



Appeal Decision

Site visit made on 8 January 2025

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal Ref: APP/G5750/C/23/3318585

Land at 16 Maybury Road, Plaistow, London E13 8RZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ahmedur Choudhury against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 8 February 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use to a *Sui Generis* House in Multiple Occupation (HMO).
- The requirements of the notice are 1. Cease the use as a *Sui Generis* House in Multiple Occupation; 2. Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including all internal locks on bedroom doors and any additional mattresses and beds; 3. Remove from the site all debris arising from compliance with steps 1 and 2.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

The appeal on ground (a)

Main Issues

1. The appeal on ground (a) is that planning permission ought to be granted. The main issues are (i) the effect of the development on the supply of family housing; (ii) the effect of the development on the living conditions of the existing and future occupiers of the property, in terms of the amount of internal space available and (iii) the effect of the development on neighbouring residents, having particular regard to disturbance from comings and goings.

Reasons

Family Housing

2. The Council's housing strategy is set out within policies H1, H3, H4, S1 and S6 of its Local Plan (NLP)¹. Collectively these policies seek to secure a mix and balance of housing types, including a significant increase in the quantity of 'family housing'. Policy H4 seeks to specifically protect existing three and four bedroomed family dwellings from being lost due to conversion. The justification for the policy refers to there being sufficient capacity for flats and Houses in Multiple Occupation (HMOs)

¹ Newham Local Plan 2018.

through new build projects, together with conversion of non-residential units. Whilst it suggests that conversion of dwellings may still be appropriate in exceptional circumstances, such as where sites are within or close to town or local centres and above commercial units, I am not provided with evidence that those circumstances apply in this case. Policy H3 states that HMOs should be purpose-built or converted from premises other than family-sized dwellings, subject to policies H1 and H4. Policy S6 seeks to restrict HMOs and flat conversions. It is clear that the provision of family housing is a policy priority for the Council.

3. The appellant does not seek to dispute that the appeal dwelling previously had at least three bedrooms and would have been suitable for occupation by a single family. I conclude the conversion of the property to a HMO has resulted in the loss of a family dwelling, which is clearly at odds with the Council's housing strategy and aforementioned policies in this case.
4. Taking account of the foregoing, I am not persuaded the proposed development can be justified on the grounds of promoting greater choice of affordable accommodation and labour market flexibility. Furthermore, the fact that this development may not lead to an over-concentration of HMOs in the locality does not overcome the policy conflict.

Living Conditions of Occupiers

5. The appeal site comprises an end of terrace dwelling. The internal accommodation consists of five bedrooms, including a loft room. There is also a communal kitchen, utility area and bathroom. A ground floor rear extension has been constructed but is not finished internally, and is not accessible from the interior of the property. It appears to be used to store various miscellaneous building materials. There is nothing to persuade me that the extension is being used, or intended for use, as part of the HMO accommodation; likewise a detached building at the end of the rear yard, which is also being used to store equipment and materials.
6. Policy D6 of the London Plan 2021(LP) sets out minimum standards of space that new self-contained dwellings are expected to provide. The Council's Policy H1 states all new homes should meet the internal space standards of the London Plan, *or if specialist housing* [my emphasis], those set out in Policy H3. Policy H3 of the NLP is concerned with specialist accommodation needs, with HMO provision included within its remit. It is undisputed that the appeal property comprises an HMO. As such it should be assessed specifically in relation to Policy H3.
7. The policy states that HMO proposals should demonstrate the achievement of the quality standards established by private sector rental licensing benchmark criteria. It therefore seems to me, in the absence of evidence to the contrary, that the achievement of an HMO licence, and compliance with any conditions therein, would be sufficient to meet the requisite quality standard in terms of the Council's planning policy. It is undisputed that the property benefits from an extant conditioned HMO licence issued by the Council².
8. From the evidence provided, the HMO licence limits occupation of the property to a maximum of five persons. However, it is undisputed that at the time of the Council's site visit in connection with this case, there were eight occupants.

² Ref 21/02164/HOHOHOL – issued 16 September 2021.

9. The Use Classes Order³ defines smaller scale HMOs as those accommodating up to six residents (Use Class C4). Where a HMO accommodates more than six residents it falls outside any specified class of use within the Use Classes Order. In such circumstances it would be regarded as a '*sui generis*' use. The appellant has not challenged the description of the use, by use of the words '*sui generis*', in the notice allegation.
10. Therefore, notwithstanding the existence of the aforementioned licence, the restrictions therein do not allow for a larger HMO, of the type the Council are enforcing against in this case. I therefore find that the appeal property, because of the intensity of use, falls short of the quality necessary to meet the requirements of planning policy.
11. I conclude the development is in conflict with Policies H1, H3, SP1, SP2 and SP3 of the NLP, with Policy D4 of the LP and with the National Planning Policy Framework (the Framework) insofar as they seek to secure an acceptable quality of accommodation for occupiers and ensure safe and healthy living conditions.

Living Conditions of Neighbours

12. The occupation of the property by residents independently of one another, is likely to give rise to a wider variation in movement patterns, compared with occupation as a single dwelling. Furthermore, it is likely that there could be a greater number of visitors, associated with the unrelated identities of the occupiers. The pattern of occupation could therefore potentially give rise to a larger number of comings and goings to and from the property, when compared to use as a single family dwelling.
13. The appeal site is within a predominantly residential location. However, I am mindful that the number of occupiers would be limited to relatively few persons. As an end of terrace property, there is a reasonable degree of separation between the appeal site and the adjacent terrace to the east. In addition, I have not been informed of any complaints in recent years, specifically with regard to noise and disturbance arising from general comings and goings.
14. In support of its case the Council has referred me to a previous appeal decision relating to an HMO at a site elsewhere in the Borough⁴. The appeal in that case was dismissed on grounds that included disturbance to neighbours. However, the appeal premises accommodated seven bedrooms and were therefore larger than in the present case. In addition, there was an objection from a neighbouring resident on record, specifically relating to noise and disturbance. Different developments must be considered on their own individual planning merits, and the difference in circumstances means I am not duty bound to follow the reasoning in that case.
15. Drawing these considerations together, on balance, I do not find conflict with Policies SP2, SP3 and SP8 of the NLP, Policy D14 of the LP or with the Framework insofar as they collectively seek to avoid development having unacceptable impacts on neighbours in terms of noise and disturbance.

Conclusion regarding ground (a) appeal

16. I have found conflict with the Council's development plan in terms of the loss of family housing and in terms of the standard of accommodation provided. I have not

³ the Town and Country Planning (Use Classes) Order 1987.

⁴ Appeal ref: APP/G5750/C/21/3269000.

found harm in terms of the living conditions of neighbouring residents, however, this lack of harm is neutral in the planning balance.

17. I am not aware of any material considerations sufficient to outweigh the policy conflict I have identified. I therefore conclude that it would not be appropriate to grant planning permission for the HMO development targeted by the notice. The ground (a) appeal therefore fails.
18. I recognise that the requirements of the notice would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998. However, these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. In this case I have found the proposed development to be in conflict with planning policies and would not outweigh the wider public interest. Accordingly, the degree of interference that would be caused to existing occupiers of the HMO would be insufficient to give rise to a violation of rights under Article 8, and would not be disproportionate.

The appeal on ground (g)

19. The appeal on ground (g) is that the time given to comply with the notice is too short. I am mindful of the importance of striking a balance between enforcement that is intended to be remedial rather than punitive, whilst maintaining public confidence in the planning system.
20. The appellant has requested that the compliance period be extended to 12 months, in order to allow sufficient time for tenants to seek alternative accommodation, in order to avoid being made homeless. However, I have not been provided with any evidence, such as tenancy documents, to substantiate the claim that a period of three months would allow insufficient time to do so.
21. I conclude, taking into account the Council's reasons for issuing the notice and the aforementioned considerations, that the time available to tenants to seek alternative accommodation would be reasonable and would not result in a disproportionate burden. Accordingly, the ground (g) appeal fails.

Conclusion

22. 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.

Final Decision

23. 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.

R Merrett

INSPECTOR