

Appeal Decision

Site visit made on 21 November 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/G5750/C/22/3307011

209 Sherrard Road, Manor Park, London E12 6UG

- 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 Mrs Zarna Ali against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 23 August 2022.
 - 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:
 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 steps 1 and 2.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds 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.
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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.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

2. I consider the main issues are:
 - Whether the HMO use is acceptable, having regard to the effect on the supply of single-family dwelling houses;
 - The effect of the use of the property as a HMO on the living conditions of neighbouring occupiers of Sherrard Road, with particular regard to noise and disturbance; and
 - The effect of the development on the living conditions of current and future occupiers of the HMO, with particular regard to floor space, and noise and disturbance.

Reasons

Preliminary

3. The whole of the Borough is the subject of an article 4 Direction which removes permitted development rights for changes of use from Use Class C3 (dwellinghouses) of the Town and Country (Use Classes) Order 1987 (as amended) to Use Class C4 (houses in multiple occupation [HMO]) of that Order. Therefore, planning permission is required for such a change of use, which is not in dispute.

Supply of Single-Family Dwelling Houses

4. Policy H4 of the Newham Local Plan, 2018 (LP) states that the Council will specifically protect 3 bed and 4+ bed family housing. The justification for this policy states that projected growth in the number of households over the Local Plan period up to 2033 effectively means there should be no (net) reduction in the housing stock, and a key element of the Local Plan is the clear presumption against the loss of residential floorspace, with particular emphasis on protecting family housing. This support for larger family sized accommodation is also reflected in LP policies H1, H3, S1 and S6. These policies accord with the National Planning Policy Framework, 2023 (Framework), which indicates that planning policies should reflect the housing needs of different groups, including families with children.
5. Prior to the current unauthorised change of use, the property appears to have comprised a three-bedroom dwelling house. As such, the unauthorised change of use has resulted in a loss of accommodation suitable for a family, for which there is an identified housing need in the Borough.
6. I conclude on the first main issue that the development has an unacceptably harmful impact on the supply of family dwelling houses, contrary to Policies H1, H3, H4, S1 and S6 of the LP, which amongst other things seek the aforementioned aims resisting the loss of existing larger family sized homes. The development is also contrary to Policy GG4 of the London Plan, 2021 (London Plan) which seeks to create mixed and inclusive communities, with good quality homes that meet high standard of design and provide for identified needs.

Living Conditions of Neighbouring Occupiers - Noise and Disturbance

7. I observed during the site visit that the premises comprises 5 separate bedrooms and a communal kitchen and dining area on the ground floor. There is also a shared shower room on the ground floor and a shared bathroom on the first floor.
8. The property is in a residential area characterised by similar two storey mid terraced properties. Furthermore, the properties in appeal terrace are fairly closely spaced. As such, the area has a fairly quiet, residential character, where noise levels are expected to be relatively low and there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of a more intensive use.
9. The appellant argues that a Class C4 HMO (occupied by no more than 6 persons who are often away from the property) has no greater impact on the living conditions of neighbouring occupiers than if the house was occupied as a

single-family dwelling. Notwithstanding this, these occupiers consist of up to five unrelated individuals/couples, all of whom would have separate work/domestic regimes and would attract their own visitors and deliveries at different times during the day and evening. In this respect, the Class C4 HMO use is more likely to increase the volume of movements to and from the property, than a single-family dwelling, and the range of times when these activities take place.

10. I consider that the introduction of the Use Class C4 HMO has resulted in levels of noise and disturbance which adversely affect the living conditions of neighbouring occupiers. This derives from noise generated from 'comings and goings' outside of the building and increased vehicular and pedestrian movements.
11. I therefore conclude that the change of use of the property to Class C4 HMO has resulted in a harmful effect on the living conditions of neighbouring occupiers, with regards to noise and disturbance, contrary to Policies SP2, SP3 and SP8 of the LP and Policy D14 of the London Plan. Amongst other things these state that all development is expected to achieve good neighbourliness and fairness from the outset by avoiding negative and maximising positive social, environmental and design impacts for neighbours on and off the site and improve health and wellbeing and quality of life. Furthermore, the change of use is contrary to paragraph 130 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Living conditions of current/future occupiers of the HMO

Noise and disturbance

12. The unauthorised change of use of the property has resulted in an HMO with five bedrooms. Therefore, the HMO use comprises five unrelated individuals/couples living within the property, all with separate work/domestic regimes and attracting their own visitors and deliveries at different times during the day and evening. I have already found that the HMO use has resulted in a harmful effect on the living conditions of neighbouring occupiers, with regards to noise and disturbance, from the increased number of 'comings and goings,' increased vehicular and pedestrian movements and the intensified use of the property and rear garden. I also note that the two bedrooms at ground floor are situated close to the entrance of the property, and one room is close to the communal kitchen/dining room (used by all occupants) and in this respect occupants of these rooms would be most susceptible from the increased number of 'comings and goings' associated with the intensified use of the property as an HMO.
13. I therefore find that that the current unauthorised change of use results in substandard level of accommodation for current/future occupants of the ground floor bedrooms with particular regard to noise and disturbance.

Floor space

14. The unauthorised change of use has created a 5-bedroom HMO, which all appear to accord with the minimum size requirements Policy D6 of the London Plan. I also observed during my site visit that each of the bedrooms provided a bed, wardrobe/storage, a table, and sufficient space for circulation.

Furthermore, the ground floor area also contained an open plan kitchen/dining area containing various white goods including a cooker, fridge, washing machine, microwave and a dining table. All occupiers also have access to the rear garden. I therefore find, with regards to floor space, that the HMO use provides satisfactory living accommodation for current/future occupiers of the site.

Conclusion on living conditions of current/future occupiers of the HMO

15. Consequently, whilst the floor space of the accommodation is of an acceptable size in general conformity with Policies H1 and H3 of the LP and the space requirements of Policy D6 of the London Plan, I conclude that the change of use has resulted in a poor standard of accommodation to the detriment of the living conditions of current/future occupiers with regard to noise and disturbance, contrary to Policies SP1, SP2, SP3 of the LP. Amongst other things these state that all developments are expected to achieve high quality of accommodation for living. Furthermore, the change of use is contrary to paragraph 130 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Other Matters

16. The demand and benefits for providing affordable HMO accommodation for young workers and students is noted. However, these do not outweigh the harmful effects of the change of use outlined above, and therefore do not alter my decision.

Overall conclusion and planning balance.

17. The development results in the unacceptable loss of a single-family dwelling house and provides unacceptable living conditions for neighbouring occupiers and current/future occupiers of the appeal site. The development is contrary to the development plan as a whole, and the Framework as a whole and no material considerations indicate that planning permission should be granted. The appeal on ground (a) must therefore fail and the application for permission deemed to have been made will be refused.
18. Dismissal of the appeal will involve some interference with the occupiers' rights to respect for private and family life under Article 8 of the European Convention on Human Rights and the right to protection of property, including peaceful enjoyment of possession under Article 1 of the First Protocol. However, these are qualified rights. The interference will be the minimum necessary and a proportionate approach to the legitimate aim of protecting the supply of family housing and ensuring satisfactory living conditions.
19. 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.

R. Satheesan

INSPECTOR