



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: 4th November 2024

Appeal Ref: APP/Y5420/C/23/3320748

30 Willingdon Road, Wood Green, LONDON N22 6SB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Kamal Uddin against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 16 March 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 house in multiple occupation.
 - The requirements of the notice are to:
 1. Cease the use of the property as a C4 House in Multiple Occupation (HMO);
 2. Remove the kitchen at first floor level in its entirety. (A kitchen comprises of cooking appliances, sinks, kitchen worktops and cupboards).
 3. Remove from the land all debris resulting from compliance with the above requirements.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (c), (d), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. 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 ground (c) appeal

2. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission.
3. In this case the appellant accepts that the alleged use amounts to development but that the material change of use to a C4 HMO enjoyed the benefit of being permitted development as set out in Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The appellant submits the development took place before the Council's Article 4 Direction¹ came into effect on 30 November 2013 and, as such, a grant of express planning permission is not required and the use is therefore lawful.
4. The appellant acquired the appeal site in September 2005 and this information is supported by an extract from the Land Registry. In his first witness statement, he states he lived at the appeal site "From 2005 to 2012" but in his

¹ This has the effect of removing Class L rights to change the use of a property from use class C3 dwellinghouses to use class C4 HMOs and as such express planning permission is required.

second statement he states, "From 2011 onwards the only purpose of the house was for use as an HMO". A letter dated 20 January 2009 from the appellant's mortgage provider establishes his intentions at this point as the provider agrees to the property being let out, subject to various conditions.

5. It would appear from the mortgage conditions that the mortgage provider envisaged that the appellant would move out whilst the property was let but this was not the case. The appellant states while he lived there the 1st floor was rented out to other residents, who made use of a second kitchen on the 1st floor. This kitchen apparently existed at the time of purchase and was referred to in the appellant's survey but this has not been submitted as evidence.
6. No names are provided for the residents who lived there with the appellant and there is no description of the exact manner in which they occupied the property. There are no extracts from bank statements or copies of receipts to show rent was being paid at this time.
7. The appellant though has provided information from the Electoral Register and Council tax records but in 2010 to 2011 no one is recorded as being registered to vote at the property and between 2011 and 2013, it is only the appellant registered to vote. Similarly, the Council tax records only show that the appellant is liable to Council tax between 16 December 2007 and 28 June 2016. Based on the limited information before me at this point it is not been demonstrated that a C4 use began during the appellant's occupation.
8. Later on in the appellant's first statement he states, "After my family and I moved out of the premises in 2012, it remained tenanted". No precise date is provided as to when in 2012 he moved out. He remains registered to vote at the appeal site until 2013 but it is accepted that changes to the Electoral Register can take time to appear. His name is replaced by Lina Kosl for the period 2013-2014 and 2014-2015 but there is no explanation as to the identity of this person. The Council tax records show that the appellant was liable for Council tax up to 28 June 2016 and this is a significant period after his house move to be paying Council tax on two properties.
9. The tenancy agreements provide more information. The first is signed on the 1 September 2013 and is for a period of 12 months for what is described in the tenancy agreement as "flat/house 30 Willingdon Road". The occupiers are listed as Deepraj Singh, Jordan Ajadi, Daniel Martin and Kieron Walker (the first tenants group), though there is no mention of Lina Kosl. They all signed the agreement and their signatures are witnessed. Based solely on this document, it would appear that the C4 HMO use began at this point.
10. However, for that use to be authorised the appellant also has to show that prior to the C4 HMO use, the property was occupied as a C3 dwelling house. This is in order to benefit from the class L permitted development. It is not clear from the appellant's submissions from when he first occupied the property that it was used as a C3 dwelling house.
11. It is not known when the first tenants group left as the next tenancy agreement was signed on 10 November 2013 for a period of 12 months by Rokshana Begum and Sheikh Muhammed Almas Ali (the second tenant group, again there is no mention of Lina Kosl). As there were only two occupiers for what is described in the tenancy agreement as "30 Willingdon Road" this use

would fall within class C3 dwellings. This is because a class C4 HMO is defined as a shared house occupied by between 3 and 6 unrelated individuals who share basic amenities such as a kitchen or bathroom.

12. It is not known when the second tenant group vacated the property but the third tenancy agreement is signed on 1 September 2014 for a period of 12 months by the first tenants group. As this C4 use occurred after the Council's Article 4 Direction came into force on 30 November 2013, this use would have required planning permission but it appears no application was submitted. As such this use was unauthorised.
13. The 4th tenancy agreement was signed on 10 November 2014 by the second tenant group and the 5th tenancy agreement is signed on 1 September 2015 by the first tenants group, who signed agreements on 1 September 2013 and 1 September 2014.
14. There is no explanation from the appellant about the 14 tenancy agreements he has submitted as evidence. I find it is highly unlikely that the occupation of the property switched between the same two groups of individuals over three years. I am inclined to agree with the Council that, it is more likely than not, that the agreements show the property was probably being let as two flats, of which one was on a HMO basis. This makes more sense as the first tenants group signed their agreement on 1 September 2013 then renewed it on 1 September 2014 and 2015. The second tenant group signed their first agreement on 10 November 2013 and renewed it on 10 November 2014. Having regard to the rent paid by the different households, the first group were charged £1800 per month for three years and the second group were charged £1450 per month for two years.
15. Again, having regard to the size of the households and the rent charged, it appears that after the end of the tenancy of the first group sometime in 2016, that they were replaced by 3 tenants with the same surname and the rent was increased from £1800 to £2000 a month. After the second tenant group moved out, they were replaced by another two person household and the rent was increased from £1450 a month to £1650.
16. In August 2017 the rent is substantially increased to £4150 a month and given the appellant states a loft conversion was carried out in 2016, which initially provided an extra three rooms, it would appear that use as two flats had ceased at this point. My conclusions on this point are helped by the Council's evidence that the appellant's letting agent advised the Council Tax department on 23 February 2016 to the effect that three new individuals had just moved into the "ground floor flat". Then in May 2016 the Council's photographs show a vacant property with no door separating the ground floor from the first floor.
17. The subsequent tenancy agreements show various groups of 4 or more people then occupy the whole property on an HMO basis. Whether that is as a C4 HMO or a larger HMO use that does not fall within the C4 class is unclear. This is because on 4 March 2020 the appellant stated in his HMO licence application form that 9 people occupy the property. This contradicts the relevant tenancy agreement at the time which lists 6 names. These later tenancy agreements are signed by 5 of the tenants but a 6th signature is by a person not listed as a tenant. This casts doubt on whether the tenancy agreements identify all the occupiers of the property and, once again the discrepancy has not been explained by the appellant.

18. There are other discrepancies in the tenancy agreements such as that signed on 1 September 2022 which list 4 tenants. A Council officer visited the site on 12 January 2023 and found 6 tenants occupying 6 rooms. The larger HMO use was attacked by an enforcement notice issued on 17 December 2020, which came into effect 29 January 2021. This was not appealed by the appellant who reduced the number of tenants to 6 instead.
19. In conclusion, I find a C4 HMO use was not established during the appellant's occupancy of the property. Between September 2013 and May 2016 the property appears to have been occupied as a flat and a C4 HMO. From August 2017 it appears a C4 HMO is commenced for the whole property but this is without the benefit of permitted development as it is after the Article 4 Direction came into effect and the property was not used as a single class C3 dwelling beforehand. The subsequent larger HMO use identified by the Council in 2020 is unauthorised, which was accepted by the appellant. However, the resumption of a C4 HMO use for the whole property is also not lawful for the reasons given regarding the use in 2017.
20. Development without the necessary planning permission has taken place, which is a breach of planning control. For these reasons the appeal on ground (c) fails.

The ground (d) appeal

21. 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 occurred before the relevant date and continued thereafter for a period of ten years. The relevant date is 16 March 2013, namely more than 10 years before the notice was issued.
22. The relevant period is 10 years as section 171B of the Town and Country Planning Act 1990 as amended sets out the time limits for enforcement action. A four year period only applies in change of use cases where the breach of planning control consists in the change of use to a single dwelling house. That is not the case here.
23. My assessment of the appellant's evidence for the ground (c) appeal shows that the earliest a C4 HMO use of the whole property may have begun was August 2017. This is after the relevant date and therefore the appeal on ground (d) fails.

The ground (a) appeal and the deemed planning application

Main Issues

24. The main issues are the effect of the development on i) the provision of family housing in the borough; and ii) the mix and balance of the community in the area and the living conditions of nearby occupiers.

Reasons

Housing stock

25. 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.

26. The Council's policies are directed at maintaining a stock of small family dwellings, which is a form of housing that requires protection. DPD Policy DM17 Housing in multiple occupation deals with proposals for the conversion of larger homes to HMOs. These will only be permitted where the gross *original* (my emphasis) floor space of the dwelling is greater than 120sqm³, amongst other criteria. The C4 HMO use conflicts with this policy due to the original size of the appeal building, which has been established by the Council to be in the order of 110sqm, a figure not disputed by the appellant.
27. 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.
28. 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 in order to control the number of class C3 dwelling houses.
29. The Council's SHMA⁴ found that there is 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.
30. Although the Willingdon Road properties appear larger than other terraced properties in the area, with prominent two storey bay windows on the front elevation, they are not noticeably so. Based on the various drawings submitted by the parties it seems the original layout of the property comprised three rooms at ground level, no doubt originally intended as a lounge, dining room and kitchen, with three bedrooms above. The Council state a small family dwelling is considered to be one that is under 120sqm with 3+ bedrooms and this description fits the original layout of the appeal property. The appellant has since extended the building with a single storey extension to the kitchen and a loft extension over the main roof and outrigger, which at one point was laid out as three rooms.
31. If the appellant's arguments held sway, then anyone owning a property less than 120sqm would extend it to avoid being classed as a small family dwelling if they wished to change the use to an HMO. Similarly, if Council policy relied solely on rent values, then this also would mean some properties would not be prevented from becoming HMOs. Rent values change though to suit the market, such as when the appellant reduced his rent in 2021. The reference

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

³ Policy DM17 Paragraph A: a.

⁴ Strategic Housing Market Assessment

to original floor area in Policy DM17 is well established and is not subject to the intentions of individual owners or fluctuations in the market place. It therefore merits considerable weight.

32. In conclusion, I find that the development has resulted in harm to the supply of small family housing in the borough and as a result there is conflict with Policy DM17.

Mix and balance of the community

33. Policy DM17 also requires that regard should be paid to the cumulative effect arising from the over concentration of HMO's in an area. The Article 4 Direction covers the east of the borough, which is defined as the Family Housing Protection Zone in the DPD. This is where there was already an over concentration of HMO's which led to the making of the Article 4 Direction and the development of Policy DM17.
34. Whilst some of the reports the Council rely on to support their case are several years old now, the National Planning Policy Framework continues to emphasise the planning objective of creating mixed and balanced communities in delivering a sufficient supply of homes. The appeal site lies within the Noel Park estate, which I saw on walking around is a purpose-built estate with a church, school, meeting hall and park. The residential character of the area is self-evident in the variety of cottage-style dwellings and other styles of houses.
35. There are just over 100 properties in Willingdon Road of which 25 have HMO licences, which I consider is a significant number for one road. The Council also identify that the ward has an over concentration of HMO's. The Government has recognised where this occurs, this can change the character of an area and result in issues such as increased pressures upon parking provision, increases in anti-social behaviour and noise and disturbance. The Council has already created a controlled parking zone in the area, which is in operation 8.00am-6.30pm Monday-Saturday. This seeks to provide parking for residents given the proximity of the area to an Underground station.
36. In this case, third parties have made objections on the basis that the use has led to an increase in parking pressure, as well as anti-social behaviour, fly tipping and noise. While these effects may not be directly attributable to the occupants of the appeal site, an additional HMO in an area that is already identified as having a high concentration is likely to be harmful to the mix and balance of the community. As such, the development does not accord with Policy DM17. The appeal on ground (a) therefore fails.

The ground (g) appeal

37. This ground of appeal is that the 9 month period given to comply with the requirements of the notice is too short. The appellant requests that this period be increased but does not specify what that period should be even though the appeal form explicitly requires this. He does however state he would like time to "collaborate" with the Council to resolve the matter and that matters are "complex".
38. It appears there is some misunderstanding as to purpose of the time for compliance. This is provided in order to remedy the breach of planning control, not for any subsequent development works or as the appellant describes it, "for any works that are eventually required to be undertaken".

39. The notice requires the use to cease and for the first floor kitchen to be removed. I consider that 9 months is more than sufficient time to remove a kitchen. The appellant claims the kitchen existed when he bought the house in 2005 but he has not submitted a copy of the survey report to show this. He states he then replaced it in 2016 but it was not present at the Council's visit in May 2016 when the officer describes the first floor layout as "2 single, 2 double bedrooms and a bathroom". In the absence of any other evidence to support the appellant's case, I find it is necessary to remove the first floor kitchen as this is part of the unauthorised use and the Council have provided a reasonable period of time to do so.
40. With regard to the cessation of the use, this 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.
41. I consider that 9 months is a reasonable period for tenants to vacate the property and for the appellant to cease the use. This recognises the rights of the individuals and the protection of matters of acknowledged public interest, namely the provision of family housing and the maintenance of a mixed and balanced community. For the reasons given the appeal on ground (g) therefore fails.

Conclusion

42. 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.

D Fleming

INSPECTOR