



Appeal Decision

Site visit made on 31 January 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Ref: APP/Y5420/C/22/3290634

The land and building(s) known as 171 Broad Lane, Tottenham, London N15 4QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Paul Gboluwaji Adu against an enforcement notice issued by London Borough of Haringey.
 - The notice was issued on 3 December 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the material change of use from a single family dwellinghouse to a small House in Multiple Occupation (C4 HMO).
 - 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 requirements is: 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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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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. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) provides for the use of a dwellinghouse as a "house in multiple occupation" (small HMO) by not more than 6 residents; that is up to 6 unrelated individuals who share basic amenities such as a bathroom and kitchen. There is no dispute that the previous use of the property was a single dwellinghouse (use class C3¹).
3. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 3, Class L grants planning permission for a change of use from a dwellinghouse (Class C3) to a small HMO (Class C4). However, on 30 November 2013 a Direction under Article 4(1) of the previous GPDO came into force throughout the council's administrative area. The effect of this Direction is that a change of use from Class C3 to Class C4 has required express planning permission since that date. No such grant of express planning permission for the change of use of the property to an HMO has been drawn to my attention.

¹ Use as a dwellinghouse (whether or not as a sole or main residence)—(a) by a single person or by people living together as a family, or (b) by not more than six residents living together as a single household (including a household where care is provided for residents).

4. The submissions from the appellant challenges the council's premise that the change of use is a material change of use considering paragraph 2(a) of section 55 of the Act and the definition of development under that section. They consider that the use remains as residential and alterations that have taken place affect the interior of the building and do not affect the external appearance of the building. They state that the use from C4 to C3 can also be reversed without the need for planning permission. As the appellant considers that planning permission is not required, because there has been no material change of use, I consider this to be a hidden ground of appeal which I will consider under ground (c) of s174 of the Act. Given the evidence before me, I can consider this hidden ground of appeal without injustice to either party.
5. The council has confirmed that Haringey's Housing Delivery Test 2021 measurement was 75%. Accordingly, the Borough's planning policies relevant to this appeal are not out of date and there is no longer the presumption in favour of sustainable development set out under section 11(d) of the National Planning Policy Framework (the Framework).

The appeal on ground (c)

6. This legal ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The notice alleges an unauthorised material change of use of the property. While the use of the property as a small HMO (Class C4) is not in dispute, the appellant considers that the property remains in a residential use and the change of use from that as a single dwellinghouse (Class C3) is not *material*.
7. The making of a material change in the use of any building or other land amounts to 'development' as defined in s55(1) of the Act. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act. The onus is on the appellant to show that the change of use from C3 to C4 was not material and the test of the evidence is on the balance of probability.
8. The property has been extended within the roof space and the loss of a communal lounge has provided six bedrooms. The appellant argues that the appeal property could be lawfully occupied by a similar number of residents, or more, living together as a family. While that could occur, it is more probable than not that a property this size would be likely to have fewer occupants and would tend to be occupied in a significantly different manner in terms of activity levels and noise and disturbance from the comings and goings of up to 6 independent adults and their visitors.
9. Nevertheless, in the absence of cogent evidence from the appellant, I am not persuaded that, on the balance of probabilities, the change of use of the property from a single dwellinghouse to a small HMO was not material in planning terms. Therefore, I consider that the change of use is development that requires express planning permission.
10. The appeal on ground (c) cannot therefore succeed.

The appeal on ground (a) and the deemed planning application

Main Issues

11. These are the effect of the development on the availability of smaller family housing in the Borough and its effect on the character of the surroundings with particular regards to its impact on current and future local residents.

Reasons

12. The appeal site (No. 171) is a two storey end of terrace dwellinghouse on the corner with Springfield Road and fronting Broad Lane. While Springfield Road appears to be a quieter mainly residential road, Broad Lane is characterised by both residential and commercial properties. Opposite is Tottenham Hale Retail Park. The property has been extended to the rear with a single storey extension and the loft has been converted to provide a further bedroom and shower room. The property has 6 bedrooms over three floors, 2 separate bathrooms and a kitchen diner. To the rear is an area of private outdoor space. The site lies in an area designated as a Family Housing Protection Zone although it is not clear from the council's representations to which policy in the development plan this relates.

Availability of smaller family housing

13. The council aims to protect existing family housing while ensuring that an adequate mix of dwelling sizes is delivered within new developments. To assist with housing difficulties within the Borough, Policy DM17 of the Haringey Development Management Development Plan Document (DPD) provides for the conversion of larger homes to an HMO within the area covered by the Article 4 Direction where certain criteria are met. The most pertinent criteria being that the gross original internal floorspace of the property concerned is greater than 120sqm. Although "original internal floorspace" is not defined by the policy, I take that to mean the internal floor area of the property as existing on 1 July 1948 or if built after that date, as it was originally built. This is consistent with the definition in Article 2(1) of the GPDO².
14. 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 2013-2026³ (HLP), referred to in the council's statement of case, which aims to provide homes to meet the Borough's identified housing needs. Both 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.
15. The council calculated that the dwelling has a gross original internal floorspace of approximately 85% which is below 120sqm required by Policy DM17. Given that the later enlargements do not form part of the dwelling as it was built originally, they are not part of its gross original internal floorspace. The appellant has made no reference to the floorspace and in the absence of evidence to refute the council, there is no sound reason which would lead me to conclude otherwise.

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

³ Formerly the Core Strategy and consolidated with alterations since 2017

16. The appellant highlights the potential loss of small HMOs where the ability to convert back to a C3 use can be accomplished without the need for planning permission. They question the impact that such a loss may have on the housing market and consider that the property meets a 'demonstrable housing need as evidenced by the individuals occupying it'. They reference the 2017 Strategic Housing Market Assessment⁴ which is reported as identifying 'a need for smaller one bedroom dwellinghouses including for smaller household sizes'. However, without demonstrating that the loss of No. 171 as a small HMO would negatively impact on housing provision in direct conflict with the council's commitment to protect against the loss of smaller family housing, I afford this argument limited weight.
17. I acknowledge HMOs play an important role in meeting particular housing needs and the appellant has brought to my attention Policy H9 of the London Plan 2021. The Plan recognises that shared accommodation and HMOs are a strategically important part of London's housing offer, meeting distinct needs and reducing pressure on other elements of the housing stock. It goes on to advise that in considering proposals that might constrain this provision, boroughs should take into account the strategic as well as local importance of HMOs. Although the council has an Article 4 Direction in place, it does not have a blanket restriction on the change of use of properties from C3 to C4. This flexible approach conforms with the Framework and the London Plan.
18. The need to provide a sufficient supply of small family homes to encourage mixed and balanced communities is a council priority. Overall, I consider that the development has an adverse effect on the availability of small family housing units in the Borough and this is contrary to the aims of Policy DM17 of the DPD which seeks, amongst other things, to protect against their incremental loss. The failure of the development to contribute to meeting an identified housing need in the Borough is also contrary to the essence of Policy SP2 of the HLP.

Character of the area and the impact on local residents

19. The council's submissions explain that it is a high concentration of HMOs in the east of the Borough that has a much wider harmful impact on local residents and the character of that area. The evidence is provided by the council's 'HMO and Planning Policy Development Research Paper, August 2012' and the 2014 'Strategic Housing Market Assessment' which formed part of the evidence base to support the Article 4 Direction that removed permitted development rights from C3 to C4. This was supplemented by further research⁵ by the council's HMO Licensing Team. This amongst other things, estimated that up to 50% of the total number of private sector dwellings were HMOs and a map shows the significant number of HMOs within the Borough, with a particularly heavy concentration in the east.
20. The council identifies that a high concentration of HMOs often impacts an area in ways such as an increase in anti-social behaviour, noise and disturbance, and with negative impacts on the physical environment and streetscape. It provides as part of its evidence a report⁶ undertaken to review the problems caused by high concentrations of HMOs. While the area is both a busy commercial and residential area bustling with traffic and people, an over concentration of HMOs can result in

⁴ Evidence base for the London Plan 2021

⁵ London Borough of Haringey Additional and Selective Licensing Evidence Base October 2017

⁶ Evidence Gathering – Housing in Multiple Occupation and possible planning responses DCLG September 2008

an adverse impact on the amenity and wellbeing of the local community. This can alter the dynamics of the area and result in an unbalanced mix of housing which can affect the character of the area and have an impact on residents. Without evidence to the contrary, there is no reason to dispute the fact that the Borough has a high concentration of HMOs in this area and that this has resulted in a loss of smaller family dwellings and a change in the character of the area.

21. For these reasons, the use of the property as a small HMO would conflict with Policy DM1 of the DPD which requires development to make a positive contribution and improve the character and quality of an area; Policy DM17 which seeks, amongst other matters, to ensure HMOs do not give rise to any significant adverse amenity impacts on the surrounding neighbourhood, including cumulative impacts arising from an over-concentration of HMOs within an area; and Policy SP11 of the HLP which expects development to respect its local context and character and to contribute to the creation and enhancement of Haringey's sense of place and identity.

Other Matters

22. My attention has been drawn to other appeal decisions relating to HMOs which the appellant considers has relevance to the appeal before me. While London may be described as having a single housing market, there will be distinct differences between some Boroughs where housing requirements will vary. Being in different Boroughs, the appeals may have been determined against different planning policies which do not prohibit the loss of smaller housing units. Also, the area may not be affected by a high concentration of HMOs.
23. While I am not provided with the full circumstances of each decision, I consider that on the surface, these examples are not sufficiently comparable to be objectively relevant. Furthermore, there are instances where planning policies are deemed out of date and there is a presumption in favour sustainable development. In the case before me, there remains a need for smaller family homes in the Borough and I am not provided with any objective evidence that substantiates that there is not such a need.

Conclusion on ground (a) and the deemed planning application

24. 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.

The appeal on ground (g)

25. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant requests 12 months to ensure that tenancy agreements that may have recently commenced can be terminated. They also consider it necessary to respect the welfare needs of tenants, allowing them time to find alternative suitable accommodation. The council consider 6 months to be sufficient as they understand the tenancy agreements can be terminated with 2 months' notice. I consider that 6 months is an acceptable period for compliance and would allow any tenants sufficient time to find alternative accommodation while respecting their welfare needs. Consequently, the appeal on ground (g) fails.

S A Hanson INSPECTOR