The Planning Inspectorate

Appeal Decision

Site visit made on 20 September 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2022

Appeal Ref: APP/N5090/C/21/3289336
Land at 25 Old Rectory Gardens, Edgware, HA8 7LS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Amanullah Kochi against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/0979/21, was issued on 11 November 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 (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 six 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.

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 Matters

2. The enforcement notice alleges a change of use of the property to a house in multiple occupation (Use Class C4).

3. For the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), dwellinghouses fall within Use Class C3 and are defined as the use by a single person or by people to be regarded as forming a single household, or not more than six residents living together as a single household (other than a use within Class C4). The UCO defines Class C4 as use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO).

4. The Council has confirmed that on 29 May 2016 it introduced a Borough wide Article 4 Direction to remove permitted development rights for a change of use from Use Class C3 to C4[1]. The effect of the Direction is that planning permission is required for a change of use between those use classes.

[1] Article 3 and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) otherwise provide permitted development rights for development consisting of a change of use of a building from a use falling within Class C3 to a use falling within Class C4, and vice versa.

Main Issues

5. The Council's evidence states that the enforcement notice was issued on 17 August 2021, that the period for compliance is eight months and that the notice was justified for two reasons. However, those matters are inconsistent with the enforcement notice submitted with the appeal and referred to in the Council's questionnaire, which was issued on 11 November 2021, with one reason for issuing it and a compliance period of six months.

6. I have therefore identified the main issues based on the single reason for issuing the notice, as follows:

   - whether the HMO meets an identified need, having regard to development plan policy;
   - the effect of the use on the character and appearance of the area; and
   - the effect of the use on the living conditions of the occupiers of neighbouring dwellings with particular regard to noise and general disturbance.

Reasons

7. The appeal relates to a two storey, semi-detached property located within a residential cul-de-sac. DMP[2] Policy DM09 states that proposals for new HMOs will be encouraged provided that they meet an identified need, can demonstrate that they will not have a harmful impact on the character and amenities of the surrounding area, are easily accessible by public transport, cycling and walking and meet the relevant housing standards for HMO.

Need

8. The Council explain that where there is a need fulfilled by HMO uses it is often a need generated in very particular circumstances, such as the need to provide student housing or accommodation to people who share a workplace or way of life. Although the appellant explains that he is one of three friends using the property, not in a commercial sense or for profit, he has not sought to identify that such circumstances exist in this case.

9. As no other evidence is provided to demonstrate that there is an identified need, I must conclude that the use of the property as a Class C4 HMO is contrary to DMP Policy DM09.

Character and appearance

10. The Council states that Old Rectory Gardens is predominantly characterised by single family dwellings. That is not disputed by the appellant and I saw no obvious indications to suggest otherwise.

11. I recognise that poorly maintained homes and poor refuse and garden management can arise regardless of the tenure of a property. Nevertheless, those are recognised issues associated with HMOs, which by their very nature, provide a more transient form of accommodation and a higher turnover of occupants. Such occupants are therefore less likely to be actively engaged in the community and to care in the same way about the appearance of the

[2] Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012

property and its surroundings, compared to occupants of single family dwellings.

12. I saw that the appeal property hadn't been maintained in the same way as its neighbours and the rear garden had an unkempt appearance with areas of discarded items. Those negative external effects are sufficiently noticeable to harm the character and appearance of the area, contrary to Core Strategy[3] Policy CS5, DMP Policies DM01 and DM09 and the Council's Residential Design Guidance SPD[4]. Those state, amongst other things, that proposals should preserve or enhance local character.

Living conditions

13. I appreciate that the property is currently being used by three friends so the effect on the occupants of neighbouring properties may not be significantly different to that of a single family home. However, if I were to allow the appeal on the basis of a Class C4 HMO, that use could be significantly intensified with up to six unconnected residents with very different patterns of usage and behaviour, compared to the occupants of a single household who are more likely to carry out activities on a communal basis. Indeed, a HMO use is likely to generate more noise and disturbance as individuals come and go separately from one another for work, shopping and other day-to-day activities.

14. Similarly, a greater number of unconnected individuals living within one property will in turn likely generate a greater number of separate visitors and deliveries to the property with associated noise and disturbance through the sound of voices, opening and closing of doors and vehicles. A more intensive use is also more likely to increase noise from multiple video and audio sources operating simultaneously.

15. As the appellant has not sought to demonstrate that such harmful impacts would be avoided in this case, the Class C4 use is contrary to DMP Policy DM09.

Other Matters

16. The Council's reason for issuing the enforcement notice also cite conflict with DMP Policy DM02 (development standards) and its Sustainable Design and Construction SPD (adopted 2016). However, I find the policy and SPD to have a limited relevance to the main issues identified.

17. I note the appellant's reference to applying for a HMO licence but that is a matter for the Council and is beyond the scope of this appeal.

Conclusion

18. 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.

Richard S Jones

INSPECTOR

[3] Barnet's Local Plan (Core Strategy) Development Plan Document September 2012
[4] Local Plan Supplementary Planning Document: Residential Design Guide October 2016