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## Appeal Decisions

Site visit made on 28 & 29 July 2025

**by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

**Decision date 07 August 2025**

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### **Appeal A Ref: APP/N5090/C/24/3358219**

#### **Land at 143 Claremont Road, LONDON, NW2 1AH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr M. A. R. Chowdhury against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 11 December 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the making of a material change of use of the building to use as a House in Multiple Occupation (sui generis).
- The requirements of the notice are to:
  1. Cease the use of the property as a House in Multiple Occupation.
  2. Restore the property to the state in which it was prior to the breaches of planning control taking place by:
    - i) Returning the internal layout to that shown in the pre-existing plans submitted with planning application No.24/3686/RCU, Drawing No. PL02
- The period for compliance with the requirements is 6 Months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.**

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### **Appeal B Ref: APP/N5090/W/24/3357814**

#### **143 Claremont Road, LONDON, NW2 1AH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr M. A. R. Chowdhury against the decision of the Council of the London Borough of Barnet.
- The application Ref is 24/3686/RCU.
- The development proposed is change of use from a single dwellinghouse (Use Class C3) to a 6 bed HMO (House in Multiple Occupation (Sui Generis) for up to 8 people (Retrospective Application).

**Summary of Decision: The appeal is dismissed.**

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## **Decisions**

### **Appeal A**

1. It is directed that the enforcement notice is varied by deletion of sub paragraphs 2 and 2 i) in paragraph 5 (What you are required to do).
2. Subject to this variation, the enforcement notice is upheld.

### **Appeal B**

3. The appeal is dismissed.

## Preliminary Matters

4. The Barnet Local Plan 2021-2036 (BLP) has been adopted since the appeal was made and statements submitted. The Council has subsequently provided details of those relevant development plan policies, and the appellant has had an opportunity to comment on them and so has not been prejudiced.

## Appeal A on ground (c)

5. The ground of appeal is that matters alleged do not constitute a breach of planning control. It is for the appellant to make out their case on the balance of probabilities.
6. There is no ground (b), that the matters stated in the notice as constituting the breach of planning control have not occurred, as a matter of fact, and the appellant does not dispute that the property is being used as a House in Multiple Occupation for up to eight persons. However, the appellant contends that the change of use of the original and lawful four-bedroomed single dwellinghouse to a six bedroomed House in Multiple Occupation (HMO) occupied by eight persons has not resulted in operational development nor has there been a perceptible change to the site's character, nor environmental effects of any consequence. There are also, in his opinion, no significant planning consequences. It is his view that the change of use from a single dwellinghouse to an eight person HMO is not a material change of use of the property, and therefore not development requiring planning permission.
7. The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) defines a series of use classes and provides that where land is used for a purpose falling within such a class of use for another purpose falling within the same class "shall not be taken to involve the development of land" (Article 3 of the UCO).
8. The UCO defines Class C3 as a dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than use within Class C4).
9. The UCO defines Class C4 use of a dwellinghouse by not more than six residents as a "house in multiple occupation". For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004. Thus, Class C4 of the UCO provides for the use of a dwellinghouse as an HMO by not more than six residents: that is up to six unrelated individuals who share basic amenities.
10. The definitions of the Use Classes are important because the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended grants permission in Schedule 2, Part 3, Class L for the following development:

*Development consisting of a change of use of a building, (a)..... (b) from a use falling within Class C3 (dwellinghouse) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.*

Thus, it is clear from legislation that the change of use from a use falling within Class C3 single dwellinghouse to a C4 HMO is development. Furthermore, Barnet Council considered it necessary to make an Article 4(1) Direction, relating to development comprising a change of use from a use falling within Class C3 of the UCO to a use falling within Class C4 of that Order, which came into force in May 2016. The Council were concerned about the concentration of HMOs in the Borough, their effect on the residential character of the area, and the loss of family homes for which there is a demonstrable need.

11. However, in this case the appeal property is being used by up to eight unrelated individuals as an HMO. Its use does not therefore fall within Class C3 or Class C4 of the UCO and is a *sui generis* use<sup>1</sup>. The appellant suggests that the former four-bedroom single dwelling could have been occupied by more than four individuals, however, no details have been provided of the actual use of the C3 dwelling before its conversion to an HMO. Furthermore, as a C3 dwellinghouse the occupants would have been living as a single household, that is significantly different than the arrangement in the appeal premises, where there are up to eight different households in the property.
12. The use as a six bedroom HMO by eight persons may result in an increase in activity at the premises, comings and goings, including visitors and deliveries to the property. Furthermore, general noise levels associated with the normal living conditions of a family would be significantly less than that expected by eight unrelated adults, particularly if they are coming and going in cars. In addition, the refuse and waste generated would be much greater than the use of a single dwelling.
13. Having regard to the provisions of the UCO and GPDO, and for the reasons set out above, the use of the dwellinghouse as a HMO accommodating eight unrelated individuals sharing basic facilities, on the balance of probability, has a significant different character than that of a single dwellinghouse where the occupants are living together as a single household. It also has planning land use consequences in terms of housing mix.
14. I conclude that there has been a material change of use of the property and a breach of planning control has occurred which did not benefit from a grant of planning permission. The development is not permitted under any provision of the GPDO. A breach of planning control occurred and the appeal on ground (c) fails.

### **Appeal A on ground (f)**

15. Section 173(4) of the Town and Country Planning Act 1990, as amended (the Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
16. The appellant considers that the requirements are excessive and that there are lesser steps which would achieve the purpose of the notice with less cost and disruption. They should be proportionate. He believes that the purpose of the

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<sup>1</sup> Latin expression, meaning 'of its own kind' when no use classes order category fits.

notice could be achieved without carrying out the works in Step 2, which in themselves are not operational development.

17. Step 2 requires the appellant to restore the property to the state in which it was prior to the breaches of planning control taking place by: (i) Returning the internal layout to that shown in the pre-existing plans submitted with planning application No. 24/3686/RCU, Drawing No. PL02.
18. Section 173(5) of the Act gives the power to require the alteration of buildings for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purposes of facilitating the unauthorised use, even if those works in their own right might not constitute development, so that the land is restored to its condition before the change of use took place.
19. In this case, Step 2 requires the internal layout of the property to be returned to its original state, which suggests a requirement to remove the new partition walls and reinstating others that previously existed. From the evidence before me, the majority of those new partitions were installed to create en-suite bathrooms. However, the notice does not require the new bathroom fittings to be removed. Thus, the works required by Step 2 are not entirely clear, and retention of ensuite bathrooms, if the appellant so desired, could still serve the occupants of a C3 dwelling.
20. For the reasons given above, including the ambiguity around Step 2, I do not consider that it is necessary for the internal layout to be reinstated to remedy the breach of planning control which can be secured solely by Step 1. The appeal on ground (f) succeeds.

### **Appeal A on ground (g)**

21. The issue is whether the compliance period of six months is reasonable. The appellant advises that some of the occupants have 12-month tenancies and therefore it would be more reasonable to allow a period of 12-months for the notice to be complied with, including remedial works. He argues that a 12-month period would give him time to notify the current tenants and allow them a reasonable length of time to find suitable accommodation that is affordable and within a suitable location.
22. The notice was issued in December 2024 and the appeal made later that month. Thus any 12 month tenancies made prior to the appeal being made should now have no more than 5 months left to run. Furthermore, I have varied the notice, and the remedial works set out in Step 2 are no longer a requirement of the notice. Six months therefore remains a reasonable time for the appellant to give the tenants notice, and for them to find alternative accommodation.
23. The appeal on ground (g) fails.

### **Conclusion on Appeal A**

24. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

## Appeal B

### Main Issues

25. The main issues in this appeal are:

- the effect of the development on housing mix, having regard to local and national planning policies;
- the effect of the development on the living conditions of neighbouring residents, with particular regard to noise and disturbance; and
- the effect of the development on parking conditions.

### Reasons

#### *Housing Mix*

26. The appeal site lies in a residential area which is predominantly characterised by modest terraced housing laid out in small blocks. The appeal property occupies a prominent plot on the corner of the street, has a large, enclosed front and side garden, and a driveway with space to park one car.
27. To support the Government's objective of significantly boosting the supply of homes, the National Planning Policy Framework (the NPPF) makes it clear that as well as sufficient land being available, the needs of groups with specific housing requirements needs to be addressed. Policy HOU02 of BLP states that in order to deliver mixed and inclusive neighbourhoods, the Council will support proposals which provide a mix of dwelling types and sizes to help meet current and future housing needs. Furthermore, Table 7 of the BLP sets out dwelling size priorities, and identifies family housing including 2-, 3- and 4-bedroom dwellings as being a priority. The need for 1 bedroom accommodation being the least priority housing need within the Borough.
28. Policy HOU04 of BLP relates to specialist housing, including HMO, and Part C, criterion b) requires proposals for new HMOs to demonstrate that they meet an identified need. Paragraph 5.12.7 of the supporting text highlights that in considering such proposals, the approach contained within Policy HOU03 of BLP to prioritise family housing needs is not undermined, and that this approach is necessary to prioritise family homes from the existing housing stock. Policy H9 of the London Plan relating to ensuring the best use of existing housing stock, including taking account of the role of HMOs in meeting local and strategic housing needs, is reflected in BLP Policy HOU04, Part C.
29. In this case, the original dwelling had three bedrooms at first floor level and a converted loft space with additional bedroom and study. In addition, the property has a large private garden, and a driveway with parking for at least one car. It is clearly a property suitable for family accommodation and for which there is a demonstrable need. The Article 4 (1) Direction which operates in the Borough and withdraws permitted development rights to convert houses into small HMOs, provides support for Policy HOU04.
30. I appreciate that there is a demand for the accommodation provided within the HMO and I recognise that there has been an increase in the number of multi-adult households living in the area. HMOs clearly play a role in meeting that need, and I

understand that the property has been fully occupied since conversion. However, the Council advise that the Authorities Annual Monitoring Report demonstrates that one and two-bedroom accommodation remain the dominant type of accommodation delivered in the Borough, accounting for 78% of new homes and 86% of flats. Whilst one-bedroom dwellings form only 6% of the Borough's market housing need. Thus, whilst continuous occupation of the HMO may prove a demand, which is a market indicator, it does not demonstrate housing need which is a measure of the shortfall of accommodation that meets normative standards. The use of the property as an HMO conflicts with the Council's objective of trying to protect and increase housing provisions for a recognised and demonstrable housing need.

31. Furthermore, it is understood that the property is located in an area which Transport for London identify as having poor public transport accessibility, PTAL rating 2. As such, it is not a location where proposals for a new HMO would be supported and there is conflict with Policy HOU04 Part C, criteria d) which requires easy access by public transport.
32. I conclude that the development has a significant harmful effect on the housing mix and has resulted in the unacceptable loss of a family dwelling. There is conflict with the development plan, and in particular with Policy HOU04 of BLP, the aims of which are set out above.

*Living conditions of neighbouring residents*

33. The creation of a six-bedroom, eight-person property, has the potential to generate a greater level of comings and goings from the property, both from those occupying the property, as well as from visitors, including deliveries. As such, there may be greater associated noise and disturbance from the property compared with that of a single, larger household.
34. I understand that the property has been operating as an HMO for a number of years, and I have not been provided with any evidence that would suggest that it is causing any noise or disturbance to neighbouring residents. There are no internal communal areas where social interaction may take place between residents, which share a wall with the attached property. Furthermore, the property holds an HMO licence which suggests the Council consider that the property meets relevant standards for HMOs.
35. Externally, comings and goings are more likely to take place at the frontage and around the front door. The appeal property is located on a corner, and its front door faces away from the attached dwelling which fronts Claremont Road, and pedestrian and vehicular access from the appeal property is instead from Clitterhouse Road. Furthermore, it has a large front garden which is heavily enclosed by a tall hedge. In the absence of any substantive evidence to demonstrate otherwise, from my observations there is sufficient separation between the appeal property and neighbouring residents such that any increase in comings and goings would not have an adverse impact on the living conditions of nearby residents, with particular regard to noise and disturbance.
36. In addition, it would be reasonable to impose a condition requiring an HMO Management Plan to be agreed and implemented which could mitigate tenant behaviour, including provision of waste, recycling provision.

37. For the reasons given above, I conclude that the development would not have a significant and harmful impact on the living conditions of nearby residents, with particular regard to noise and disturbance. There would no conflict with Policies CDH01 and HOU04 c). of the BLP, Supplementary Planning Document: Residential Design Guidance, and Supplementary Planning Document: Sustainable Design and Construction. Collectively, these policies seek to ensure that proposals do not have an unacceptable impact on the amenity of occupiers of neighbouring properties.

### *Parking*

38. The Council advise that since the planning application was refused and BLP subsequently adopted, the development no longer conflicts with the Borough's off-street parking maximum standards. In the case of use of the property as a large HMO, the standards provide for a maximum of one off-street parking space per unit/dwelling. The appeal property has a single driveway and makes provision for the parking of one car off the highway. There is also sufficient space within the garden area of the property to accommodate secure cycle storage.
39. From the evidence before me, including my own observations on my site visit, the appeal property does not lie within an area where there is a Controlled Parking Zone (CPZ) in operation. Thus, there is no requirement for a planning obligation to restrict the occupiers of the property from obtaining car parking permits.
40. I recognise that the appeal property lies within an area where public transport options are considered to be poor. However, the property is within walking distance of the local rail/tube station and is on a bus route. There are also local shops, services and community facilities close by. I noted on my visit that many of the properties in the surrounding area have off-street parking available to them, and competition for on-street parking did not appear to be at a premium. Furthermore, I have not been provided with any substantive evidence to would demonstrate that the use of the property as an HMO has resulted in any harm to highway or pedestrian safety.
41. For the reasons given above, the development makes adequate provision for off-street parking and there is no conflict with Policies TRC01 and TRC03 of BLP which seek amongst other criteria, reduce car parking dependence, and ensure that levels of provision for each development take into account the local environment and accessibility of the site.

### **Human Rights**

42. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most fundamental rights and freedoms contained in the European Convention of Human Rights, and I recognise that dismissal of the appeal would interfere with the occupiers' rights under Article 8 and the appellant's rights under Article 1 of the First Protocol. However, given the harm identified, the action pursues the legitimate aim of regulating land use in the public interest and is necessary and proportional to the situation.

### **Conclusion on Appeal B**

43. Although I have found that the development would not result in harm to the living conditions of neighbouring residents, and would provide adequate on-site parking

provision, I have found the loss of a family home and conflict with the development in this regard is the decisive factor. The appeal does not therefore succeed.

*Elizabeth Pleasant*

INSPECTOR

Appendix 1

List of those who have appealed

| Reference | Case Reference         | Appellant             |
|-----------|------------------------|-----------------------|
| Appeal A  | APP/N5090/C/24/3358219 | Mr M. A. R. Chowdhury |
| Appeal B  | APP/N5090/W/24/3357814 | Mr M. A. R. Chowdhury |