



Appeal Decision

Site visit made on 16 August 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 08 September 2023

Appeal Ref: APP/Y5420/C/22/3298595

27 Gathorne Road, London N22 5ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Zhaohui Xue against an enforcement notice issued by London Borough of Haringey.
 - The notice was issued on 4 April 2022.
 - The breach of planning control as alleged in the notice is Without planning permission the material change of use to a C4 HMO (house in multiple occupation).
 - The requirements of the notice are
 1. Cease the use of the property as a house in multiple occupation
 2. Remove from the site all debris arising from the compliance with step 1.
 - The period for compliance with the requirement is 6 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 (the Act) 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. It is directed that the enforcement notice is corrected by deleting in full requirement 2 from the notice.
2. Subject to that correction, 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.

Procedural matters

3. The appellant did not attend at the pre-arranged site visit. Whilst I was unable to view the interior of the property, I saw the context of the appeal site and am satisfied that there is sufficient information submitted by the parties to determine the appeal having regard to the main issues.

The Notice

4. In paragraph 4 of the notice, the Council refers to the breach of planning control occurring within the last four years. However, where a breach alleges a material change of use (which is not a change of use to a single dwelling house) the relevant period is ten years not four years. The time limits for the enforcement of different types of breaches are set out in Section 171B of the Act. However, as there is no appeal on ground (d), I am satisfied that there is no injustice to either party as a result of the reference to 4 years rather than 10 years. As the matter does not go to the effect of the notice, I do not consider it necessary to make any formal correction.

5. Requirement 2 of the notice refers to removing the debris arising from compliance with step 1. However, step 1 requires the use of the property as a house in multiple occupation to cease and does not require anything that would produce debris to be removed. I will therefore delete the second requirement from the notice. This does not cause any party injustice as it is unrelated to step 1 and the allegation. I will amend the notice accordingly.

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

The main issues

6. The main issues are (i) the effect of the development on the character of the area with particular regard to impact upon local residents and (ii) the effect of the development on the availability of smaller family housing in the Borough.

Reasons

Policies

7. In this case, the development plan is made up of the Haringey Local Plan 2017, the London Local Plan (2021) and the Haringey Development Management Development Plan Document (2017) (the HDM). The appeal property is located in an area where an Article 4 Direction takes away permitted development rights to change the use of dwellings (Use Class C3) to houses in multiple occupation (HMO) for up to six residents (Use Class C4) without applying for planning permission.

Character of the Area

8. Policy DM17 of the HDM addresses the conversion to a house in multiple occupation including small HMOs within the area covered by the Article 4 Direction. A small HMO can be occupied by up to 6 unrelated individuals who share basic amenities such as a bathroom and kitchen. There is no dispute that HMO use has taken place and that the previous use of the property was as single dwelling house (Use Class C3). Policy DM17 refers to conversions to HMOs being permitted subject to meeting a number of criteria including *(b) not giving rise to any significant adverse amenity impacts on the neighbourhood including cumulative impacts arising from an overconcentration of HMOS within an area*. The supporting text to Policy DM17 acknowledges that HMOs can play an important role in meeting particular housing needs but they can also give rise to issues including adverse impacts on local character and amenity¹.
9. The appellant disputes that there is an over concentration of HMOs in the area. He refers to the planning register showing that only 4% of planning applications for the area namely Gathorne Road, St Albans Crescent, Berners Road, and Cranbrook Road seek planning permission for non-family uses including HMOs and self-contained flats. The appellant therefore maintains that 96% of existing properties remain in use as family housing. However, there is no documentary evidence provided to show how the 4% figure is arrived at or what part of the planning register was searched.
10. In response, the Council has undertaken an assessment of the same area which shows that 42.40% of original single family dwellings have been converted to either flats or HMOs. The Council's detailed survey has been

¹ Paragraph 3.38

provided and includes three categories of properties namely where Council tax is being paid on flats, an HMO licence is in place or where HMO use has been confirmed by a visit. Out of 48 properties on Gathorne Road itself, 18 are not in use as single family properties.

11. The Cranbrook Park Residents Association (the CPRA) which includes residents of Gathorne Road and the three other named streets believes that HMO accommodation is overrepresented in the locality and that this has impacted upon the character of the area. It refers to anti-social behaviour, drug related offences including the cannabis factory which operated at the appeal property and fly tipping. Photographs provided including overflowing bins in the area and discarded beds on streets which are more associated with areas of transient multiple occupation than single family use. The CPRA has also provided details from the Council's HMO license register as of September 2021 and refers to 300 licensed HMOs within a one mile radius of the appeal property.
12. There is very limited information to support the appellant's assertion that 96% of the properties in the four named streets remain in family use. In comparison, the Council's figures are supported with an assessment indicating that in Gathorne Road itself over a third of the properties are not in family use. The nature of the impacts on an area with an overconcentration of HMOs are supported by the comments of the CPRA.
13. With regard to specific issues arising from the appeal property, a third party refers to internet advertising resulting in a steady turnover of tenants, the use of commercial style lighting at higher floors impacting neighbouring properties, noise, and issues arising when the property was being used for illegal purposes. He also refers to the transient nature of occupation making it difficult to address any noise issues directly with occupants.
14. Compliance with licensing requirements is not directly related to impacts upon neighbours or the character of the area. Whilst there are areas where HMO uses can cohabit with other residential uses, the use of the appeal property in this particular location causes adverse impacts for the reasons given.
15. The HMO use has given rise to specific amenity issues for neighbouring properties which have had adverse amenity impacts. In addition, there is an overconcentration of non-family use which is changing the character of the streetscene and the immediate area around Gathorne Road.
16. I do consider that the effect of the development does harm the character of the area with particular regard to impact upon local residents. The development is therefore contrary to Policy DM17(b) of the HDM which seeks to ensure that development takes account of the amenity of nearby occupiers. With regard to other policies referred to, Policy DM12 does not address amenity of neighbouring uses as it refers to new housing and residential extensions. Similarly, Policy D6 of the London Plan 2021 refers to high quality design and external space and adequately sized rooms which are not matters raised by the Council.

Housing Availability

17. The Council refers to the change of use to an HMO representing the loss of a small family dwelling house. The Council aims to protect existing family

housing whilst ensuring that there is an adequate mix of dwelling sizes. The Strategic Housing Market Assessment (SHMA) found that there was a serious shortage of small family residential dwellinghouses in the Borough. The property is located within a Family Protection Housing Zone where retaining an adequate supply of family homes is a priority to maintain housing choice for local residents.

18. The loss of a family home arising from the conversion to an HMO use in an area where there is already a concentration of non-family uses is likely to impact the Council's ability to address the shortage of small family homes. The Council relies upon Policy DM16 'Residential Conversions' specifically refers to the Council permitting the conversion of a larger home to small self-contained homes (Class C3) which includes flats rather than HMOs.
19. However, the Council also refers to policy SP2 of the Haringey Local Plan in its statement which aims to provide homes to meet Haringey's housing needs. This policy is consistent with Paragraph 62 of the National Planning Policy Framework (the Framework) which advises that the size, type and tenure of housing needed for different groups their community including families with children should be assessed and reflected in the planning policies
20. I therefore conclude that the use of the appeal property as an HMO has an adverse effect on the availability of family housing units having regard to the need to provide a mixed and balanced communities. The failure of the development to contribute towards an identified housing need is contrary to the aims of Policy SP2 of the Haringey Local Plan and the Framework.

Conclusion on ground (a)

21. Having regard to the above, I find that the use of the property as an HMO is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted. Accordingly, the appeal on ground (a) fails.

Other matters

22. The Council's reasons for issuing the notice include as a separate reason a failure to provide adequate and convenient refuse storage resulting in overflowing waste bins and bags littering the highway. However, the Council has not addressed this specific concern in its enforcement report or in its statement. At the time of my site visit, there were two waste bins in the modest frontage of the terraced property and there was no rubbish in the front garden of the appeal property. Whilst any visit is only a snapshot in time, I do not have any evidence either from the Council or the third parties to indicate that the storage of waste at the appeal property itself creates a particular problem.

The appeal on ground (g)

23. The ground of appeal is that the period for compliance specified in the notice falls short of what reasonably be allowed. The period for compliance specified in the notice is six months. The appellant has requested a period of 12 months.

24. The appellant states that 6 months would not allow enough time to serve notice on the existing tenants to vacate the property or for the tenants to find and move into alternative accommodation. However, no details have been provided of the tenants or tenancy agreements which would contain details of the notice period. In the absence of any information about the tenants, I have no evidence to show that 6 months is not a reasonable time to secure compliance with the notice. The appeal on ground (g) therefore fails.

Conclusion

25. 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 Act.

E Griffin

INSPECTOR