



Appeal Decision

Site visit made on 17 September 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2024

Appeal Ref: APP/T5150/C/23/3329192

48 Preston Road, Wembley HA9 8LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Sanjay Kataria against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 11 August 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the premises to a House in Multiple Occupation (HMO).
 - The requirements of the notice are to:
STEP 1 Cease the use of the premises as a House in Multiple Occupation (HMO).
STEP 2 Remove all internal partitions, items, materials and debris, associated with the unauthorised change of use, including the bathroom, kitchen counter and partitions from the former garage.
STEP 3 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen, dining room and lounge on the ground floor, bedrooms and a bathroom on the upper floor.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (g) of the Town and Country Planning Act 1990 (as amended).
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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 Enforcement Notice

2. The term 'C4' refers to class C4 or the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO), as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (UCO). If an HMO has more than six residents, it is 'sui generis,' meaning that it falls outside of any class.
3. Whilst use classes can be specified in a notice they do not need to be. In this case the Council consider the use to be as an HMO occupied by more than six residents. Whilst it would have been helpful if the Council had referred to the use as a large or sui generis HMO, the lack of such reference does not make the allegation so vague and imprecise to render the notice a nullity or invalid.
4. Moreover, whilst better to make it clearer why the Council considers there has been a material change of use, it is not necessary for an enforcement notice alleging a material change of use to recite the previous use. In this case the

Council consider the lawful use is as a single dwellinghouse falling within class C3 of the UCO which the appellant understood.

Background

5. Article 3, Schedule 2, Part 3, Class L (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out that development consisting of the change of use of a building falling within class C3 of the schedule to the UCO to a use falling within class C4 is permitted development.
6. However, an Article 4 Direction came into force in the borough on 1 November 2022. The effect of which was to remove permitted development rights for the change from class C3 to C4. If the use as a class C4 HMO took place before 1 November 2022 it would have benefited from permitted development rights. After 1 November 2022, express planning permission would have been required.
7. The appellant does not dispute that the property has been used as an HMO. Their case is essentially that express planning permission was not required to change the use of the property from a dwellinghouse to an HMO at the point when that change took place. As such, they contend that the change to an HMO did not amount to a breach of planning control.
8. This argument is more pertinent to and appropriately considered under an appeal on ground (c) that those matters, being the matter alleged (if they occurred), do not constitute a breach of planning control. Since this was raised in the appellant's initial submission on which the Council has had the opportunity to comment, I shall address this as though that ground had been pleaded, without injustice to either party.

The appeal on grounds (b) and (c)

9. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact and (c) that those matters (if they occurred) do not constitute a breach of planning control. The burden of proof on both grounds is on the appellant and the relevant test is the 'balance of probabilities.'
10. As already stated, the appellant has not sought to dispute that the property has been used as an HMO. Since the alleged material change of use has clearly occurred the appeal on ground (b) must fail.
11. If the use of the property had changed lawfully before the Article 4 Direction came into force, and has remained in that use since, then no breach of planning control will have occurred.
12. The appellant's evidence includes a record of rent payments for four rooms and the associated tenancy agreements, a table which shows the tenancy period for each room and the number of occupants for 2022, the HMO license dated 11 July 2022 and gas safety certificates.
13. The dates on the tenancy agreements relate to periods between 2021 – 2022 but not the month of November 2022, albeit the appellant explained that these were held over. The record of rent payments corresponds with the names in

the agreements as does the table detailing the number of occupants in the rooms. However, the payment details are evidently a snapshot as they do not include the payments from the occupant of room four – who was also resident for periods which the details concern.

14. Accordingly, whilst the details are consistent and appear to indicate there were six occupants in November 2022, they do not necessarily demonstrate that no other people lived at the address.
15. In the HMO license it is stated that the property is reasonably suitable for occupation by not more than five people and that room four should not be occupied due to deficiencies (size).
16. Whilst the appellant stated that they ceased letting room four when the license was issued, which is reflected in the table, they provided no explanation about why they continued to let the property to six people, which undermines their case. The gas safety certificates take me no further.
17. At my visit I saw there are four bedrooms on the first floor, albeit the smaller room at the front which based on the submissions is room four, was not in use. Downstairs was a double room at the front of the property and a further en-suite room located off the lounge at the back of the property, which was also not in use.
18. However, the Council visited the property on 16 May 2023 and their photographs, whilst not annotated, having seen the property, show room four and the room off the lounge in use as bedrooms.
19. They also stated, although it is not clear where the information came from, that it was confirmed during the visit that the property was occupied by at least eight unrelated people.
20. Whilst the number of occupants may have fluctuated, the evidence does not demonstrate, on the balance of probabilities, that the property was being used as a class C4 HMO immediately prior to the Article 4 Direction coming into force, nor that it remained in that use.
21. When making an appeal on legal grounds, the burden of proof rests with the appellant. However, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
22. Whilst the Council has provided little information of its own to contradict the appellant's version of events, the evidence provided by the appellant is not, of itself, sufficiently precise and unambiguous to demonstrate their case. For the reasons given, I cannot conclude, on the balance of probabilities, that the property was in lawful use as an HMO at any point prior to the service of the notice. Accordingly, the appeal on ground (c) fails.

The appeal on ground (d)

23. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.

24. In order to succeed on this ground, the appellant would need to demonstrate, on the balance of probabilities, that the use as an HMO has been ongoing on a substantially uninterrupted basis for not less than ten years before the material date, being the date of the issue of the notice 11 August 2023 (s171B(3) of the Act).
25. The appellant has not sought to demonstrate that the use as an HMO has been ongoing throughout the relevant ten-year period.
26. The appeal on ground (d) must fail.

The appeal on ground (a) the deemed planning application

Main issues

27. The main issues are the effect on (i) the stock of family housing in the borough (ii) the living conditions of occupants with regard to the standard of accommodation (iii) the living conditions of neighbouring occupants and (iv) the availability of on-street parking.

Family housing

28. Policy BH10 of the Local Plan¹ states that development resulting in the net loss of residential dwellings will be supported only in exceptional circumstances including where it provides social or physical infrastructure to meet an identified local need which could otherwise not exist. The justification states that as identified in the SHMA and Policy BH6 Housing Size Mix, provision of family accommodation (3 bed or more dwellings) to meet Brent's needs is a priority.
29. Policy BH7 of the Local Plan sets out that proposals for student accommodation, non-self-contained or self-contained residential accommodation with shared facilities or on-site support/care to assist residents in their daily lives will be supported subject to several criteria, including where there is a demonstrable *specific Brent need* [my emphasis], or in the case of purpose-built student accommodation a London need, for the particular use.
30. It is recognised in the Local Plan, that changes in demographics, welfare and lifestyle choices mean that there will be increased demand for these types of accommodation and that these types of uses make a significant contribution to meeting local and in the case of students, London needs.
31. However, it is also stated that the cost, limited availability of housing and flexibility of development rights has resulted in many Brent homes becoming houses in multiple occupation.
32. The justification at 6.2.68 explains that Brent is an area with lower property values than some parts of London, particularly inner London. Pressure created by welfare reform and support agency budgets to reduce costs might provide drivers for relocation to Brent. For the reasons identified in relation to potential adverse factors identified above in relation to concentration, Brent is reluctant to encourage such a move. Consequently, it will seek to ensure that with the exception of students, the accommodation proposed is addressing a Brent population specific need.

¹ London Borough of Brent Brent Local Plan 2019-2041 Adopted February 2022

33. Beyond generalised assertions regarding demand, the appellant has provided no detailed evidence to demonstrate that there is a specific Brent need for this accommodation. Consequently, the development is contrary to Policies BH7 and BH10 of the Local Plan.

Standard of accommodation

34. The accommodation consists of four bedrooms on the first floor, albeit as already stated room four was not in use at the time of my visit, with a shared bathroom and toilet. Downstairs was a double room at the front of the property, and separate shower room, and a further en-suite room located off the lounge at the back of the property, which was also not in use. There is a garden at the rear which occupants have access to.
35. The kitchen is modest in size and includes a small seating area, as such occupants would have somewhere to eat a meal. However, not all occupants would be able to do so at one time.
36. Three of the rooms on the first floor, except room four which at around 5sqm is deficient, and the double room on the ground floor at the front, would be adequate in size if there was reasonable access to adequately sized communal living space in which occupants could eat meals, watch TV, or otherwise relax and undertake everyday household tasks.
37. The Council's photographs show the lounge in use for drying clothes, which is an indication that there is inadequate space within rooms and the property for occupants to carry out everyday household tasks such as drying clothes. Moreover, any use of the lounge would compromise the privacy and quiet enjoyment of the occupants of the bedroom off the lounge.
38. The property has an HMO licence however, that license is for a maximum of five persons. Since one of the purposes of licensing is to ensure accommodation meets a minimum standard for human habitation, this reinforces my view, that the use by more than five occupants is unacceptable.
39. However, based on my observations, occupation of the property by no more than five people would enable the provision of additional communal space and would resolve the issues associated with over concentration of the accommodation.
40. Accordingly, subject to a condition to the effect that no more than five people should occupy the premises, there would be no conflict with Policy BH7 of the Local Plan and DMP1 of the DMP² which together require development to be of an acceptable quality and provide high levels of internal amenity. There would also be no conflict with the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing and future users of buildings.

Living conditions of neighbouring occupants

41. The property is a two-storey semi-detached dwelling located in a corner position, adjoining 17 Highfield Avenue, and fronting what appeared at the time of my visit to be a reasonably busy road, in a residential area.

² London Borough of Brent Local Plan November 2016 Development Management Policies

42. It seems likely to me that the use as an HMO would result in an increase in comings and goings due to the movements generated by a collection of individuals occupying the property, rather than a single family, due to different timetables, working and socialising patterns. And, that this could cause general disturbance to neighbours, particularly the adjoining residential property, due to an increase in residential activity associated with the use.
43. Representations from the adjoining neighbours refer to noise late at night and in the garden, and matters relating to waste disposal and lack of garden management.
44. Additional bin storage could be provided within the site which could be, along with the requirement for a waste disposal and garden management plan, secured by condition. However, the use has resulted in harmful levels of noise and disturbance to neighbouring occupants.
45. The use therefore conflicts with the aims of Policy DMP1 of the Local Plan in so far as it aims to protect living conditions, and the amenity protection aims of the Framework.

Parking

46. With a Public Transport Accessibility Level (PTAL) rating of three, it is evident that occupants of the HMO can easily access public transport and I observed that the site is within easy walking and cycling distances of services and facilities.
47. I recognise that if occupants of the appeal property all had cars this would increase pressure for on-street parking in the area. However, considering the type of accommodation, which the justification to Policy BH7 states, is likely to be aimed at people with limited accessibility to personal transport, and the accessibility of services and facilities by non-car modes, I consider this reduces the desire to own a car.
48. There is off-street parking for at least one, possibly two vehicles at the front of the property. In the absence of evidence that there is a material shortage of parking or that the use has resulted in an increase in demand for on-street parking, there is no harm and no conflict with Policy BT2 of the Local Plan or policies T6 and T6.1 of The London Plan 2021 which set out maximum standards.

Other matters

49. Since the appellant failed to demonstrate that the property was lawfully used as a class C4 HMO, this does not represent a fallback.
50. I acknowledge the appellant's misgivings about the Council's approach to their investigation. However, this has no bearing on my assessment of the planning merits of the development.
51. That the property could revert to use as a class C3 dwellinghouse does not alter my view.

Conclusion on ground (a)

52. There is no evidence that the HMO has led to an over-concentration of the type of accommodation in the area, and there is no harm in respect of parking and

subject to conditions, the standard of accommodation. However, these considerations do not outweigh the conflict with policies DMP1 and BH7 in respect of the harm to the living conditions of neighbours, and policies BH7 and BH10 in so far as it has not been demonstrated that there is a specific Brent need for the HMO.

53. As such, the use as an HMO is contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
54. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (g)

55. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested they may need a period of 12 months depending on the tenancy agreements which exist at the time if the notice is upheld.
56. The appellant has not submitted up to date tenancy agreements, and those submitted do not detail the notice period which the landlord is required to give. I cannot therefore be certain, that a period longer than six months is necessary to secure compliance with the notice, or that the period is not proportionate to the breach of planning control that has occurred.
57. Additionally, the Council also referred to their powers under s173A(1)(b) to extend any period for compliance, if necessary, a matter which is entirely at their discretion, without prejudicing their right to take further action.
58. Accordingly, the appeal on ground (g) fails.

Conclusion

59. 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).

Felicity Thompson

INSPECTOR