



Appeal Decision

Site visit made on 30 July 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2024

Appeal Ref: APP/T5150/C/23/3334269

91 Princes Avenue, London NW9 9JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Husna Rauf against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 27 October 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) ("the unauthorised change of use").
- 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 removal of all kitchens and kitchen facilities, except ONE, to be located on the ground floor, and all bathrooms/shower rooms, except TWO, so that the internal layout of the premises is returned back to that which existed prior to the unauthorised change of use took place.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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.

Decision

1. It is directed that the enforcement notice is corrected by, at Schedule 3, the deletion of '4' and the insertion of '10' so that the first sentence of Schedule 3 says 'It appears to the Council that the unauthorised change of use took place within the last 10 years.'
2. Subject to the correction above, 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.

Matters concerning the notice

3. The enforcement notice alleges the material change of use of the premises to a House in Multiple Occupation (HMO). Within its reasons for issuing the notice, the Council says, 'It appears to the Council that the unauthorised change of use took place within the last 4 years.' However, a material change of use to an HMO would be considered under section 171B(3) of the Act and so the 10-year rule would apply.
4. The appellant has not appealed on the basis that the use would be immune from enforcement action due to the passage of time, rather the appellant's case is made on the basis that the use would have been granted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO). It would therefore be possible to correct the notice

to refer to 10 years, without causing injustice to either party and I shall correct the notice accordingly.

5. Enforcement notices often distinguish between an HMO which would fall within Use Class C4, i.e., which is use of a dwellinghouse by not more than six residents as a "house in multiple occupation" and *sui generis* (or large) HMOs, which are HMOs which are occupied by more than six residents as a "house in multiple occupation". The appellant does not dispute that the property has been used as an HMO, rather their appeal is made on the basis that it would fall within Use Class C4. Whether the use would fall within Use Class C4 is a matter which I shall consider under grounds (c) and (a) below. I am satisfied that the allegation is sufficiently precise and unambiguous and that no correction to the notice is necessary in this regard.

Ground (c)

6. An appeal under ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. The main thrust of the appellant's case under ground (c) is that, by the time an Article 4 Direction came into effect, the appeal premises was already in use as an HMO and so it would have been permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO)(as amended).
7. In an appeal under ground (c), 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. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
8. Use Class C4 is the use of a dwellinghouse by not more than six residents as a "house in multiple occupation". For the purposes of Class C4, an HMO does not include a converted block of flats to which section 257 of the Housing Act 2004 (the HA2004) applies but otherwise has the same meaning as in section 254 of the HA2004. For the purposes of section 254 of the HA2004, a building or part of a building is a HMO if it meets certain tests. These tests require, amongst other things, that the living accommodation is occupied by persons as their only or main residence.
9. The Town and Country Planning (General Permitted Development)(England) Order 1995 (the '1995 GPDO') 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.
10. Schedule 2 Part 3 Class L of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)(GPDO) permits development consisting of a change of use of a building... (b) from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation (HMO)) of that Schedule.
11. This means that a material 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. Prior to 1 October 2010 it is likely that the material change of use of the property to an HMO would have required an express grant of planning permission.

12. The appeal site is located within an area which is subject to an Article 4 Direction removing permitted development rights for the change of use of dwellings (Use Class C3) into smaller HMOs (Use Class C4). The Article 4 Direction came into effect on 1 November 2022. 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 1 November 2022 but after the GPDO amendment came into force, it would have been development which was granted by the GPDO in force at that time.
13. The appellant states that an HMO license for the property was issued on 14 December 2020 and that in March 2021, they let the building to a company called DACS Support Ltd. DACS Support Ltd are stated to have provided accommodation to 5 individuals and the names of 5 individuals are provided, along with 'start dates' which range from 22 March 2021 to 12 April 2021. However, there is no detailed information to show how long these individuals resided at the property, whether the appeal property was their only or main residence, or how they used the property. The appellant's evidence is ambiguous in this regard.
14. The appellant has provided a Company Let Agreement, which is for a term of 12 months from 20 March 2021 to 19 March 2022. The use of the property is stated to be for the explicit purpose of it being sub-let or licenced to Sub-Tenants. The Tenant is stated as being entitled to sub-let, licence, part with or share possession of the whole or any part of the Property without the prior consent of the Landlord. However, while this agreement simply shows that DACS Support Limited had the right to sub-let the property, it does not show that it did, or if it did, how many people it was sub-let to.
15. I have also been provided with Council Tax bills, dated 14 July 2021 and 7 March 2022, which show that DACS Support Ltd was responsible for the Council Tax at the property between 1 April 2021 and 31 March 2022 and 1 April 2022 and 31 March 2023. However, while the documentation provided shows that DACS Support Ltd was involved with the property, the documents do not show details of tenants, nor do they show how many individuals occupied the property.
16. The Council visited the site on 7 October 2022 and took a series of photographs. The beds are all unmade, with no obvious personal effects evident in each of the rooms. It appears unlikely the premises was being used by tenants at this date. Indeed, the appellant suggests in their final comments that the '7 en-suite rooms...were not observed in use'. This was during the period when DACS Support Ltd is identified as having an agreement to sub-let the appeal property and when it was responsible for Council Tax and after it is stated as providing accommodation to 5 individuals.
17. The Council has provided an email, dated 27 April 2023, which refers to a meeting during which, the Council officer was advised that 'so far only one person had been accommodated in the premises since the HMO license was granted'. I have not been provided with any evidence to show that the recipient of the email disputed its accuracy at the time, or that the Council's account of the meeting was wrong.

18. A property which is occupied by a single individual does not meet the definition of an HMO. This, in addition to the photographs provided by the Council, undermines the appellant's suggestion that 5 individuals were being provided with accommodation during this period.
19. The appellant states that, when the contract with DACS Support Ltd finished, the building was let to tenants through Brent Homes for Ukraine. The names of six individuals are given, who are stated to currently reside at the property. Start dates range from 23 August 2023 to 28 September 2023. The Council has provided photographs, dated 3 October 2023, which show a number of beds which are made and personal effects present, suggesting that the property was, at that time, used as an HMO. However, this is well after the Article 4 Direction came into effect.
20. The appellant provides very little evidence regarding the use of the property prior to March 2021. I have been provided with a copy of the HMO license for the property, which was issued on 14 December 2020. The license states that the Authority has decided that the house is reasonably suitable for occupation by not more than 6 persons. The Council has provided me with a copy of a pre-application checklist for HMO reference FS262661857, which was submitted on 21 October 2020. The applicant describes the number of households within the property as 6 and the number of occupants as 6, though they identify the number of tenants in each room as '0' suggesting the building was not occupied at that time.
21. The applicant describes the 2nd floor middle as being a '1 bedroom self contained flat'. The appellant asserts that this is not planning terminology and suggests this does not reflect the actual layout or use of the building. I recognise that the form was filled in for the purposes of an HMO licence and therefore caution is necessary when interpreting such terms for planning purposes. However, the top floor comprises a substantial room, with a kitchen area, bathroom and double bed.
22. Although there were no cooking facilities in the top floor at the time of my visit, from the photographs provided by the Council, it seems likely that cooking facilities have, at one time, been installed. Indeed, the appellant suggests a hob had been removed (from the unit) because they had come to understand that it was not appropriate as part of a HMO bedroom. The appellant has not explained why they came to this conclusion, nor have they explained how the top floor has been used, particularly when cooking facilities were present within it.
23. While the Council has not provided evidence as to how the top floor has actually been used, as set out above, the burden of proof in a legal ground of appeal is firmly on the appellant. Given its location on the top floor, were occupants of the unit provided with the facilities required for day-to-day living, I consider it unlikely they would have chosen to use the modest shared facilities located on the ground floor and would be more likely to use the facilities within the unit to meet their day-to-day requirements. As such, the top floor would have comprised a self-contained unit.
24. Section 55(3)(a) of the Act sets out that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. The use of the top floor of the property as a self-contained

flat would have resulted in a material change of use of the building. There is no evidence to show that planning permission was granted for such a material change of use.

25. It seems likely cooking facilities had been removed by the time the Council visited on 7 October 2022, as the photograph shows a hole where a hob would likely have been and holes in the wall where an extractor fan would likely have been. However, the evidence does not show how the property was occupied after this date but before the Article 4 Direction came into effect.
26. Even if it was used as a 6 bedroom HMO following removal of cooking facilities on the top floor, section 57(4) of the Act only permits reversion to the last lawful use following the issue of an enforcement notice. No such notice has been issued. In this circumstance, the property would not have benefitted from permitted development rights by virtue of Article 3(5) of the GPDO, which states that the permission granted by Schedule 2 does not apply if (b) in the case of permission granted in connection with an existing use, that use is unlawful.
27. The Council has provided me with a 'Report an HMO' form, dated 3 December 2018. The document states there are 9 occupants, and that the Landlord lives at the property with multiple unrelated tenants, with various people seen constantly in and out. While the report is not corroborated, the appellant has provided no evidence to show who occupied the property at that time, or how they occupied the property.
28. The Council has provided a letter it sent regarding the property, dated 5 July 2019, which states 'following an unannounced inspection the Council has identified the above property as needing to be licensed as a house in multiple occupation (HMO).' This appears consistent with the complainant's suggestion that the property is being used by multiple tenants.
29. The Council issued a requisition for information pursuant to the provisions of section 16 of the Local Government (Miscellaneous Provisions) Act 1976, which required information regarding the occupier and persons who have an interest in the land. A notice was also issued under section 235 of the Housing Act 2004 by the Council requiring a range of documentation to be provided, including tenancy agreements. There is no evidence to show that the requests for information were responded to and the appellant has not explained how the property was used at that time.
30. The use of the property by 9 occupants would have required planning permission and, since no planning permission appears to have been granted, it would have been unlawful. There would have been no right of reversion under section 57(4) of the Act, since an enforcement notice was not issued, and permitted development rights would not have applied by virtue of Article 3(5) of the GPDO.
31. I am mindful that application 19/2565 was made on 17 July 2019 for the erection of a single storey side to rear extension to include conversion of garage to a habitable room and replacement of garage door with window, alterations to front entrance, and associated front boundary wall and soft landscaping to dwellinghouse. However, the delegated report makes no mention as to how the property was used at that time, nor is it clear from the report whether the officer saw inside the building.

32. The way in which the property has been used is important because of the implications of section 57(4) of the Act and Article 3(5) of the GPDO. Even if the property was used as a C4 HMO prior to the Article 4 Direction coming into effect, if that use was not granted by the GPDO at the time because of Article 3(5), then the appellant's appeal under ground (c) cannot succeed.
33. Significantly, even if the appeal property did benefit from permitted development rights, I do not find the appellant's evidence to be sufficiently precise and unambiguous. The evidence of occupation is limited and is contradicted by evidence provided by the Council. The appellant has not shown, on the balance of probabilities, that the material change of use of the premises occurred before 1 November 2022 and that it would have been development which was permitted by the GPDO in force. Consequently, the appeal under ground (c) must fail.
34. I note the Council also raise concerns regarding the lawfulness of the extensions, which could also have affected whether permitted development rights were available to the property. However, since the appellant has not demonstrated that the use of the property would have been lawful, it is not necessary for me to make a finding regarding the operational development which has been carried out.

Ground (a)

Main Issues

35. The main issues of the appeal are:

- Whether the appeal scheme provides a satisfactory standard of accommodation for its occupants;
- The effect of the appeal scheme on the living condition of neighbouring occupants, having particular regard to on-street parking;
- The effect of the appeal scheme on the living conditions of occupants and neighbouring occupants, having particular regard to noise and disturbance;
- The effect of the appeal scheme on the provision of family sized accommodation within the borough;
- Whether the appeal scheme makes satisfactory provision for waste, garden maintenance and cycle storage; and
- The effect of the appeal scheme on the character of the area.

Reasons

Living conditions: Occupants

36. The accommodation within the property is laid out over three floors. At the time of my visit, the ground floor comprised two front bedrooms, each with its own shower room, a rear bedroom with its own shower room and access to the rear garden, a room to the rear which was laid out with a sofa, television, table and chairs, a shower room and access to the rear garden, and a modest kitchen with its own access to the rear garden. The first floor comprised two rooms, one of which had a shower room and the other which had a bathroom

- (with bath), and a boiler cupboard. The second floor comprised a substantial room with kitchen area and a bathroom with a bath.
37. Policy DMP1 of the Brent Local Plan (2022)(the BLP) seeks development that provides high levels of internal and external amenity and policy BH7 supports accommodation with shared facilities where it is of an acceptable quality meeting appropriate standards for the needs of its occupants.
38. The Houses in Multiple Occupation Supplementary Planning Document (2022)(the SPD) advises that for every 3 households, or 5 people, a kitchen space of at least 5.5square metres (sqm) is required. The SPD goes on to advise that, including the minimum kitchen space, a minimum 5sqm of internal communal amenity space will be provided per resident. For a property with 6 occupants, this would result in a requirement of 30sqm internal communal amenity space and for a property with 7 occupants, this would result in a requirement of 35sqm.
39. The HMO licence identifies the larger rear room as a bedroom¹ and the smaller rear room as a dining room. However, as set out above, at the time of my visit, the smaller rear room was laid out with a single bed rather than as a dining room, while the larger rear room was laid out with a sofa, table and chairs and its own en-suite. In my experience, it is unusual for living rooms to have en-suite shower rooms, not least because this would not provide sufficient privacy to users of the shower room. From the Council's evidence, it seems this room has previously been laid out as a bedroom.
40. Within their HMO application, the appellant identifies the kitchen as 10.75sqm and the dining room as 9sqm. This falls well below the requirements set out in the SPD. Even if I were to consider the larger rear room as communal amenity space, this would, together with the kitchen, measure around 27.5sqm. This would still fall below the 30sqm set out in the SPD for a 6 person HMO and below the requirement of 35sqm for a property with 7 occupants. Furthermore, were I to allow the appeal, it would be relatively easy for the appellant to reintroduce a bed to the larger ground floor rear room.
41. While the HMO license restricts occupancy, the terms of a licence can change. The appellant suggests limiting occupancy by condition. However, it would not, in my view, be reasonable to impose such a condition given the layout of the property, which is clearly intended to accommodate a greater number of occupants. Moreover, it would not be reasonable to require that the larger ground floor rear room is used as communal living space, since the HMO licence appears to have considered its suitability on the basis that it would be a bedroom.
42. Even if I were to limit occupancy by condition to 6, therefore, there would still not be sufficient internal communal amenity space. The SPD highlights the importance of providing sufficient communal amenity, to enable the HMO to better meet the needs of its occupants, provide space for them to congregate and spend time together, thereby improving social integration. As a result of the limited provision of internal communal amenity space, the appeal premises fails to provide satisfactory living conditions to its occupants, contrary to policies DMP1 and BH7 of the BLP and the advice set out in the SPD.

¹ Based upon the description of the room as ground floor rear and the size given.

43. To the rear of the property is a substantial garden, which is mostly laid to lawn. Three doors open out onto the garden from the larger rear room, the kitchen and the smaller rear room respectively. These rooms all look directly out towards the rear garden. The SPD advises that rear ground floor bedrooms that have windows facing directly onto communal outdoor amenity spaces must have a sufficient defensible space between them and that amenity space.
44. While no such space has been provided, the rear garden is generous in size and so, while occupants of the rear ground floor bedroom/s² are likely to find its use by other occupants of the dwelling intrusive, it would be possible to design a scheme for the provision of such a defensible space. Although no such scheme is before me, it would be possible to secure the submission and implementation of a scheme by condition. There would therefore be no conflict with policies DMP1 or BH7 of the BLP or the SPD in this regard.

Living conditions of neighbouring occupants: On-street parking

45. The appeal property is an end terraced property which has been extended so that it now adjoins both neighbouring properties. To the front of the dwelling is a modest garden which is paved, and which was used for the storage of bins and a bicycle at the time of my visit. Properties along Princes Avenue are generally hard surfaced, with drop kerbs enabling vehicles to park off-road. This significantly limits on-street parking provision along the road. Along Princes Avenue is a school and so on-street parking provision is likely to be in high demand when parents are dropping off and collecting their children from school.
46. The appellant suggests that the appeal site is located in an area with a PTAL rating of 5. However, the Council disputes this and states it has a PTAL rating of 1b. The appellant suggests the site is in 'close walking distance of Kingsbury tow centre and tube station to the south'. During my visit I saw that Kingsbury Underground Station is around 1km from the appeal site and the shops are generally well in excess of 400m away. I therefore consider it unlikely the appeal site is within area with a PTAL rating of 5 and consider it more likely to be in 1b.
47. Policy T6 and T6.1 of the London Plan (2021)(the LP) set out maximum car parking standards that should be applied to development proposals, which for outer London in PTAL 0-1 with 3+ beds is up to 1.5 spaces per dwelling. The area to the front of the dwelling could accommodate around 2 cars, which exceeds the provision set out in the LP. It would be possible to secure, by condition measures to limit parking within the site and to repurpose parts of the frontage, in line with the SPD and so there would be no conflict with policies T6 or T6.1 of the LP in this regard.
48. The appellant states that none of the current occupants of the property own a car and that it is only when the property manager visits the property that the off-road parking provision is used. However, while the existing users of the property may choose not to own a car, future occupants may wish to own a car, given the distance of the appeal building from local amenities, including public transport. Indeed, the SPD advises that prioritising HMOs in PTAL 3 or higher locations ensures greater likelihood that their residents will not require a car.

² As set out above, either of the rear rooms could be used as a bedroom.

49. Conditions and obligations cannot be used to control the actions of individual occupiers and so any mechanism would need to make a clear connection to the property concerned. To deliver car-free development a mechanism is required to ensure that anyone living there, other than a Blue Badge holder, would not be eligible to apply for a residents parking permit. However, there is no evidence to show that the appeal site is within a controlled parking zone or that it would be possible to control eligibility for a resident's parking permit by condition.
50. Were each of the occupants to own a car, this could have significant implications for on-street parking along Princes Avenue, within an area which is already likely to suffer from some form of parking stress due to the nearby school. Occupants are likely to wish to park relatively near to the property and so this may lead to parking in front of drop kerbs, effectively blocking driveways, which neighbouring occupants would find inconvenient and harmful to their living conditions, contrary to policy DMP1 of the BLP, which seeks to ensure that development is satisfactory in terms of parking and policy BT2 of the BLP, which seeks to ensure that development does not add to on-street parking demand where on-street parking spaces cannot meet existing demand.

Living condition of occupants and neighbouring occupants: Noise and disturbance

51. The appeal property is located in a generally residential area. Given its layout, the property could accommodate up to 7 individuals. Even if the property is only occupied by 6, those individuals are likely to lead separate lives and so their comings and goings, visits from friends and so on, are likely to be greater compared with a typical family. Although the complaints received by the Council do not specifically raise concern regarding noise, the individuals occupying the property could change.
52. The appellant has provided me with a HMO Management Plan, which sets out measures to control noise and disturbance, including the provision of 'House Rules' that will request that tenants show consideration to other tenants and to neighbours and to not make excessive noise after 11pm and before 8am. Other measures include dealing with complaints, the inclusion of a clause relating to noise and anti-social behaviour in tenancy agreements and the keeping of complaints/correspondence for 3 years.
53. While the HMO Management Plan seeks to address excessive noise, it is not clear how this would be defined or determined. As set out above, the ground floor could be occupied by up to 4 individuals, with the kitchen also used by other members of the premises. Given the limited provision of internal communal amenity space, I consider occupants are far more likely to seek to use electronic devices which generate noise in their own rooms compared with a family.
54. An individual playing music in their room, for example, may not individually make excessive noise, however, were each occupant of the ground floor to play music in their respective rooms, this could result noise which is harmful to the living conditions of other occupants of the appeal premises, as well as neighbouring occupants, particularly given that the rooms on the ground floor adjoin the neighbouring properties.
55. It is not clear how the appellant would deal with such a scenario, given that each individual would have their own tenancy agreement. Moreover, this would

not address noise and disturbance generated by the comings and goings of occupants and their visitors. I consider conditioning the implementation of the HMO Management Plan is therefore unlikely to ensure that noise and disturbance generated by occupants of the premises does not harm the living condition of other occupants or neighbouring occupants.

56. As a consequence, I find the appeal scheme harms the living conditions of occupants and neighbouring occupants, contrary to policy DMP1 of the BLP, which seeks to ensure development does not unacceptably increase noise and general disturbance, and the National Planning Policy Framework (December 2023)(the Framework), which seeks a high standard of amenity for existing and future users.

Loss of a family sized dwelling

57. Policy BH11 of the BLP seeks to maintain family size housing by supporting its conversion to two or more other dwellings where certain criteria are met. Notwithstanding suggestions regarding the history of the site, the appeal under ground (a) is made on the basis that planning permission should be granted for the development alleged in the notice, which is a House in Multiple Occupation (HMO), not flats. Since the development would not comprise the material change of use of a family sized house to two or more other dwellings, policy BH11 is not relevant in this case.
58. Policy DMP1 sets out that development will be acceptable provided it is 'resulting in no loss of....other land/buildings for which there is an identified need.' The Supplementary Planning Document advise that HMO accommodation is likely to compete for the same properties with facilities who also need 3 bedroom dwellings or larger. The SPD goes on to advise that this unmet need for family homes will be balanced against the quality of the HMO being provided. Where the Council considers that this quality is not sufficiently high, it is more likely to tilt the balance in favour of retaining the premises as a family dwelling.
59. The appellant has drawn my attention to policy H9 of the London Plan (2021)(the LP), which states that where they (HMOs) are of a reasonable standard they should generally be protected. However, while the appeal premises is clearly meeting the needs of its current occupants, the property is not located in an area with good access to public transport and other amenities. Furthermore, as set out above, I have found that the premises does not provide satisfactory living conditions for its occupants and so it is not supported by policy BH7.
60. While it may be possible for the premises to be returned to use as a family dwelling without planning permission, were I to grant planning permission for its use as an HMO, I consider it unlikely it would be used as such given its layout. The material change of use of the property to an HMO has resulted in the loss of a family dwelling, for which there is an identified need, contrary to policy DMP1 of the BLP.

Waste, cycle storage and garden maintenance

61. Along Princes Avenue, I saw that bins are generally stored to the front of dwellings. Bins for the appeal property were also stored to the front of the dwelling. The SPD advises that, due to the increased number of inhabitants,

HMOs often result in the production of larger amounts of waste than a typical dwelling. To ensure it does not become a nuisance to neighbours, it is suggested that all bins must be contained within an attractively designed shelter for storage and collection.

62. There appeared to be sufficient space to accommodate the number of bins provided for the appeal property, within a location which is accessible to the occupants of the appeal premises. Furthermore, it would be possible to secure details of bin storage by condition. While this could include a shelter, given the open character of the properties along Princes Avenue, and the fact that bins being stored to the frontage is characteristic of this part of Princes Avenue, I consider there is no harm arising from the management of waste within the property, and no conflict with policy DMP1 in this regard, which seeks a high level of amenity, amongst other things.
63. To the rear of the property is a substantial garden, which is laid with hard standing directly to the rear of the dwelling and mostly grass to the remainder. The garden is of sufficient size that it could be used for the storage of bicycles. Furthermore, space to the front of the dwelling could also be used for the storage of bicycles. It would therefore be possible to secure dedicated provision of cycle storage by condition. There would therefore be no harm to the living conditions of occupants or neighbouring occupants in this respect and no conflict with policy DMP1 of the BLP in this regard.
64. The rear garden appeared well maintained at the time of my site visit. The majority of the garden is laid to lawn, while the front is laid with hardstanding and so maintenance requirements are likely to be relatively low. The HMO Management Plan states that a gardener will maintain the garden regularly. While this is not precise, I see no reason why occupants of the property would not seek to maintain the rear garden, since it would constitute outdoor amenity space which they are likely to wish to use for activities such as the drying of clothes and sitting out. I therefore consider there is no harm to the living conditions of occupants or neighbouring occupants in this respect and no conflict with policy DMP1 of the BLP in this regard.

Character of the area

65. The enforcement notice raises concern regarding the effect of noise and disturbance on the character of the area. The use of the property as an HMO is a residential use which is in keeping with the character of the area. Although I have found that noise and disturbance harms the living conditions of neighbouring occupants, it would not significantly alter the character of the area and there is no harm to the character of the area as a result. There would therefore be no conflict with policy DMP1, which seeks development of a type which complements the locality or the Framework in this regard.

Other Matters

66. In its statement of case, the Council raise concern regarding external alterations that are asserted not to accord with SPD2. However, the enforcement notice does not allege the erection of the rear extension, nor does it allege the erection of the rear dormer. Although the notice requires the removal of internal partitions, items, materials and debris associated with the unauthorised change of use, it does not require removal of the extension or the dormer.

Planning balance and ground (a) conclusion

67. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellant states that the appeal site accommodates tenants who are refugees fleeing the war in Ukraine. Occupants of the appeal property therefore have protected characteristics for the purposes of the PSED.
68. For the reasons set out above, I find the appeal premises does not provide satisfactory living conditions for its occupants and harms the living conditions of neighbouring occupants, and has resulted in the loss of a family home, contrary to policies DMP1, BT2 and BH7 of the BLP and the advice contained in the SPD, the requirements of which are set out above and the relative expectations of the Framework. I attach substantial weight to these findings against the appeal.
69. Although it may be possible to locate occupants of the appeal site elsewhere in borough, the appeal site is clearly providing living accommodation to those currently living in it, to which I afford moderate weight.
70. While I have found there would be no harm arising from provision for garden maintenance, bin storage and cycle storage or the effect on the character of the area, these are neutral factors in my consideration of the appeal.
71. Having regard to the legitimate and well-established planning policy aims to protect living conditions and meet family housing need, in my view, the benefits of the appeal scheme are outweighed by the harms I have identified. Thus, having due regard to the PSED, I consider that upholding the notice and refusing planning permission is necessary and proportionate.
72. Thus, for the reasons given above, I find the material change of use of the premises to an HMO 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.

Ground (f)

73. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
74. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach. The Council states that the purpose of the notice is to remedy the breach of planning control.
75. The appellant suggests the requirement to removal all kitchens and kitchen facilities, except one, serves no useful purpose since the building only has a single kitchen. However, the top floor room has kitchen cupboards and a sink, which in my view, comprise kitchen facilities. The appellant has not shown that

the facilities were installed for some other lawful use and so it is not excessive for the notice to require its removal.

76. The appellant suggests it is common for bedrooms to be ensuite and that the requirement to remove the additional bathrooms puts the appellant to extra expense and hassle for no clear planning benefit. However, while bedrooms in a family dwelling may have an ensuite bathroom, it is unusual for ground floor rooms, which are often used as living rooms and/or dining rooms, to have ensuite facilities. The appellant has not shown that the additional bathrooms were installed for some other lawful use and so it is not excessive for the notice to require their removal.
77. Although the appellant has secured planning permission for the extension of the ground floor, it seems unlikely that the appellant built the development in accordance with the approved plans and then carried out works to facilitate an HMO. Rather, it seems more likely the appellant carried out the works as a whole to facilitate the material change of use of the building. While the enforcement notice does not attack the operational development, the internal partitions are likely to have facilitated the use. For example, the internal partitions erected between the living room and dining room have enabled the rooms to be used as bedrooms, with ensuite bathrooms. It is therefore not excessive to require that they are removed.
78. The appellant asserts that the requirement to 'removal all internal partitions, items, materials and debris associated with the unauthorised change of use' gives rise to ambiguity. However, the appellant is best placed to know which internal partitions were erected in connection with the unauthorised change of use.
79. The enforcement procedure is intended to be remedial rather than punitive. However, were I to allow the additional bathrooms, kitchen facilities and internal partition walls to remain, it would be relatively easy for the appeal building to continue to be used as an HMO. Furthermore, this would not remedy the breach. It is therefore not unreasonable or excessive to require removal of the additional bathroom and kitchen facilities and the internal partition walls and so the appeal under ground (f) fails.

Conclusion

80. Thus, for the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, as corrected, 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