 7. Demolish the single storey (first floor) rear extension;
 8. Make good all external damage to the property as a result of the above steps in materials matching the remainder of the building; and
 9. Remove all 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), (b), (f) and (g) 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.
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Appeal B Ref: APP/A5270/C/20/3255142

55 Carlisle Avenue, Acton, London W3 7NL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr S Janjuha against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 13 May 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a ground floor rear extension, a two storey side extension, a single storey (first floor) rear extension and the material change of use of the premises to a mixed use of self-contained flats and a large HMO (sui generis use).
- The requirements of the notice are to:
 1. Cease the mixed use of the property as a large HMO (sui generis use) and self-contained flats.
 2. Remove the kitchen and drainage connections from the self-contained flats;
 3. Remove the bathroom and drainage connections from the self-contained flats;
 4. Remove all internal doors, locks and partitions which facilitates (*sic*) the mixed use of the property as self-contained flats and a large HMO;
 5. Demolish the ground floor rear extension;

6. Demolish the two storey side extension;
 7. Demolish the single storey (first floor) rear extension;
 8. Make good all external damage to the property as a result of the above steps in materials matching the remainder of the building; and
 9. Remove all 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), (b), (f) and (g) 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.
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Appeal C Ref: APP/A5270/W/21/3283982
53 and 55 Carlisle Avenue, London W3 7NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr S Janjuha against the Council of the London Borough of Ealing.
 - The application, Ref 212417FUL, is dated 12 March 2021.
 - The development proposed is described as "*retrospective planning permission for the retention of (part of) the existing rear ground floor extension, a two storey side extension, a single storey (first floor) rear extension as well as the material change of Nos 53 and 55 Carlisle Avenue from single dwellings (Class C3) to large Houses in Multiple Occupation (Sui Generis)*".
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Decisions

1. Appeals A and B-It is directed that the enforcement notices be varied by substituting "*six months*" in the final sentence of paragraph 5 with "*nine months*" as the periods for compliance. Subject to these variations the appeals are dismissed, the enforcement notices are upheld and planning permission is refused on the applications deemed to have been made under s177(5) of the 1990 Act as amended.
2. Appeal C-The appeal is allowed and planning permission is granted for part of the existing rear ground floor extension, a two storey side extension, a single storey (first floor) rear extension as well as the material change of Nos 53 and 55 Carlisle Avenue from single dwellings (Class C3) to large Houses in Multiple Occupation (Sui Generis) in accordance with the terms of the application ref 212417FUL, dated 12 March 2021, subject to the conditions in the Schedule at the end of this Decision.

Application for Costs

3. An application for costs was made by Mr S Janjuha against the Council of the London Borough of Ealing in respect of Appeal C. This application is the subject of a separate Decision.

Preliminary Matters

4. The appellant sought to argue that both appeal properties effectively functioned as large Houses in Multiple Occupation (HMOs). The question as to whether what in fact has occurred at the properties amounts to large HMOs, as opposed to mixed uses of self-contained flats and large HMOs, involves considerations relevant to ground (b)-"*that those matters (i.e., the matters stated in the notice which may give rise to the breach of planning control) have not occurred*". Therefore, I intend to deal with Appeals A and B as if they had also been made on that ground. There would be no injustice, the Council having addressed such matters in its written submissions.

5. The London Plan 2021 (LP) was published in March of that year. The LP comprises the spatial development strategy for London and is now part of the Development Plan. Policies in the LP have superseded the policies in the previous London Plan as well as the draft policies referred to in the Council's reasons for issuing the notices.
6. The revised National Planning Policy Framework (the Framework) came into force during the course of Appeals A and B. The main parties have been given an opportunity to comment on the implications of the revised Framework in respect of those appeals.
7. The description in the banner heading of the development proposed in Appeal C is taken from the application form. I have omitted references in my decision to words which do not relate to an act of development.

Appeals A & B

Ground (b) appeals

8. The burden of proving that the matters alleged in the notices have not occurred as a matter of fact rests with the appellant, the relevant test of the evidence being on the balance of probability.
9. The appeal properties contain a pair of semi-detached residential buildings. Both buildings have been substantially extended at the sides and rear, to provide living accommodation arranged over three floor levels. On the ground floor of No 53 are two bedrooms with ensuite facilities, a shared living/dining area and kitchen together with a shared bathroom. There are four bedrooms on the first floor, two of which are ensuite, with another bedroom having access to a shared bathroom. Also on this floor is an ensuite bedroom containing a kitchenette. Another ensuite bedroom, also containing a kitchenette, occupies the second floor. On the ground floor of No 55 are two ensuite bedrooms and a shared living/dining area, as well as an ensuite bedroom containing a kitchenette. On the first and second floors are a further seven bedrooms, two of which have access to a shared bathroom. The other bedrooms are ensuite, two of which also contain kitchenettes.
10. An HMO is generally understood to be living accommodation that is occupied by persons who do not form a single household and who share basic amenities such as a toilet, personal washing and cooking facilities. The presence in an ensuite bedroom of a small, basic kitchenette for occasional use would not, by itself, mean that the room had the facilities required for day-to-day private existence, this being the distinctive characteristic of a dwellinghouse according to established case law¹. The kitchenettes fitted in five bedrooms at the properties however include a sink, drainer, fitted cabinets and a two-ring hob, as well as day-to-day domestic electrical appliances such as a fridge/freezer and a microwave. Consequently, the kitchenettes are well-equipped. The facilities provided by the kitchenettes for the storage, preparation and cooking of food would be perfectly adequate in terms of meeting the day-to-day requirements of the tenants occupying these five bedrooms. Therefore, the bedrooms in question each possess the separate facilities that would normally be associated with a use as a dwelling.
11. There is of course also a much larger shared kitchen in both buildings, each containing a range of facilities for storing, preparing and cooking food. Even so, given the well-equipped nature of the kitchenettes there is little to indicate that persons occupying the bedrooms in question would use the shared kitchens, other than perhaps occasionally. Also, most of the bedrooms containing kitchenettes are on the upper floors of the buildings. To my mind,

¹ *Gravesham BC v SSE* [1984] 47 P&CR 143.

where kitchenettes have been provided it is therefore more probable that occupiers would favour the greater convenience, as well as privacy, associated with storing, preparing, cooking and consuming food in their own rooms. The appellant did not present any clear and compelling evidence which might indicate that the occupiers of the rooms with kitchenettes utilised the shared kitchen facilities at most times.

12. As a result, on the balance of probability and as a matter of fact and degree, I find that the buildings are in mixed uses as self-contained flats and large HMOs and that the matters alleged in the notices have therefore in fact occurred. The appellant has been unable to show otherwise and the ground (b) appeals fail.

Ground (a) appeals

Main Issues

13. The effect of the Act at s177(1)(a) is that the terms of the deemed planning applications arising from the ground (a) appeals flow directly from the allegations in the notices. The notices each allege the mixed use of the properties as self-contained flats and large HMOs. Use solely as a large HMO however differs materially in terms of its character, as well as in the amount of self-contained accommodation created, the relevant planning units and the Development Plan policies applicable, from the mixed use specified in the allegations. Such use is a different development to that enforced against, it does not comprise part of the matters in the allegations and cannot therefore be considered in the deemed planning applications arising from the ground (a) appeals. A proposal for the use of the properties as large HMOs is dealt with in Appeal C. It follows that the main issues in the ground (a) appeals are:
- The effect of the mixed uses as flats and large HMOs on the living conditions of occupiers of adjoining residential property, having regard to noise and disturbance and privacy.
 - Whether suitable living conditions are provided for the existing and future occupiers of the properties, having regard to internal floorspace, outlook, noise and disturbance and the provision of outdoor amenity space.
 - The effect on the character and appearance of the area.

Reasons

Living conditions-adjoining occupiers

14. The properties occupy a relatively quiet, established suburban residential setting. This and surrounding residential streets could be busy at times, having regard to the presence of schools nearby. However, I observed limited levels of pedestrian and vehicular traffic in the immediate vicinity. As far as I was made aware, most properties in the locality are in single family occupancy, with no significant concentrations of large HMOs or flats.
15. Planning approval was granted for erecting two storey side and rear wrap around extensions to both properties in May 2016². Building out to accord with that approval would most likely have resulted in two, five-bedroom dwellings. Therefore, it is possible that each dwelling could have been occupied by a large family. However, it is more probable that such occupation would have involved one or more bedrooms being used for other purposes, such as a study or for storage. Consequently, if used as single dwellings the extended properties would probably each have a maximum of perhaps six or seven occupiers.

² Council Ref: 160525HH.

16. Use of the properties as flats and large HMOs has, based on the appellant's figures, resulted in No 53 being capable of accommodating up to thirteen occupants in seven rooms. No 55 is capable of accommodating as many as fifteen occupants in ten rooms, when all the rooms that I saw were being occupied are accounted for. Therefore, it is highly likely that the mixed uses as flats and HMOs represents a substantial increase in the overall numbers of occupiers at the properties when compared to the use as single dwellings.
17. The significant increase in the number of occupiers has in all probability resulted in a corresponding increase in activity at the properties, as well as a much greater frequency in terms of individual comings and goings. Moreover, occupiers of HMOs can often lead largely separate daily lives, with differing work patterns, lifestyles and leisure interests. Relationships between occupiers of different rooms in an HMO are generally absent. Similar considerations apply in respect of separate flats. As a result, activity by occupiers, such as preparing food, washing clothing or socialising with visitors internally or in the outdoor amenity space, as well as comings and goings, are highly likely to occur at different times throughout the day, including late at night and early in the morning. The above has in all probability resulted in considerable extra noise and disturbance being experienced by adjoining occupiers, who might otherwise have reasonably expected to enjoy good levels of peace and tranquillity at most times. This is not offset to any great degree by the distance from adjoining residences and is entirely at odds with the otherwise reasonably quiet suburban residential context.
18. There was no firm evidence of any unacceptable overlooking of adjoining residential property occurring as a result of the mixed uses. Nevertheless, for the reasons set out above the mixed uses have, individually and when taken together, led to a considerable and harmful erosion of the living conditions previously enjoyed by occupiers of adjoining residential property. The failure to ensure a high standard of amenity for adjacent uses by ensuring appropriate levels of development fails to accord with Policy 7B of the Ealing Development Management Development Plan Document (DPD), whilst not delivering appropriate amenity or helping to prevent or mitigate the impacts of noise does not accord with criteria in LP Policy D3.

Living conditions-existing and future occupiers

19. The flats generally each contain a double bed and some basic items of furniture such as a table, wardrobe and drawers as well as the kitchenette and ensuite facilities. There were few signs however of other large furniture items that might normally be associated with a living area, such as sofa chairs or a coffee table. Accommodating additional large furniture is highly likely to leave little space remaining for circulation or for storage of everyday domestic items, resulting in a cramped and congested living space for the occupiers. It is not unreasonable to expect that self-contained accommodation for up to two people would make provision for an area in which the occupiers can relax away from the sleeping area. The inability to comfortably accommodate items of day-to-day furniture generally found in similar self-contained accommodation is therefore an indication of the flats having a restrictive floor area. The areas of sloping ceilings further limit the useable floorspace in the second floor flats.
20. Moreover, the flats have gross internal floor areas (GIA) that vary between around 19 m² to up to 25 m². Therefore, all of the flats provide less than half of the minimum 58 m² GIA for a two-person flat set out in the LP at Table 3.1, which reflects the Government's Technical Housing Standards-Nationally Described Space Standard (THS)³. In the second floor flats, the minimum floor to ceiling height set out in criterion in LP Policy D6 and reflected in DPD Policy

³ DCLG March 2015.

3.5 is also not met in around a third of the floor area. The significant deficiencies when assessed against the minimum size standards set out above reinforces my misgivings regarding the restrictive floorspace in the flats.

21. The size of one of the HMO bedrooms falls slightly below the 7.5 m² minimum GIA for a single bedroom set out in the THS and the London Mayor's Housing Supplementary Planning Guidance (SPG), whilst three of the two-person rooms fell slightly below the 11.5 m² minimum GIA for a double bedroom in those standards. However, all of the HMO bedrooms in both properties are of a reasonable size for their level of occupancy, comfortably accommodating beds and some basic items of furniture whilst providing a good level of circulation space, as well as leaving space for the storage of everyday domestic items. Even in the HMO bedrooms with ensuite facilities, the rooms felt reasonably open and uncluttered; I was not left with the impression that any rooms were particularly cramped or congested. Consequently, the HMOs provide suitable levels of internal floorspace for the existing and future occupiers, notwithstanding the slight shortfall in GIA in some of the rooms when assessed against the minimum size standards.
22. For the most part, the flats and HMO bedrooms are lit by good-sized windows. The windows provide a reasonably open outlook, either towards the outdoor amenity spaces or over the front garden areas and the street, contributing to a light and airy feel in the rooms. However, that is not the case in one room on the ground floor of No 53, or in the second bedroom on the second floor of No 55, both of which are lit by quite small areas of glazing. The outlook from the narrow window in the ground floor room is further restricted by its proximity to a side wall of the single storey rear extension, whilst in the second floor room the window is above eye level. As a result, occupiers of these bedrooms experience restricted views of the exterior, with a limited outlook and limited levels of natural daylight. This has led to a significantly enclosed feel and a sense of oppressiveness in the rooms in question and does not contribute positively to a suitable living environment for the occupiers.
23. Additionally, given the substantial numbers of occupiers at the properties significant levels of activity are likely to be taking place in the shared spaces at times, including in the shared kitchens, dining/living areas and the outdoor amenity spaces. Together with the frequency of comings and goings, it is highly probable that the occupiers of the properties themselves also therefore experience significant incidences of noise and disturbance as well as a sense of the properties being congested at times. This is particularly the case in respect of occupiers of bedrooms alongside internal and outdoor shared spaces. There was little evidence of any sound insulation having been provided between bedrooms and shared spaces which might have assisted in mitigating the effects of such noise and disturbance.
24. The properties each retain good-sized areas of rear garden. I am given to understand that the size of each rear garden is about 90 m². I estimate that the amount of private outdoor amenity space at No 53 would meet that required by Table 7D.2 of the DPD in respect of the mixed use. At No 55, the size of the private outdoor amenity space is around 10% smaller than that required. Even so, a good number of the occupiers could comfortably utilise the rear garden for activities such as informal relaxation or drying clothes, without it feeling particularly crowded. Moreover, the rear gardens reflect advice set out in the Council's Planning New Garden Space Supplementary Planning Document. Therefore, notwithstanding the slight shortfall in size at No 55, suitable outdoor amenity space has been provided for the occupiers of both properties. It follows that there is no failure to accord with DPD Policy 7D A, as there has been an appropriate contribution towards meeting additional demand for open space, having regard to the standards in Table 7D.2.

25. Nevertheless, for the reasons set out above the mixed uses do not provide suitable living conditions for the existing and future occupiers of the properties on account of the limited size of the flats, the limited outlook provided in two HMO bedrooms and the significant levels of noise and disturbance the occupiers experience. By not providing adequately-sized rooms meeting the requirements in Table 3.1 with comfortable and functional layouts which are fit for purpose, the mixed use does not accord with LP Policy D6 and DPD Policy 3.5. In addition, by not achieving a high standard of amenity for users, including by ensuring good levels of light, the mixed use does not accord with DPD Policy 7B.

Character and appearance

26. The properties originated as a pair of semi-detached dwellings with a balanced appearance. Development in the vicinity largely consists of dwellings of similar architectural style and materials, arranged in regularly spaced pairs or short terraces in ample sized, rectilinear plots, with good sized front and rear gardens. Consequently, the surroundings exhibit a pleasant, reasonably spacious and cohesive suburban residential character and appearance. Residential extensions and changes to uses other than single family occupancy including other large HMOs, as well as infill development, have for the most part been successfully assimilated into the residential surroundings without any appreciable erosion of the above qualities.
27. The two storey side extensions have lower ridge lines than the host buildings, they are less than half the width of those buildings and the first floors are set well back behind the front elevations. The extension roof forms and eaves lines integrate with those of the host buildings. The elevational detailing and external materials closely reflect that of their host buildings. Consequently, the side extensions retain the sense of balance on the front elevations and are viewed in the street scene as subordinate built features in relation to their host buildings. Furthermore, the side extensions do not differ significantly in terms of their scale and visual impact to extensions at other properties in the vicinity.
28. Similarly, the crown roofed wrap around rear extensions and associated works have maintained the main roof eaves and ridge lines of the host buildings as well as a significant sense of the original roof forms. As a result, the side and rear wrap around extensions have not caused unacceptable harm to the character and appearance of the area. Moreover, as built the extensions have a significant outward resemblance in terms of their design, scale and materials to the extensions shown on the drawings accompanying the 2016 approval, which was granted in the context of similar Development Plan and national design policies.
29. Single storey flat roof extensions were also approved at the rear of both properties prior to the 2016 approval. Nevertheless, in accumulation with the side and rear wrap around extensions the single storey extensions have given rise to a substantial increase in the built form and footprint at the properties, leading to a significant erosion of the space about the buildings. The single storey rear extensions therefore help greatly in creating an impression of the original rear elevations of the buildings having been almost entirely subsumed by later extensions. They also contribute to an appreciably more built-up and enclosed feel, entirely at odds with the relatively spacious visual qualities of the locality identified above. As a result, the enlarged properties are viewed as alien features in the surroundings. Whilst the rear elevations of the buildings are open to limited public view, they can be seen from adjoining property. In any event, an absence of public views is not, on its own, a good reason for approving unacceptable development as it could be repeated, further eroding the visual qualities of the area.

30. I did not observe a great amount of waste and recycling being kept outdoors at the properties. Even so, a substantial waste and recycling storage facility is likely to be required, having regard to the number of occupiers. The scale of the waste and recycling storage is likely to be considerably in excess of that which might normally be associated with single family dwellings and given the need for convenience of servicing, could occupy a considerable portion of the front garden areas. In the absence of such a facility, the likely unrestricted proliferation of waste and recycling storage at the front of the properties reflects a more urbanised setting and is also therefore seen as an alien feature in the otherwise suburban residential street scene, contributing to the further harmful erosion of the visual qualities of the environs.
31. For the above reasons, portions of the extensions and activity associated with the mixed uses have also caused unacceptable harm to the character and appearance of the area. Whilst parts of the extensions have not caused visual harm, I cannot grant approval for the parts of the deemed planning applications in relation to those extensions as they are not clearly severable from the rest of the unauthorised developments. There is no failure to accord with LP Policy D1, which is largely concerned with preparing Development Plans. Even so, by not complementing the building pattern there is failure to accord with criterion in DPD Policy 7.4, whilst by not ensuring a coherent and appropriate level of development at the site and a positive visual impact, there is failure to accord with DPD Policy 7B.

Other matters

32. The appellant referred to a number of local examples where planning approval has recently been granted for large HMOs. As full details of the examples were not supplied, only limited comparison with the circumstances in these appeals can be made. None of those developments involved comparable maximum levels of occupancy at two adjacent properties, or a mixed use including flats. Moreover, although the example properties occupied a largely residential context, from what I observed some were either located on streets with appreciably higher levels of passing traffic compared to No 53 and No 55, or they were located in proximity to other sources of noise and disturbance. As a result, based on the information before me the circumstances in those examples are not comparable with the mixed uses in these appeals.
33. The mixed uses have increased the quantity of affordable housing stock in the Borough and the properties are in an accessible location. However, those factors do not outweigh the planning harm identified above.

Conclusion-ground (a) appeals

34. The unauthorised developments have caused unacceptable harm to the living conditions of occupiers of adjoining residential property and suitable living conditions for the existing and future occupiers of the properties have not been provided. Also, there is unacceptable harm to the character and appearance of the area. Therefore, the unauthorised developments do not accord with the Development Plan, taken as a whole, and the ground (a) appeals do not succeed.

Ground (f) appeals

35. The ground of appeal is that the notice requirements are excessive.
36. An enforcement notice can have the purpose of remedying the breach, including by discontinuing any use of the land or by restoring the land to its condition before the breach took place as provided by s173(4)(a) of the Act, or it can remedy any injury to amenity which has been caused by the breach as provided by s173(4)(b).

37. Although the notices do not state as such, it is clear that their purpose is to remedy the breaches of planning control. The notices require the unauthorised mixed uses to cease, together with works including the removal of the unauthorised side and rear extensions. Compliance with the requirements would remedy the breaches, as the properties would be restored to their condition prior to the breaches taking place.
38. The planning merits of the extensions attacked by the notices are considered in the ground (a) appeals. In the context of ground (f), I am mindful of the various approvals granted for extending both properties. As enforcement action is intended to be a remedial measure, whether the planning difficulties could be overcome at less cost and disruption is a relevant consideration. In this respect, it is also possible to remedy a breach of planning control by making development comply with the terms (including conditions and limitations) of any planning approval which has been granted in respect of the land.
39. Be that as it may, the extensions do not accord with the drawings accompanying the approvals. There is also no firm evidence of the extensions having been erected other than as part and parcel of and integral to continuous operations to extend both buildings to facilitate the unauthorised mixed uses. In particular, there was little to indicate that either building had been used as a single dwelling following substantial completion of the extensions and prior to the material changes of use occurring. Consequently, on the basis of the available evidence I am not persuaded that it is possible to rely on the previous approvals as authority for the extensions or that building out in accordance with those approvals is a realistic 'fallback' position.
40. By stopping short of requiring the extensions to be demolished, built development which facilitated the unauthorised material changes of use would remain in situ. This would not achieve the purpose of the notices, as it would not restore the properties to their pre-breach condition and so does not represent an obvious alternative to the requirements specified. No lesser steps by which the breaches might also be remedied were suggested and to my mind, there are none.
41. Consequently, the requirements to demolish the extensions remedy the breaches in a proportionate fashion. These and the other requirements are not excessive, having regard to the purpose of the notices, being no more than the minimum necessary to restore the properties to their condition prior to the breaches taking place. The ground (f) appeals fail.

Ground (g) appeals

42. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
43. In practice, the time available to occupiers before they have to vacate the properties is likely to be considerably shorter than the six months provided for in the notices, given that the substantial internal and external remedial works must also be undertaken within that period. The compliance period therefore provides the occupiers with a relatively tight timescale in which to search for and secure suitable alternative living accommodation. It also provides limited time for any negotiations regarding the termination of any longer tenancies to be concluded.
44. The well documented pressures on the availability and affordability of housing in London generally as well as the continuing after-effects of the COVID-19 pandemic are also relevant in terms of occupiers finding alternative accommodation. Other rented property in the locality controlled by the appellant might not necessarily be available given the relatively limited

timeframe involved. I cannot rely on the Council using its powers under s173A(1)(b) of the Act to extend the compliance period, as that is uncertain. I have to assess the reasonableness of the period for compliance on the basis of the circumstances before me.

45. Extending the compliance period to twelve months would unduly perpetuate the breaches and the associated planning harm. However, a period of nine months would take sufficient account of the factors identified above. It would strike a more appropriate balance between remedying the planning harm identified as soon as is practicable, whilst affording the occupiers an adequate timescale in which to secure suitable alternative accommodation and for any negotiations on ending tenancies to be concluded. This would avoid imposing a disproportionate burden on the appellant and their tenants. Furthermore, extending the compliance period to nine months would provide scope for absorbing any hitherto unforeseen delays or disruption caused by, for example, a resurgence of COVID-19 or changing economic conditions.
46. Therefore, I conclude that a reasonable period for compliance would be nine months and I am varying the notices accordingly, prior to upholding them. The appeals under ground (g) succeed to that extent.

Conclusions

47. For the reasons given above I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notices with variations and refuse to grant planning permission on the deemed applications.

Appeal C

Main Issues

48. The Council did not advance any substantive reasons as to why it would have refused the application, had it been in a position to do so. The proposal involves the use of No 53 and No 55 as large HMOs. Each property would have six bedrooms and would each accommodate up to ten occupiers. The existing kitchenette facilities would be removed, so that none of the rooms provided self-contained accommodation. Space formerly used as bedrooms in both properties would provide ground floor living and dining areas with an additional shared kitchen on both first floors, whilst a second floor room in No 55, currently used as a bedroom, would be used for storage. The single storey rear extensions to both properties would be demolished. Therefore, I consider that the main issues in this appeal are:

- The effect of the proposal on the living conditions of occupiers of adjoining residential property, having regard to noise and disturbance.
- Whether suitable living conditions would be provided for the existing and future occupiers of the properties, having regard to internal floorspace, outlook, noise and disturbance and provision of outdoor amenity space.
- The effect on the character and appearance of the area.
- The effect on highway safety.

Reasons

Living conditions-adjoining occupiers

49. The proposal entails reducing the maximum number of occupiers at the properties by between a quarter and a third, compared to the mixed uses in Appeals A and B. There would be a corresponding reduction in the scale of activity at the properties as well as the comings and goings thereto, due to the

substantial reduction in the number of occupiers. The resulting scale of activity and comings and goings would be higher, but not markedly so, from that which might reasonably be associated with use of the properties as large family dwellings. Also, when looked at individually or together the maximum number of occupiers would not be dissimilar to that of other large HMOs recently approved in the locality. Consequently, the proposal would be comfortably assimilated within its established residential context and would not result in occupiers of adjoining residential property experiencing appreciably greater levels of noise and disturbance compared to the use of the properties as single dwellings.

50. As the proposal would not cause unacceptable harm to the living conditions enjoyed by occupiers of adjoining residential property, it would ensure a high standard of amenity for adjacent uses with appropriate levels of development in accordance with DPD Policy 7B. Furthermore, delivering appropriate amenity and helping to mitigate the impacts of noise is in accordance with criteria in LP Policy D3.

Living conditions-existing and future occupiers

51. By reconfiguring the interiors of the buildings as set out above, the bedrooms would either meet or exceed the relevant minimum GIA, whilst removal of the single storey rear extensions coupled with inserting an additional window in the ground floor rear elevation of No 53 would ensure that all of the bedrooms were provided with a suitable outlook. Reducing the number of occupiers to the maximum limits set out in the proposal is likely to result in appreciably less noise and disturbance being experienced by occupiers of the properties compared to the mixed uses in Appeals A and B. Suitable sound insulation measures to address the effects of noise and disturbance on occupiers with rooms adjacent to internal and outdoor shared spaces could be secured by a planning condition. In addition, the proposal would make provision for suitably sized, private outdoor amenity spaces at both properties.
52. Therefore, the proposal would provide suitable living conditions for the existing and future occupiers of the properties. The provision of adequately-sized rooms meeting the requirements in LP Table 3.1, with comfortable and functional layouts which are fit for purpose, accords with LP Policy D6 and DPD Policy 3.5. By achieving a high standard of amenity for users the proposal accords with DPD Policy 7B. Also, there is accordance with DPD Policy 7D A, as there is an appropriate contribution towards meeting additional demand for open space.

Character and appearance

53. Removing the single storey rear extensions would address the visually harmful aspects of the enlarged built forms identified above, whilst the reduction in the numbers of occupiers is also likely to require less provision for waste and recycling storage and would enable a visually acceptable facility to be secured through the imposition of a suitable condition.
54. Consequently, the proposal would not cause unacceptable harm to the character and appearance of the area and by complementing the building pattern there is accordance with criterion in DPD Policy 7.4, whilst by ensuring coherent and appropriate levels of development at the site with a positive visual impact, there is accordance with DPD Policy 7B.

Highway safety

55. There is limited off-street vehicle parking available at the properties. Even so, the locality has a Public Transport Accessibility Level (PTAL) of 4, reflecting a good level of access to public transport services. The properties are also within

convenient walking or cycling distance of a range of local services and facilities. Moreover, the relative affordability of HMO accommodation means that it can often be an attractive option for persons who are unable to support the costs associated with running a vehicle. It is not unreasonable to anticipate therefore that many occupiers of the properties would not require access to a private car to meet their day-to-day travel needs. That the Council did not provide any evidence of incidences of parking congestion in the locality attributable to the mixed uses in Appeals A and B also supports a finding that the proposal would not increase pressures on local on-street parking capacity compared to the lawful uses as single dwellings.

56. Therefore, the proposal restricts car parking in line with levels of existing and future public transport accessibility and connectivity in accordance with LP Policy T6. It also follows that, based on the evidence before me, in these specific circumstances a Planning Obligation restricting the occupiers' rights to apply for parking permits in the Controlled Parking Zone would not satisfy the relevant tests in paragraph 57 of the Framework.

Conditions

57. After seeking the views of the main parties, I shall impose a condition which, in addition to those matters already specified above, requires within a set timescale the reconfiguration internally and externally of the properties to accord with the approved drawings, including the reduction in the number of bedrooms and removal of the single storey rear extensions, as well as for the provision and retention of secure, covered cycle storage. Furthermore, I shall impose a condition limiting the maximum number of occupiers. The above requirements are necessary in order to safeguard the living conditions of the existing and future occupiers of the properties and those of the occupiers of adjoining residential property, as well as to safeguard the character and appearance of the area. In the case of secure cycle storage provision, this is necessary to encourage travel by means other than the private car.
58. Condition 1 is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the implementation of the approved scheme, because development has already taken place. The purpose and effect of the condition is therefore to ensure that the approved development may only remain if the appellant complies with its requirements.

Conclusion

59. The proposal would not cause unacceptable harm to the living conditions of occupiers of adjoining residential property and suitable living conditions for the existing and future occupiers would be provided. Also, there would be no unacceptable harm to the character and appearance of the area or to highway safety. Therefore, the proposal accords with the Development Plan and the appeal should be allowed.

Stephen Hawkins

INSPECTOR

SCHEDULE OF CONDITIONS

Appeal C:

- 1) The use of the site as two large HMOs hereby approved shall cease and the two storey side and rear extensions and single storey rear extensions to the buildings shall be totally demolished with all resulting demolition materials removed from the site, and the site shall be reinstated to its condition before development took place within one month of the failure to meet any one of the requirements set out in (a) to (e) below:
 - a) Within nine months of the date of this decision the buildings have been reconfigured so that the external appearance and internal layout of 53 Carlisle Avenue is fully in accordance with the following drawings: 3020A-03/FP, 3020A-04/FP, 3020A-05/FP, 3020A-06/FP & 3020A-07/FP, and; the external appearance and internal layout of 55 Carlisle Avenue is fully in accordance with the following drawings: 3020A-03/FP Revision A, 3020A-04/FP Revision A, 3020A-05/FP, 3020A-06/FP & 3020A-07/FP. The above works shall include reducing the number of bedrooms in each building to no more than six, removing all of the kitchenettes from the bedrooms, demolishing the single storey rear extensions, provision of the additional window to the rear bedroom on the ground floor at No 53 and making good the external walls of both buildings where required using external materials similar to those of the buildings.
 - b) Within nine months of the date of this decision the following schemes have been submitted in writing to the Local Planning Authority for approval, to include a timetable for their implementation: A scheme for sound insulation of the floor/ceiling /wall structures separating different types of rooms/uses, namely, communal entrance/staircase and bathrooms above/below/adjoining bedrooms, and; a scheme for waste and recycling storage at the site and; a scheme for secure cycle parking at the site.
 - c) If within twelve months of the date of this decision the Local Planning Authority refuse to approve the schemes or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - d) If an appeal is made in pursuance of (c) above, that appeal shall have been finally determined and the submitted schemes shall have been approved by the Secretary of State.
 - e) The approved schemes shall have been carried out and completed in accordance with the approved timetable.

Following the undertaking of the works of reconfiguring the buildings to accord with the approved drawings listed above at (a) and upon implementation of the approved schemes specified in this condition, the site shall be maintained in accordance with those drawings and in accordance with the approved schemes.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The maximum number of occupiers in each building shall not exceed ten.