



Appeal Decision

Site visit made on 15 October 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Appeal Ref: APP/Y5420/C/23/3324700

21 Berners Road, Wood Green, LONDON N22 5NE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Mustafa Chehabeddine against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 24 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to a C4 HMO (House in Multiple Occupation) and the creation of a self-contained dwelling in the rear garden outbuilding.
 - The requirements of the notice are to:
 1. Cease the use of the property as a house in multiple occupation.
 2. Remove the kitchen from the rear garden outbuilding, including but not limited to cooking facilities, extraction fan, kitchen cupboards and kitchen countertops.
 3. Cease using the outbuilding as a self-contained dwelling.
 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3 above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by the deletion of Step 2 in paragraph 5 and its replacement with:

“Remove the cooking facilities from the self-contained unit in the garden”; and

by the deletion of “26 December 2023” in paragraph 6 and its replacement with “six months”.

Subject to these variations, the appeal is dismissed and 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.

The enforcement notice

2. The “Time for Compliance” in paragraph 6 of the enforcement notice is set out as a set date, the 26 December 2023, as opposed to a period of time. Instead, the Council have added a heading in paragraph 5 “What you are required to do” after setting out the steps to be complied with, namely “Time allowed: A period of 6 months from the effective date of the notice should be allowed for compliance with steps (1), (2), (3) and (4).”
3. As the notice clearly expresses when it takes effect, and an appeal has been made on ground (g), I find that there has been no injustice caused by the unusual setting out of the notice. Nevertheless, to avoid any future confusion,

I shall direct that the notice is corrected to delete the reference to the set date in paragraph 6 headed Time for Compliance and that "six months" be inserted instead.

Background

4. The appeal site comprises a mid-terrace property with a small front garden and a rear garden/courtyard that opens onto Hardy Passage. This is a service road surfaced in granite setts with street lights and some mews style properties developed at the rear of the shops facing the High Road. The appeal property has the benefit of a loft conversion and an extension in the lightwell area. The former garage in the rear garden has been converted into habitable space.
5. The property was partially empty at the time of my site visit and some rooms were unfurnished. It was unclear whether there were six or seven bedrooms in total. The loft conversion has provided two en suite bedrooms and there are three bedrooms and a bathroom on the first floor. The ground floor is laid out as a kitchen with a separate laundry and WC. The adjoining room, which in the appellant's photographs was furnished as a dining area, had no clear use at the time of my visit. The ground floor room overlooking the front of the property contains two double beds and is clearly used as a bedroom whereas the adjacent room containing a wardrobe is said to be a reception room.
6. Part of the allegation is that the property is being used as a Class C4 HMO. Class C4 is defined in the Town and Country Planning (Use Classes) Order 1987 as use of a dwelling by not more than six residents as a "house in multiple occupation", which has the same meaning in section 254 of the Housing Act 2004. A HMO use where there are a greater number of residents falls outside this use class and is often referred to as a large HMO use. It has been held in case law that children under the age of 18 are classified as "residents" for the purpose of HMOs.

The ground (b) appeal

7. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the matters stated in the notice relating to the creation of a self-contained dwelling in the former garage have not occurred as a matter of fact.
8. I saw that the garage conversion contains two doors. One provides access from Hardy Passage and the second provides access from the garden/courtyard area. Internally the building is laid out as one large room with an adjoining bathroom containing a shower, basin and WC. The main room contains a run of kitchen units against one wall which includes a two ring hob, a full size oven, a fridge and a sink. There is also a hot water instant heater for the shower and the sink within one of the cupboards. The remainder of the space is occupied by a double bed. The room is lit by a large window looking out onto Hardy Passage and there are also two roof lights. There are no windows looking over the garden/courtyard.
9. I find that the layout of the converted building meets the *Gravesham*¹ test in that all the facilities for day to day living, such as cooking facilities and a bathroom are behind a locked door in a self-contained unit. Furthermore,

¹ Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142

independent access is available from Hardy Passage. Notwithstanding the appellant's submissions that the converted garage is part of the HMO and the kitchen and shower area are for the comfort of the tenant to avoid trips to the main building for refreshments etc, the facilities provided mean there is no need for reliance on any shared facilities. The absence of separate Council Tax registration for the converted garage and the existence of one power supply serving both the converted garage and the main property also does not make the converted garage an HMO room.

10. The matters alleged have therefore occurred as a matter of fact. The appeal on ground (b) therefore fails.

The ground (d) appeal

11. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, the appellant needs to show, on the balance of probabilities, that the material change of use of the property to a C4 HMO and the creation of a self-contained dwelling in the former garage occurred before the relevant dates. These are 24 May 2013 for the C4 HMO use, namely more than 10 years before the notice was issued and 24 May 2019 for the self-contained dwelling, namely more than four years before the notice was issued.
12. The appellant states he purchased the property in December 2020 after which the building was vacant until October 2021 whilst he carried out some modernisation. An appeal Inspector visiting the site in September 2021 observed "The property is nearing the end of some internal refurbishment and none of the rooms were furnished or occupied at the time of my visit."
13. This appeal (reference APP/Y5420/X/21/3273292) was in connection with a lawful development certificate (LDC) application to convert the garage into a habitable room by removing the garage door and inserting new windows and roof lights. This was refused by the Council on 7 January 2021 but allowed on appeal on 2 November 2021. Thereafter the conversion works were carried out.
14. It appears then that the conversion of the garage to a self-contained dwelling and subsequent use as such occurred less than four years before the issue of the notice. The Council submits copies of Building Control records which confirm that the garage conversion was not completed until 12 September 2022. In addition, the appellant acknowledges that this element of the development is not immune from enforcement action.
15. Although a LDC was granted on appeal to convert the garage into a habitable room, the resultant development differs markedly from those approved drawings. In particular, the self-contained dwelling is smaller in footprint than the proposed habitable room and includes a door opening onto Hardy Passage. No window was provided opening onto the garden, which was shown on the plans, and the space was subdivided to provide a bathroom.
16. Having regard to the appellant's admission and the Council's evidence, on the balance of probabilities, I find that neither the conversion building works nor the self-contained use are lawful.

17. Moving on to the claimed C4 HMO use, the appellant's evidence shows that this began on 12 October 2021 when five unrelated people signed a tenancy agreement for 18 months. Copies of receipts from the managing agents show that rent was duly paid monthly thereafter. However, this period of use falls short of the required immunity period.
18. It appears though the appellant relies on the use made by previous tenants, which began in February 2008 and continued until December 2020. The number of people who occupied the property during this period was between eight and nine and, as such, the use would have been classed as a large HMO. As this was a different use, it does not count towards the period of immunity for the Class C4 use.
19. In the absence of any other evidence to indicate otherwise, I find, on the balance of probabilities, that the C4 HMO use is not lawful. As such, the appeal on ground (d) fails.

The ground (a) appeal and the deemed planning application

Main Issues

20. The appellant submits that he seeks planning permission to use the property and converted garage as a six person C4 HMO. However, the description of development for the deemed planning application is derived solely from the wording in the allegation. Following the failure of the ground (b) appeal, the allegation that relates to the development of a self-contained residential unit remains unchanged and I shall proceed with the determination of the ground (a) appeal on that basis.
21. As such, the main issues are the effect of the development on (i) the provision of small family housing in the borough; (ii) the living conditions of the occupiers of the self-contained unit, having regard to the standard of accommodation; (iii) the living conditions of neighbouring occupiers, having regard to noise and disturbance; and (iv) whether the development makes suitable provision for waste disposal.

Reasons

Housing stock

22. For the purpose of my determination under the planning Acts, I am required to determine the appeal in accordance with the development plan unless material considerations indicate otherwise. The development plan in this instance is The London Plan² published March 2021 (TLP) and Haringey London, Development Management DPD (the DPD) adopted July 2017.
23. The Council are concerned that the C4 HMO use results in the loss of a small family dwelling, which is a form of housing that the Council seeks to protect. Reliance is placed on DPD Policy DM16 Residential Conversions. However, this policy seeks to maintain a supply of larger family homes and will only permit their conversion to smaller *class C3 dwellings* (my emphasis) where the gross original internal floorspace of the existing dwelling is greater than 120sqm.
24. I find the relevance of this policy has not been adequately explained by the Council as it relates to the conversion of larger dwellings to smaller dwellings,

² The London Plan: The Spatial Development Plan for Greater London, March 2021

not C4 HMOs. Furthermore, the gross original floorspace of the appeal dwelling is stated as being 104sqm. This figure is not disputed by the Council and it therefore appears that the appeal dwelling would not be categorised as a larger family home.

25. DPD Policy DM17 Housing in multiple occupation appears more applicable in this instance as it deals with proposals for the conversion of larger homes to HMOs. These will only be permitted where the gross original floorspace of the dwelling is greater than 120sqm, amongst other criteria. The C4 HMO use conflicts with this policy due to the original size of the appeal dwelling.
26. The supporting text to this policy explains that the Council's area contains 10 000 private sector HMOs and it is accepted this form of accommodation plays an important part in meeting various housing needs. However, this has come at the cost of reducing the number of smaller family housing units, for which there is also a significant need.
27. The Council are in a difficult position, trying to balance the housing needs of those unable to afford more than shared accommodation and those people who require small family units. Part of the Council's solution has been to make the Article 4 Direction, which came into force in November 2013. As a result, express planning permission is required for the change of use of a building falling within use class C3 (dwelling houses) to C4 HMOs.
28. The Council's SHMA³ found that there was a serious shortage of small family dwellings. Therefore, in addition to the overall need for a net increase in the supply of all types and tenures of housing, the SHMA established that if the proportional loss of small family units continues at the same rate, Haringey will fail to provide enough small to large family homes. This led to the development of Policy DM17, whose requirements I consider important to uphold given the clearly pressing needs for small family housing.
29. The appellant submits that as the DPD does not define gross original internal floorspace and as the property has been extended to 162sqm, a more practical approach is to take into account the size of the existing dwelling, which now makes it suitable for conversion. However, the adoption of this approach would undermine the Council's current policies.
30. The appellant also highlights the findings of the Council's SHMA June 2021, which show projected increases in single person and couple without children households and not much change in the families with children category. However, this document does not appear to have been the subject of any examination in public and I have not been advised of any emerging new local plan policies. Therefore, I find the appellant's arguments are insufficient to set aside the requirements of the DPD and to overcome the conflict with Policy DM17.

Standard of accommodation

31. The Council are concerned that the size of the self-contained unit at 11sqm significantly falls short of the standards set out in Policy D6 Housing Quality and Standards of TLP as a one bedroom, one person unit should be at least 37sqm in area. I agree and at the site visit I saw, other than a double bed, there was very little space to place furniture such as a wardrobe, a

³ Strategic Housing Market Assessment

comfortable chair or even a small table in the room. Even if such items were placed in the room, it would result in very cramped living conditions.

32. As such, I find that the standard of accommodation conflicts with TLP Policy D6 and Haringey's Local Plan Strategic Policies 2013-2026⁴ (HLP) Policy SP2 Housing. These require, amongst other matters, high quality design for new housing.

Living conditions of neighbours

33. Use of the property as a C4 HMO can manifest itself in a number of ways, not just within the property but also the garden and at street level and this in theory could affect a wide area. The property also contains a self-contained unit, which increases the number of occupiers on site.
34. Occupiers within HMOs can often be on different timetables. Employees may work different shifts or be on zero hour contracts, leading to the kitchen and laundry being used more intensively for cooking and washing clothes over a longer period. It is also likely that there are more comings and goings from the property throughout the day and night not just from the front of the property but also the rear onto Hardy Passage.
35. Even where communal facilities are provided, it is not always the case that unrelated individuals would gather there and it is likely that tenants would use their bedrooms for watching TV, gaming or even work. The more intensive use of bedrooms could lead to additional noise and disturbance especially where they abut living areas in adjacent properties. I have read the appellant's letters of support from the immediate neighbours but that is not to say that future neighbours would be so tolerant.
36. It is also likely that the alleged use results in more visitors to the property such as social callers, parcel and food deliveries. Berners Road is a largely residential road but it is just around the corner from Wood Green Underground station, one of the gateways into the Wood Green shopping area, an extremely vibrant area that also contains a cinema and many restaurants.
37. I saw that Berners Road is used by motorbike delivery people to park and that the area has been traffic calmed with a 20mph speed limit and a controlled parking zone in operation. Parking bays are marked out along one side of Berners Road and double yellow lines exist on the opposite side. During the day there appeared to be a noticeable amount of traffic but during the evening it is likely that this would change. As such, additional visitors to the property would be more noticeable during this time.
38. Over time an HMO use can have an effect on the health, environment and general amenities of an area. Occupation by a multi-generational family is not compatible for the reasons given. I therefore find it has not been demonstrated that the living conditions of neighbouring occupiers, having regard to noise and disturbance, are not harmed by the alleged use. As such the development fails to accord with Policy SP2 of the HLP and Policies DM12 and DM17 of the DPD. These require, amongst other matters, that there are no significant adverse amenity impacts on the surrounding area.

⁴ Haringey's Local Plan Strategic Policies 2013-2026 (formerly the Core Strategy) adopted March 2013, Consolidated with Alterations since, 2017.

Provision for waste disposal

39. I saw that in this neighbourhood, waste is stored in various categories of wheelie bins such as general waste, recycled waste etc. These are kept in the front gardens given the terraced layout of the properties in the area. With an HMO use there is the potential for more waste from multiple households but at the appeal site I saw that there are already two general waste bins and two recycled waste bins in the front garden. It is not known how the occupier of the self-contained unit disposes of their waste and there were no domestic wheelie bins stored in Hardy Passage. This however could be addressed by the imposition of a condition and with such a condition in place, there would be no conflict with DPD Policy DM17.

Interim conclusion

40. Notwithstanding my finding on the provisions for waste disposal, there is harm caused to the Council's strategy for protecting small family housing, harm caused to the living conditions of occupiers of the self-contained unit and harm caused to the living conditions of the wider area. The appeal on ground (a) therefore fails.

The ground (f) appeal

41. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires the cessation of the HMO use and the use of the self-contained dwelling as well as the removal of the kitchen from the self-contained dwelling. Therefore, I consider that the purpose of the notice is to remedy the breach of planning control.
42. The Council submit that the purpose of the notice is also to remedy injury to amenity as the removal of the kitchen addresses the small size of the room and improves the quality of the accommodation. However, it is not clear what accommodation is envisaged by the Council given my finding on ground (d).
43. In appealing on ground (f) the onus is on the appellant to specify lesser steps, which in his view would overcome the objections to the development. These lesser steps are concerned with the self-contained unit where the appellant accepts the cessation of the use but submits it is only necessary to remove the cooking facilities from the building, not the surrounding extractor fan or kitchen cupboards and worktops. It is argued that these do not enable the self-contained use and could be used for example, as wardrobe or other storage type space.
44. I find that the removal of the cooking facilities is essential for remedying the breach of planning control, together with the cessation of the self-contained use. The removal of cupboards and worktops is unnecessary though as they do not directly enable the self-contained use and I shall vary the notice accordingly.
45. No lesser steps are suggested regarding the C4 HMO use other than a partial repetition of the submissions made for the ground (a) appeal, which I have already dealt with. The appeal on ground (f) therefore succeeds in part.

The ground (g) appeal

46. This ground of appeal is that the six month period given to comply with the requirements of the notice is too short. The appellant requests that this be increased to nine months to allow time for the tenants to find new homes and to engage suitable contractors to carry out the building works.
47. The notice before me results in the engagement of Article 8 rights and Article 1 rights (1st Protocol) and that there will be interference with the occupiers' home and home life. Those rights are however qualified and it is for the decision maker to ensure interference is proportionate.
48. I accept that a longer period would be helpful to the tenants and in turn to the appellant but I consider six months is certainly sufficient to carry out the physical works. At the site visit I saw that most of the property was empty and it therefore appears that the appropriate balance has already been struck by the Council in specifying six months. This balances the rights of the individuals and the protection of matters of acknowledged public interest, namely the provision of family housing and the protection of neighbouring living conditions. For the reasons given the appeal on ground (g) therefore fails.

Conclusion

49. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

D Fleming

INSPECTOR

