



Appeal Decision

Site visit made on 15 February 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2023

Appeal Ref: APP/G2625/C/21/3277140

Land at 16 Rydal Close, Norwich NR5 8LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Miss Rachel Jackson against an enforcement notice issued by Norwich City Council.
- The notice was issued on 26 May 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the above land from residential (Class C3) / HMO (Class C4) use to residential sui generis use.
- The requirement of the notice is: Cease the unlawful residential sui generis use and return the premises back to its lawful residential (Class C3) use or HMO (Class C4) use by reducing the number of occupiers to a maximum of six persons.
- The period for compliance with the requirement is four months after the notice takes effect.
- 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 as corrected and varied in the terms set out below in the Formal Decision.

The Notice

1. The breach of planning control stated at Section 3 of the enforcement notice refers to an unauthorised change of use from 'residential (Class C3) / HMO (Class C4) use to residential sui generis use'. Although the appellant understands the breach of planning control specified in the enforcement notice, the Planning Practice Guidance advises that enforcement notices are not improved by over-elaborate wording or legalistic terms, and that plain English is always preferable to ensure they are comprehensible to the lay person¹.
2. It is clear that the breach of planning control involves an unauthorised material change of use to a dwellinghouse used by 7 residents as a House in Multiple Occupation (HMO). It is not clear whether its former use was as a dwellinghouse by a single household or as a dwellinghouse by not more than 6 residents as a HMO. While those potential former uses fall within the C3 and C4 use classes respectively, as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), the unauthorised use in this case does not fall within any specific use class defined in the UCO.
3. Uses which do not fall within a specific use class are known as 'sui generis' uses, but this is not made clear to the lay person in the enforcement notice. This follows through to the requirement of the enforcement notice, which refers

¹ Paragraph: 019 Reference ID: 17b-019-20180222

to the breach of planning control in the same terms. I shall therefore correct the breach of planning control and vary the requirement stated in the enforcement notice to describe the use of the dwelling in the same terms as the UCO, to provide clarity. There is no need to specify the former use.

4. There are errors in Section 4 of the enforcement notice, which refer to the unauthorised material change of use as 'the proposal'. I shall correct these minor inaccuracies to avoid any confusion. None of these minor changes would cause injustice to the main parties or any loss of natural justice to any other parties.

Ground (a) and the deemed application for planning permission

Main Issues

5. The main issues are:

- Whether the use of the dwellinghouse by 7 residents as a HMO provides acceptable living conditions for those residents; and
- The impact of the use of the dwellinghouse by 7 residents as a HMO on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

Living Conditions: HMO Residents

6. The appeal dwelling has 7 bedrooms, a communal kitchen, a communal lounge, and 2 communal bathrooms, and is served by a private garden area. The appellant has explained that 2 of the bedrooms have en suites.
7. The internal layout of the appeal dwelling is cramped, with the communal lounge providing the only space for residents to sit down or congregate. This area is extremely small, with a television and what the appellant has described as 2 sofas and an extendable dining table with chairs. The lounge also provides access to a bedroom. It would be incapable of being used by all residents of the HMO at the same time for eating or relaxation. Any talking or watching of television in the lounge would likely disturb the occupier of the bedroom accessed from it.
8. Although residents may not want to congregate together, the internal layout of the building forces them to largely rely on their private bedrooms for relaxation and eating. The kitchen may provide space for residents to interact, but this also comprises a passageway between the front and rear of the house and is evidently an important and busy space for storage and preparation of food, and cleaning.
9. The living conditions provided for residents therefore fall below what would reasonably be considered acceptable on account of the lack of internal communal space and the proximity of the lounge to one of the bedrooms. Floor plans previously submitted to the Council² show that the bedroom accessed off the lounge could have previously formed a dining area conjoined with the lounge. This suggests that the dwelling would be capable of providing acceptable living conditions for a smaller number of residents.

² Plan reference 16RC N S 01 A submitted as part of planning application 15/00075/U

10. Payment of rent for ongoing occupancy of the property by up to 7 tenants does not convince me that the living conditions offered to them are acceptable, as this could be affected by the level of rent charged and local availability of affordable accommodation. I also note that the property provides the necessary facilities to be granted a HMO license by the Council. Such factors do not make the poor standard of accommodation acceptable in planning terms.
11. The use of the dwellinghouse by 7 residents as a HMO does not therefore provide acceptable living conditions for those residents, which is contrary to Policies DM2 and DM13 of the Norwich development management policies local plan (2014) (DMPLP). These require, amongst other things, development, including HMOs, to provide a high standard of amenity and living conditions for existing and future residents.

Living Conditions: Neighbouring Residents

12. The appeal dwelling is an end of terrace house with front and rear gardens, located at the end of a cul-de-sac. Its access path runs past the front of a neighbouring dwelling. Houses are closely arranged within the cul-de-sac, but as an end of terrace plot, the appeal site is bordered by a mix of woodland and gardens to the north and west.
13. The appellant has claimed that the appeal dwelling was first used by 7 people as a HMO in 2015 and that no complaints have been received from neighbouring residents. I also note comments submitted by an owner of an adjacent dwelling in support of the appeal, which corroborate the appellant's claims in these regards to some extent.
14. The enforcement notice would be complied with if no more than 6 residents used the dwellinghouse as a HMO. This would constitute a fallback position for the appellant. I am therefore left to consider the impact of an additional resident on the living conditions of neighbouring residents, with particular regard to noise and disturbance.
15. I consider it unlikely in this specific case that the use of the dwellinghouse by 7 residents as a HMO is, or would, cause any unacceptable harm to the living conditions of neighbouring residents, compared to the fallback position. This is on account of the lack of any evidence that the existing unauthorised use, which has been ongoing for some time, has caused any unacceptable noise or disturbance, and due to the spacious surroundings of the appeal site to the north and west. I therefore find no conflict with Policy DM2 of the DMPLP in this regard.

Other Matters

16. Vehicle parking spaces are limited in the local area and the Council has referred to there being no controlled parking zone. Taking the fallback position into account, I do not consider one additional HMO resident in this particular instance would be likely to materially increase parking stress locally.

Conclusion

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

Formal Decision

18. It is directed that the enforcement notice is corrected and varied by:

(a) deletion of the words 'change of use of the above land from residential (Class C3) / HMO (Class C4) use to a residential sui generis use' at Section 3 and their substitution with the words 'material change of use to a dwellinghouse used by 7 residents as a House in Multiple Occupation (HMO) (a 'sui generis' use)'.

(b) deletion of the 2 words 'proposal' at Section 4 and their substitution with the words 'change of use' in both instances.

(c) deletion of the words 'residential sui generis use and return the premises back to its lawful residential (Class C3) use or HMO (Class C4) use by reducing the number of occupiers to a maximum of six persons' at Section 5 and their substitution with 'use of the dwelling by more than 6 residents as a HMO'.

19. Subject to this correction and variations the appeal is dismissed and 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.

L Douglas

INSPECTOR