
Appeal Decision

Site visits made on 22 August 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Appeal Ref: APP/N5090/C/22/3311583
81 Hampden Way, London N14 5AU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Anand Shulka of Thikarmar Developments Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0367/22, was issued on 12 October 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the change of use of the property into a C4 House of Multiple Occupation (HMO)*.
- The requirements of the notice are to cease the use of the main dwellinghouse as a House in Multiple Occupation.
- 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 (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. An associated appeal relating to the provision of a rear outbuilding has been withdrawn, apparently on the understanding that the Council were to withdraw the relevant notice because it duplicates an earlier one that remains in force. I have not seen that notice, or therefore what it requires, but observed at my visit that the rear entrance to the property was of a somewhat domestic appearance. My decision here reflects what I understand to be the existing position which is that a rear outbuilding is being used for separate residential purposes, although with an enforcement notice in place requiring that building to be demolished or the use to cease.
2. No matters relating to the living conditions of the occupiers of the property were raised in the Council's reasons for issuing the notice, and hence it was unnecessary for me to inspect the property internally. I conducted two unaccompanied site inspections, at lunchtime and again in the evening, to observe the property from the adjoining highway.

Main Issues

3. The main issues in the case arise principally from the application of the Council's existing Local Plan policy DM09, together with other related policies in the Local Plan as well as the London Plan and emerging local plan for the area. Policy DM09 relates to specialist housing provision in the borough. It is supportive of proposals for new HMOs 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

HMOs. The last of those criteria is not in dispute, with the house having already obtained an HMO Licence. The main issues arise from the remaining criteria, forming the council's reasons for issuing the notice; namely:

- (i) Whether the proposal meets an identified need;
- (ii) Whether it will have a harmful impact on the character and amenities of the surrounding area (and in this I include the impact on neighbouring living conditions); and
- (iii) Whether it is easily accessible by public transport, cycling and walking.

Reasons

Identified need

4. Policy DM09 describes as a 'useful reference' the Barnet Housing Needs Survey of 2006, although I have not been provided with this or any later assessment of housing needs. I am referred to Policy DM08, which seeks to ensure a variety of new housing sizes to meet the area's need. For market housing (such this) the priority is for four-bedroomed homes. The Council contend that this applies only to dwellinghouses in a C3 use, although the policy itself is not specific. According to plans submitted with the appeal, the property contains four bedrooms.
5. 'Useful references' described by policy DM08 are annual monitoring reports and a strategic housing market assessment for North London. Neither has been provided.
6. An Article 4 Direction has been made which removes the general permitted development right to change between Class C3 and C4 uses (or at least, to change from Class C3 to C4). There is no dispute between the parties that permission is required here. According to the officer's report when determining to issue the notice, the Article 4 Direction does not appear to have resulted from any assessment as to the absence of need for HMOs, but a 'recognition that HMOs need to be controlled and their proliferation can be harmful to a more permanent residential character'.
7. The Council criticises the appellant for failing to robustly demonstrate the need for the HMOs. Policy DM09 itself does not expressly spell out that the burden of demonstrating the identified need falls upon the applicant for planning permission. I would expect the identification of need generally to arise from the housing needs assessment and/or annual monitoring reports, but these have not been provided.
8. Policy DM09 itself also seeks to resist the loss of HMOs, but only provided they meet an identified housing need. Thus the answer to whether there is an identified housing need is not found in that policy. The introduction of the Article 4 Direction is not itself evidence that HMOs are not needed, but rather seeks to avoid local over-concentration. Policy DM08 is supportive particularly of four-bedroomed homes but is not specific as to whether these include HMOs.
9. The appellant draws to my attention parts of the London Plan and its associated Housing Supplementary Planning Document, describing HMOs as 'a strategically important housing resource' and requiring London Boroughs to take account of the role of HMOs in meeting local and strategic housing needs.

10. The parties also refer me to the emerging Local Plan (although, as with the London Plan, no policy extracts have been supplied except in the text of the parties' statements). The appellant refers to the emerging Local Plan's statement that HMOs are 'an important source of low cost, private sector housing for students, those on low incomes and those seeking temporary accommodation'. Nonetheless, as acknowledged by the appellant, the growth of shared households increases pressure on the existing dwelling stock, in particular family homes.
11. The appellant contends that the appeal property provides more affordable accommodation for people starting on the property ladder or needing affordable accommodation, and contends there is a well-established need for this type of accommodation in London and in Barnet.
12. The appellant also refers to the borough's Strategic Housing Market Assessment Update report of October 2018, although again only excerpts are provided in the appellant's statement rather than the document itself. It is said to describe a growth of 25% in the number of multi-adult households living in the area. The time period over which this occurred is not stated, but apparently the number of HMOs increased from 4,680 to 6,737 during it. Thus it is said that there is likely to be a continued (and possibly growing) role for HMOs, with more of the existing stock possibly being converted.
13. The council conversely contends that this particular HMO, not providing accommodation that is specialist in nature, is effectively meeting the need for those who would otherwise be seeking a one-bedroomed flat. These are not a priority in the borough because this demographic is already, relative to others, well served in the borough. The emerging plan is said to have identified that one-bedroomed dwellings form only 6% of the borough's housing need (although, together with two-bedroomed homes, accounting for around 80% of recent provision).
14. Nonetheless policy DM09 and the remainder of the policies supplied to me, read as a whole, do not require the refusal of proposals for which a need does exist, on the basis of some more pressing need arising for developments of another type. On the Council's case, the appeal property would help meet a need identified as applying to 6% of the borough's need for housing. That does not make that need negligible, or non-existent. It is apparent from the limited extracts of the London Plan and emerging policies supplied that new HMOs have some role to play in meeting the housing needs of the area. Thus on balance, and on the limited information made available to me, I do not discern any conflict with the first criterion of policy DM09 which is supportive of HMO provision where an identified need exists, and where no policies seeking expressly to resist the loss of the property as a single C3 dwellinghouse (the property's former use) to the local housing stock have been cited or supplied to me.

Impact on character and amenity of the area

15. Policy DM09 is here explicit that it is for the proposer of an HMO to demonstrate that no harmful impact on the character and amenities of the surrounding area would result. Guidance is given in the Council's Residential Design Supplementary Planning Document ('SPD') of 2016, requiring at paragraph 15.6 that a property should be capable of conversion without substantial extensions; that there should normally be access to a rear garden

- for all; that sufficient off-street parking is provided; that suitable refuse storage is provided; and that minimum space standards are adhered to.
16. The current HMO Licence allows for the occupation of five persons in four households. That Licence was granted in May 2018, prior to the retrospective approval of plans for a single storey rear extension. It is unclear from the details provided whether the property would have been capable of conversion without that extension, or how substantial the extension was; the communal living area (freeing up the front ground floor room for use as a bedroom) is shown to be situated at the rear of the property.
 17. The plans depict communal access to the rear garden area through that communal living area. Each household within the HMO would not have their own private space, but the main garden area is shown to be of a sufficient size for the overall number of occupants. No off-street parking is provided, although the appellant refers to an intention to provide for cycle storage.
 18. The refuse arrangements presently consist of four wheeled bins (two waste, two recycling) that at the time of my site visits, at lunchtime and subsequently in the late evening, were out to the street, despite the bins having been emptied and when the property was apparently occupied. Apparently excessive amounts of refuse deriving from the property have been the subject of neighbour observations. At the time of my visit a large ball of what appeared to be plastic waste was situated in the front garden. There was no fenced refuse storage area to the front of the property, where the garden is raised from the street, although as the appellant points out this could be made the subject of a planning condition, although no drawn-up proposal has been put before me. As a mid-terrace property, any refuse storage area would inevitably need to be to the front.
 19. Whilst the Council now take issue with whether residential space standards, and other factors such as sufficient daylight, are met by the property, these were not reasons for issuing the notice and as the appellant points out the property does benefit from an HMO Licence which would suggest compliance with licensing requirements, although I am not told exactly what these are.
 20. The present position is thus that the appellant has not demonstrated that sufficient off-street car parking or refuse storage would be provided. Whilst the latter issue is potentially reconcilable through a planning condition, the former is not. The consequences of the lack of off-street parking are, in a house with mainly or only adult occupiers, potentially to add to parking pressures in the local streets, another subject of neighbour observations on the appeal. At my site visits I saw that parking in the area, although unrestricted, was the subject of considerable pressures with difficulty parking near to the house on both of my visits, particularly in the evening.
 21. The SPD refers to the need to comply with the parking standards of Local Plan Policy DM17 in this regard. This policy was not cited in the notice, and has not been supplied to me. Nonetheless the appellant concedes that no off-street parking is provided here. Although the appellant considers that a large family could generate at least six people in the property, with potentially more cars and comings and goings than as an HMO, the appropriate comparator, from the perspective of deciding whether harm to character and amenity would result from a change of use, would not be with some hypothetical use as a family dwellinghouse but with its actual former use. On this I am not enlightened by

either party, but consider it unlikely that any hypothetical family use would involve more cars serving the property's occupants than when in use as an HMO.

22. The SPD goes on to describe the 'principles' of HMO conversions which include that the conversion of houses into HMOs in roads characterised by houses will not normally be appropriate. This appears to derive from Local Plan Policy DM01 which, in seeking to protect the area's character and amenity, provides that the loss of houses or the conversion of houses into flats in roads that are characterised by houses will not normally be appropriate.
23. That Hampden Way is currently so characterised is not disputed. The onus being on the applicant to demonstrate, pursuant to policy DM09, that this residential character would not be harmed, I do not find that this burden has been discharged here. There are departures from the requirements of the supporting SPD concerning the provision of off-street parking and refuse storage. The comparison made with the hypothetical use of the property by a large family does not appropriately address the factual matrix, requiring comparison with the actual former use. No evidence as to the actual use of the property in terms of vehicular ownership or comings and goings is supplied. Thus I am unable to conclude that the appellant has demonstrated the lack of harm to the area's character and amenity as is required by Policy DM09. Accordingly, the development fails to comply with the policy in that respect.

Accessibility by public transport, cycling and walking

24. The appeal site is located in a fairly hilly part of north London, with a stepped access into the property itself. It does not therefore lend itself to walking to all people. However, it adjoins a generous footway and safe pedestrian routes are available to local facilities near the Osidge roundabout, and further away (around 10 minutes' walk) to the local centre of Southgate, where London Underground services on the Piccadilly Line are available around 15 to 20 minutes' walk away. Bus stops are available on Hampden Way itself, within around 300 paces from the property, offering services between Barnet and Turnpike Lane with the first London Underground stop six minutes away.
25. The PTAL rating for the property is 2, which is at the lower end of the scale. Although the property has been in use as an HMO for some five years, I am not supplied with any information as to the travel patterns of its current or former residents. The appellant points to several employers in the vicinity, but without saying whether these bear any relation to the circumstances of the past or present occupiers of the site. Without such information, given the low PTAL rating I am unable to conclude that the site is sufficiently readily accessible by public transport as to comply with this aspect of the policy.
26. The accessibility by cycling is however deficient, because until the position with the rear outbuilding is rectified it appears that no rear cycle storage at the property is possible without having to transport a bicycle up the front steps and subsequently through the house. Such arrangements would be an obvious discouragement to cycling. No cycle storage to the front of the property is provided, and it is not clear how this could be done without affecting the open garden aspect of the property to the front, which itself would introduce additional character or amenity considerations.

27. Therefore, regardless of the accessibility of the location by cycling, the barriers to cycle storage at the property mean that the criterion of policy DM09 that the property be easily accessible by each of public transport, cycling and walking is not met.

Conclusion on ground (a) and the deemed planning application

28. For the reasons given above I find that, although compliant with the development plan in some respects, overall the development fails to comply with the development plan for the area, specifically in relation to aspects of policy DM09 concerned with the impacts of development on the character and amenity of the area and with its accessibility including to cyclists. Therefore the appeal will be dismissed as it relates to the deemed planning application made on ground (a) and planning permission will be refused.

The appeal on ground (g)

29. The appellant contends for a local shortfall of this type of accommodation, and that difficulties are likely to be experienced by the existing tenants in securing new homes. No tenancy agreements are supplied concerning the notice periods that the tenants may expect, and nor is any information about how soon new tenancies might be secured. In these circumstances I do not find the period specified by the notice for complying with its requirements to fall short of what should reasonably be allowed. Accordingly the appeal on ground (g) does not succeed.

Conclusion

30. 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 deemed application.

Formal Decision

31. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR