



Appeal Decision

Site visit made on 14 June 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2023

Appeal Ref: APP/G5750/C/21/3281242

Land at 11 The Common, Stratford, London E15 4LS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Humphrey Ogbuefi against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice, numbered 20/00644/ENFC, was issued on 25 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use to a Use Class C4 house in multiple occupation (HMO).
 - The requirements of the notice are to:
 1. Cease the use as a Use Class C4 house in multiple occupation.
 2. Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds,
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is: Six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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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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. I visited the site on 14 June 2023, however, I was not permitted access into the property. Although I was not able to see inside the property, I was able to see its general location. The Council has provided me with a copy of the planning contravention notice response submitted by the appellant, which contains plans showing the layout of the property. As such, I consider that the appeal can be determined on the basis of the evidence already submitted and my visit on 14 of June. The parties have both had the opportunity to comment on this and I am satisfied neither party would be prejudiced by this approach.

Ground (d)

3. The appellant has appealed under ground (d), which is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. The appellant's case is advanced on the basis that the property has been continually used as a Housing in Multiple Occupation (HMO) for a period in excess of 10 years.
4. The Town and Country Planning (General Permitted Development)(England) Order 1995 was amended by the Town and Country Planning (General

Permitted Development)(Amendment)(England)(No.2) Order 2010 to give permitted development rights for buildings used as dwellinghouses, to use as small scale houses in multiple occupation shared by three to six people without the need for a specific planning application. This means that a change of use from a Class C3 use to a Class C4 use would have been permitted development had it occurred after the GPDO amendment came into force on 1 October 2010, except where such permitted development rights are removed by virtue of an Article 4 Direction.

5. The Council made a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995, as amended, which came into force on 31 July 2013, which removed permitted development rights for the change of use of Use Class C3 dwellinghouse to Use Class C4 small HMO. The planning permission granted by the GPDO is crystallised when the development begins. Therefore, where the material change of use of a property to a C4 HMO occurred before 31 July 2013 but after the GPDO amendment came into force, it would have been development which was granted by the GPDO.
6. The appellant's case, however, is made on the basis that the use of the building as an HMO commenced in 2005. The GPDO does not grant retrospective planning permission and so it is likely that the use of the property as an HMO would have required an express grant of planning permission prior to 1 October 2010. Section 171B(3) of the Act sets out that (in the case of any other breach), no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
7. As the enforcement notice was issued on 25 June 2021, the appellant would therefore need to show, on the balance of probability, that the HMO use had commenced before 1 October 2010 and continued for at least ten years without significant interruption. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
8. The appellant states that the property was purchased in the Summer of 2005 and promptly refurbished for the use of students at the University of East London. The appellant asserts that the property has been used as an HMO, accommodating students in the individual rooms for the past 16 years [sic].
9. The appellant has provided a number of tenancy agreements dated between 2005 and 2006. Within the documents the property is described as consisting of three rooms in which tenants have shared use of the kitchen, WC and bathrooms. However, although three tenancy agreements are provided, the dates of all three do not overlap and so they do not show that three or more tenants occupied the property at any one time. A property which is only occupied by 2 individuals does not constitute an HMO.
10. To be immune from enforcement action under section 171B(3) of the Act, a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. However, there is very limited information as to who occupied the property or how prior to 2017.
11. The Council has provided me with a response to a Planning Contravention Notice (PCN) which was completed by the appellant. Within the document the

appellant describes the property as being 'part family, and part tenant/rented' and states the property was first used for the purpose on 12 June 2017. This contradicts the appellant's assertion that the property has continuously been used as an HMO.

12. The Council advise the property was under licensing investigation, reference 14/11176/HOTECH, which began in March 2014. While it is possible an HMO use could have commenced and gone undetected prior to this date, this does undermine the appellant's claim that the property has been used as an HMO since 2005.
13. The evidence provided by the appellant is limited, ambiguous and does not show, on the balance of probabilities, that at the date the enforcement notice was issued, no enforcement action could have been taken in respect of the HMO. Consequently, the appeal under ground (d) must fail.

Ground (a)

Main Issues

14. The main issues of the appeal are the effect of the appeal scheme on:
 - The provision of family housing within the borough; and
 - The living conditions of occupants and neighbouring occupants, having regard to noise and disturbance.

Reasons

Provision of family housing

15. The appeal site comprises a three storey terraced property which is located along a row a similarly designed properties, with off-road parking. Opposite the appeal site is the University of East London (UEL) Stratford Campus, with access to a car park for the University located off The Common. Accommodation is laid out over three floors, with two bedrooms and a toilet/shower on the ground floor, a bedroom/living room, kitchen and storage on the first floor and two bedrooms and a bathroom on the third floor.
16. Policy GG4 of the London Plan (2021)(the LP) seeks to deliver the homes Londoners need by creating mixed and inclusive communities, with good quality homes that meet high standards of design and provide for identified needs. Policies SP1, SP2 and SP3 of the Newham Local Plan (2018)(the NLP) similarly seek to create mixed and inclusive communities. The Housing Supplementary Planning Guidance (2016)(the SPG) identifies the long-term commitment to meeting the need for family sized homes.
17. Policy H1 seeks to secure a significant increase in family housing and policy H3(b) states that HMOs should be converted from premises other than family-sized dwellings. Policies S1, S6 and H4 of the NLP also seek to protect family housing. The supporting justification for policy H4 explains that Newham will fail to provide enough family housing if it does not both increase the rate of new provision and hold onto existing family stock.
18. It is not disputed that the property was previously in a C3 use or that the appeal scheme has resulted in the material change of use of a dwelling house

to a C4¹ HMO. While policy H4 sets out the circumstances in which subdivision or conversion may be appropriate, the appeal scheme does not meet the criteria contained within the policy as it is not located above a commercial unit, nor has it resulted in a new 4 bedroom family dwelling unit.

19. Although I saw that the appeal site is well located for students to access the UEL Stratford campus, the reasoned justification provided for policy H4 of the NLP advises that there is sufficient capacity for flats and HMOs through purpose built new build, conversion of non-residential uses and reuse of redundant premises above shops in Town Centres. I have no substantive evidence to show that this is not the case.
20. Furthermore, although the property is occupied by 5 individuals, this is unlikely to be significantly greater than would occupy the property as a family dwelling. Therefore, the appeal scheme is unlikely to make any greater contribution towards the Government's objective of significantly boosting the supply of homes² than the previous lawful use. Consequently, the provision of student accommodation would not outweigh the loss of family housing.
21. The Council has referred to policy S2 of the NLP in its enforcement notice, which sets out where new housing in the Borough will go. However, the appeal scheme concerns the material change of use of an existing dwelling I do not find any conflict with this policy. Nevertheless, for the reasons given above, I consider the appeal scheme harms the supply of family housing, contrary to policies GG4 of the LP and policies SP1, SP2, SP3, S1, S6, H1, H3 and H4 of the NLP, the requirements of which are set out above and the advice contained in the Housing SPG (2016).

Noise and disturbance

22. The appeal site comprises a mid-terrace property which is located towards the end of a cul-de-sac, opposite the UEL. Policy SP8 of the NPL and D14 of the LP both seek to avoid unacceptable exposure to noise, amongst other things and policies SP2 and SP3 both seek high quality living accommodation.
23. Although occupants of the property are likely to lead separate lives and therefore generate more movements in and out of the house than a family, given the limited size of the property, I consider the movements generated are unlikely to be so significant as to be harmful to the living conditions of neighbouring properties.
24. Similarly, while occupants of the ground floor rooms of the appeal property may hear other occupants of the building exiting and entering, given the limited number of occupants, I consider their movements are unlikely to be so significant so as to cause harm to the living conditions of occupants of the ground floor rooms.
25. While the appeal under ground (d) has failed, from the Council's own evidence it seems the property is likely to have been used as an HMO for a number of years. Although occupants of the premises may change, were significant noise likely to be generated from the use of the property as an HMO, I would expect there to be some evidence of concern or complaint already, either from

¹ Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

² National Planning Policy Framework (2021)(the Framework)

occupants of the appeal site, or neighbouring occupants. However, I have no evidence to show that any such complaints have been made to date.

26. For the reasons given above, I consider the appeal scheme does not harm the living conditions of occupants or neighbouring occupants with respect to noise and there is no conflict with policies SP2, SP3 or SP8 of the NPL or policy D14 of the LP, the requirements of which are set out above or the National Planning Policy Framework (2021) which seeks to prevent new development from contributing to unacceptable risk from noise.

Other Matters

27. I note the Council raises concern regarding the internal accommodation provided for occupants of the building in its officer report. However, the enforcement notice does not identify this as a reason for taking enforcement action. While a number of bedrooms within the property are modest in size, they are shown to measure around 10square metres (sqm) which in my experience is likely to be sufficient to accommodate a single bed and a number of items of furniture without compromising movement within the room.

Ground (a) conclusion

28. While I have found the appeal scheme does not harm the living conditions of occupants or neighbouring occupants, I have found it has resulted in the loss of a family dwellinghouse and therefore compromises the provision of family housing in the borough. I therefore find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Overall conclusion

29. Thus, 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.

M Savage

INSPECTOR