



Appeal Decisions

Site visit made on 28 June 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2022

Appeal A Ref: APP/N5090/C/21/3286114

16 Montrose Avenue, Edgware HA8 0DW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr I Ahmed (HAZR Ltd) against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/1287/20, was issued on 26 October 2021.
- The breach of planning control as alleged in the notice is without planning permission, the use of the property as a House in Multiple Occupation (HMO Use Class C4).
- The requirements of the notice are 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 Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out in the Formal Decision.

Appeal B Ref: APP/N5090/W/21/3283616

16 Montrose Avenue, Edgware HA8 0DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Iqan Ahmed (HAZR Ltd) against the decision of the Council of the London Borough of Barnet.
- The application Ref 21/3778/RCU, dated 8 July 2021, was refused by notice dated 9 September 2021.
- The development proposed is change of use from C3 dwellinghouse to small-scale HMO for up to 6 people (Use Class C4).

Summary Decision: The appeal is dismissed.

Formal Decisions

Appeal A

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.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The Council's reasons for issuing the notice refer to policies from '*Barnet's Local Plan (Core Strategy)*' (CS) (2012) and '*Barnet's 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 Plan¹, and specifically to policy HOU02. Although the Council state that 'substantial weight' may now be given to this policy as a material consideration, no evidence has been provided in respect of the outcome of any independent examination of the Draft Local Plan or its subsequent adoption. The weight that I give to this policy is therefore limited as a consequence.

Main Issues

4. The main issues arising in the appeals are:

- 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 housing supply;
- The effect on character of the surrounding area; and
- 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.

Reasons

Location

5. DMP Policy DM09 recognises the role that HMOs can play in providing a form of specialist housing whilst London Plan Policy H9, in seeking ensure that the best use is made of housing stock, states that boroughs should promote the efficient use of existing housing stock to reduce the number of vacant and under-occupied dwellings and to take account of the role that HMOs play in meeting local and strategic housing needs.
6. DMP Policy DM08 seeks to ensure an appropriate mix of dwelling types and sizes to provide choice for all households across the borough. Proposals for new HMOs will be encouraged by DMP Policy DM09 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. However, DMP Policy DM08 emphasises the importance of ensuring provision of a range of dwelling types and sizes. HMOs are one particular type of housing, often providing a low-cost option but, across tenures, 3 and 4 bed housing are the highest priority for the Council.
7. It is argued by the appellant 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. To this end, my attention has been drawn to the site's location relative to Middlesex University, Edgware Community Hospital, Metropolitan Police training centre and the offices of Public Health England. These, the Council accept, are within a reasonable walking distance of the appeal property and, within the PTAL4 zone, are reasonably well-connected by public transport.

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

8. However, I have not been presented with any direct or evidenced link between those facilities and the occupation of the appeal property as an HMO, or that this constitutes an identified need, as opposed to merely a local market demand for such properties. Nor has any compelling evidence been provided to demonstrate that the appeal property provides, or is occupied as, specific low-cost housing.
9. Although it is broadly agreed that there is housing need across all house sizes and tenures, there is little persuasive evidence before me to demonstrate that there exists either a particular or pressing shortage of HMO accommodation or conversely a surplus of family-sized housing to justify the loss of a family-sized home where the latter is identified as a particularly high priority. Indeed, it seems to me that the recent commentary on housing provision set out within the Council's '*Authorities Monitoring Report 2019/20*²' (AMR) supports the Council's approach to its house size priorities set out in DMP policy DM08, rather than call it into question in the manner the appellant seeks to portray.
10. 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, that the current occupiers are students or others who may benefit from lower cost housing or that the appeal property was vacant or under-occupied prior to its occupation as an HMO.
11. 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, given the appeal site's relatively accessible PTAL rating, the services and facilities noted above are accessible via level and well-lit residential streets and 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.
12. 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 has a counterbalance with the identification of the provision of three and four bedroom properties as being 'the highest priority' for the Council at DMP Policy DM08. I am also mindful that the encouragement of HMOs by DMP Policy DM09 is also qualified by assessment of their impact upon both character and amenities of the surrounding area.
13. My attention has been drawn by the appellant to an instance elsewhere within the borough³ where a property was converted to an HMO, resulting in the loss of a larger dwelling. However, in that instance an Inspector concluded amongst

² 'Barnet's Local Plan Authorities Monitoring Report 2019/20' appended as Appendix I to the appellant's Statement of Case

³ APP/N5090/W/20/3251995 – 67 Vivian Avenue, Hendon, London NW4 3XE

other factors that, as at least an 8-bedroom dwelling, it would not have resulted in the loss of characteristic housing or existing accommodation identified as a priority to meet needs. The appeal property in this instance is a more modestly sized dwelling consistent with a type of accommodation identified as a priority to meet needs. Nor does the Council's AMR diminish the priority for 3 and 4 bedroom dwellings identified by DMP policy DM08.

14. Nevertheless, for the reasons I have set out above, it has not been compellingly demonstrated that the occupation of the appeal property as an HMO meets an identified need. In this respect, the proposal would be contrary to DMP Policy DM09 and London Plan Policy H9, and, in terms of the loss of a family dwelling from an area where it has not been demonstrated that single family dwellings are not the predominant form of housing, also contrary to DMP Policies DM01 and DM08.

Character

15. Although Montrose Avenue is exposed to the busier surroundings of Burnt Oak Broadway at its junction with it, it nevertheless seemed to me that, for much of its length between Burnt Oak Broadway and Montrose Park, it is a reasonably quiet, suburban residential street. The relatively generous width of Montrose Avenue at this point, and the open space around Saint Alphage church, opposite, are particular contributors to the quieter residential character of the area around the appeal property.
16. The appellant has not compellingly challenged the Council's assertion that Montrose Avenue is predominantly comprised of single household dwellings, rather than sub-divided properties providing either smaller flats or, as in this instance, HMOs. My observations during my visit confirmed this, visually at least, with little if any evidence of such sub-division whether through multiple door-entry systems or refuse collection arrangements. This distinguishes the appeal property and street from an example quoted at 67 Vivian Avenue⁴, where an Inspector noted a mix of uses and tenures within an area of diverse character. It is therefore reasonable to conclude that the prevailing character of the surrounding area is primarily of housing in single household occupancy.
17. 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 to that of a single-family dwelling.
18. However, six 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 Montrose Avenue, the occupation of the appeal property in this manner would amount to a noticeable and overly intensive residential use out of keeping with the quieter residential character of the appeal property and its surroundings. This would have the very real potential to cause harm to the living conditions of occupiers of nearby residential properties.

⁴ APP/N5090/W/20/3251995 – 67 Vivian Avenue, Hendon, London NW4 3XE

19. In the appeal example⁵ drawn to my attention by the appellant, it is noted that the Inspector concluded that the likely effects of an increase in activity associated with an HMO were most likely to be experienced within its immediately vicinity. Although I do not have the full details or context of that example before me, the residential area within which the current appeal property is notable for the significant presence of the church and its grounds opposite, and thus a lack of further housing on the opposite side of the road. There are therefore fewer residential properties in the immediately vicinity of the appeal property to offset the comings and goings and general levels of activity associated with an HMO; put simply, there are fewer residential properties and consequently less activity, for the comings and goings at the appeal property to be ameliorated by.
20. 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.
21. 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.
22. For the reasons I have set out, 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, even a modestly sized one such as the appeal property. This would be at odds with the quieter residential character of this part of Montrose Avenue 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

23. The appeal property is a typical suburban semi-detached property within the modest residential setting of Montrose Avenue. As such, and despite a reasonably lengthy rear garden, neither it nor its neighbours enjoy an excess of space around them. The effects of six households living independently of each other within only a modest property such as the appeal property, particularly the movements, deliveries and visitors associated with each, would be particularly keenly felt and would, in my judgement, be materially different to that of a single, larger family.
24. 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

⁵ APP/N5090/W/21/3268522 – 49 Heming Road, Edgware HA8 9AB

to introduce a different, more intensive pattern of occupation, movements, visits and deliveries.

25. 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. Whilst I acknowledge the street's relative proximity to the busier Burnt Oak Broadway, Montrose Avenue is nevertheless relatively quiet, aided by the appeal site's setting opposite the open grounds and quiet setting of Saint Alphage church. Thus, within a typical suburban residential setting such as Montrose Avenue the more intensive nature of this occupation would be disruptive to, and at odds with, the prevailing occupation of houses as single-household homes.
26. The appellant seeks to draw parallels with two recent appeal cases where Inspectors concluded, amongst other matters, that those schemes would not result in disturbance and harm to the living conditions of neighbours through additional comings and goings. However, in the first instance⁶ the comparison of relative occupancy between an HMO and a single household dwelling was in relation to a much larger property than in the current instance, and in a location acknowledged as being one where multiple household occupancy was not uncommon.
27. With regard to the second example⁷, in that instance it was concluded that use as an HMO would be likely to result in increased comings and goings, at different times of the day, and thus exhibiting different patterns of use when compared with a single household unit, albeit to an extent that would have a limited effect on the function and character of the wider street. I accept that no evidence of specific complaints regarding the current occupation of the appeal property has resulted in recorded instances of disturbance, and that the Council's concerns are not therefore supported by evidence in this instance. Nevertheless, given the context and nature of the appeal property's immediate setting, the modest nature of the appeal property itself and its close physical relationship with its residential neighbours, the Council's conclusion, with which I concur, is not an unreasonable one to reach.
28. For these reasons, as per DMP Policy DM09, I am not persuaded that the occupation of the appeal property as an HMO does not cause harm to the living conditions of occupiers of neighbouring properties. This would be at odds with the quieter residential character of this part of Montrose Avenue 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.

Other Matters

29. 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 an HMO amounts to interference with the residents' convention rights under Article 8 of the European Convention on Human Rights⁸.

⁶ APP/N5090/W/20/3251995 – 67 Vivian Avenue, Hendon, London NW4 3XE

⁷ APP/N5090/W/21/3268522 – 49 Heming Road, Edgware HA8 9AB

⁸ as set out within the Human Rights Act 1998

30. 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.
31. I note the appellant's statement that an HMO licence is in place for the occupation of the appeal property as an HMO. That may be so, but that represents a different regime of control to that set out within planning legislation, where I am required to consider the planning merits of the proposal. The presence of an HMO licence is not a material consideration to which I give any significant weight.

Conclusion

32. For the reasons given above I conclude that the appeal should not succeed. In relation to Appeal A 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. In relation to Appeal B I shall dismiss the appeal.

G Robbie

INSPECTOR