



Appeal Decisions

Site visit made on 13 March 2026

by **Jean Russell MA FRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 April 2026

Appeals A and B: APP/U5930/C/24/3345263 and APP/U5930/C/24/3345264 66 Huxley Road, Leyton, London, E10 5QU

- Appeals A and B are made by Mr Ashaq Amin Khokhar and Mrs Shahida Khokhar under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: ENF/210414) issued on 30 April 2024 by the Council of the London Borough of Waltham Forest.
- The breach of planning control as alleged in the notice is: “without planning permission, the material change of use of the land as dwellinghouse C4 use class to a Large House in Multiple Occupation (‘HMO’) (Sui Generis Use Class) incorporating a hotel let (Use class C1).”
- The requirements of the notice are to:
 1. Cease the use of the property as a Large House in Multiple Occupation (‘HMO’) (Sui Generis Use Class).
 2. Cease the use of the property as a Hotel let (C1 Use Class).
 3. Remove all additional kitchens including microwaves, oven cookers, washing machines, kitchen countertops, sinks and cupboards and associated fittings and fixtures from the property so that only one remains on the ground floor.
 4. Remove all additional bathrooms including showers, handwash basins and WC toilets, fittings and fixtures so that only two remain.
 5. Remove from the property all associated debris resulting from compliance with the above steps.
- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5).
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990. Since planning permission could be granted for what is alleged via Appeal A, Appeal B does not proceed on ground (a).

FORMAL DECISIONS: APPEALS A AND B

1. It is directed that the enforcement notice be corrected by:
 - Deleting the text of paragraph 3 entirely and substituting “Without planning permission, the making of a material change of use of the land to a mixed use comprising use as a large house in multiple occupation with more than six residents and use for hotel or temporary sleeping accommodation.”
 - Deleting requirements 1 and 2 set out in paragraph 5 and substituting “1. Cease the mixed use comprising use as a large house in multiple occupation with more than six residents and use for hotel or temporary sleeping accommodation”.
 - Renumbering requirements 3, 4 and 5 as 2, 3 and 4 respectively.
2. The enforcement notice is upheld subject to the corrections. Planning permission is refused on the application deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

PRELIMINARY MATTERS

The Enforcement Notice

3. I describe the enforcement notice subject to these appeals as 'the appeal notice'. It was issued on 30 April 2024, the date that 'the original notice' was withdrawn by the Council. The original notice was issued on 7 December 2023 with the same reference number (ENF/210414).

The Evidence and Grounds of Appeal

4. The appellants suggest that relevant evidence was submitted in support of appeals made against the original notice. Since that was withdrawn, however, the previous appeals were probably not determined, and I can only refer anyway to evidence submitted properly for the current appeals. I have had full regard to the appellants' statements and supporting documents, including declarations, bank statements, tenancy agreements, emails and planning, building control and licensing papers.
5. The appeal grounds are determined in logical rather than alphabetical order. Grounds (e), (b), (c) and (d) are 'legal' grounds where the onus is on the appellants to make their case on the balance of probabilities. The planning merits of the development are relevant only to ground (a).

A Note on Use Classes

6. The enforcement notice refers to 'use classes' C1 and C4 and to 'sui generis' uses. It is worth explaining that use classes are set out in Schedules 1 and 2 to the Town and Country Planning (Use Classes) Order 1987 (the UCO) where:
 - Use class C1 is defined as use as a 'hotel or boarding or guest house...'
 - Use class C4 is use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO).
7. A 'sui generis' use is one which does not fall within any use class. The use of a building as a 'large HMO', with more than six residents, is sui generis. Any mixed use also falls outside of any use class, a point I shall return to later.

APPEALS A AND B ON GROUND (E)

8. Ground (e) is that copies of the enforcement notice were not served as required by s172 of the Town and Country Planning Act 1990 (TCPA90). The relevant subsection in this case is 172(2), which requires that a copy of an enforcement notice shall be served on (a) the owner and on the occupier of the land to which it relates, and (b) any other person having an interest in the land which, in the opinion of the Council, is an interest materially affected by the notice.
9. The appeal building includes 11 numbered habitable rooms. On the date of my visit, nine of those rooms were furnished as bedrooms, while nos. 2 and 9 were used for dining and storage respectively. However, the numbering indicates that 11 rooms could be let and indeed more than nine, as shown below, have been in the past. By serving copies of the notice on the "occupiers" of all 11 rooms, the Council ensured that none would be missed and compliance with s172(2).
10. The appellants ask why the company secretary of London Accommodation 4U Ltd (LA4U) was served. LA4U were managing agents for the building but ceased to

have any interest in September 2019. I understand the appellants' concern that personal information pertaining to them was shared with LA4U, but s172 does not relate to data protection and I have no general remit over the Council's approach to that matter. Enforcement notices are in any event held on a public register.

11. The Council has explained that they knew LA4U once had an interest but not whether that was still the case. S172(2) does not require but also does not prohibit service on previous owners. The Council acted on the side of caution in serving the notice on the company secretary, who would thus have been able to make an appeal if (as the Council thought possible) they had still had an interest in the land.
12. The appellants question why LA4U were served but another former owner (KHM) and former occupier (TN) were not. KHM and TN ceased to have any interest in the property in 2014. The Council were not required and had no reason to serve those persons. I conclude that, on the balance of probabilities, copies of the notice were served in accordance with s172. Appeals A and B must fail on ground (e).

APPEALS A AND B ON GROUND (B)

13. Ground (b) is that the matters set out in the notice, meaning the alleged change of use, has or have not occurred. The appellants claim that the appeal building is not in use as a hotel, but as an HMO with some rooms being available for short lets.
14. I saw that none of the 11 numbered rooms contains any washing, toilet or cooking facilities. However, there are two kitchens on the ground floor, connected via space to the side of a bathroom. Second and third bathrooms are installed on the first and second floors, and both kitchens and all bathrooms are accessible to all bedroom occupiers. From the inexact guide of visible personal effects, it looked like at least seven bedrooms are occupied permanently. The building is probably used as a large HMO, but that need not be the only use.
15. A hotel use typically involves the provision of bedroom accommodation which is bookable by the night. Hotel bedrooms may or may not have en-suite bathrooms; there can also be variety in the extent to which the rooms are furnished and guest food and drink is provided. It is possible for a building to be in a mixed use for a hotel and something else. A hotel (or guest or boarding house) use may be carried out so that there is no practical difference, in land use terms, from what the appellants would describe as a short let or temporary sleeping use.
16. That being so, the appellants' evidence proves fatal to ground (b). They told the Council by email on 19 May 2021 that "the property is not being used as Hotel... [but] as HMO and partially Airbnb". On 15 September 2021, in response to a Planning Contravention Notice (PCN), the appellants said they had appointed Grand Heights Estate Ltd (GHE) as managing agents who used Airbnb for letting because of Covid-19. Seven bedrooms were occupied by HMO tenants and two were let by the night, but the long-term aim was only to carry out HMO use.
17. A similar version of events is set out in a signed statement made by MF¹ who, with friends, rented the building from October 2019. Their tenancy agreements were "converted" in June 2020 to be put in their company name of GHE. MF stated that "we" are using the property as an HMO with "eight rooms for rent on room by room basis to eight different un-related people" plus "25% of the property for Airbnb".

¹ The signed statement is not a statutory declaration because it was not sworn in front of a solicitor.

This statement was made on 15 January 2024, indicating that the building was used for HMO and hotel or temporary sleeping purposes beyond the pandemic.

18. The Council found that rooms were still being advertised as available to book by the night, via a few online agencies, on 24 October 2024. The property was listed on Airbnb as a “10 bed lodging establishment that offers overnight accommodation and breakfast...with shared kitchen and shared bathroom”. Even on the date of my visit, there was a “guests notice” in each of the kitchens and the ground and first floor bathrooms. The kitchen notices stated that the facilities are “self-service”, advice unlikely to be necessary for anyone who lives in the building permanently.
19. I conclude that the use of the building as a large HMO incorporating a hotel let has occurred on the balance of probabilities. Appeals A and B fail on ground (b).

APPEALS A AND B ON GROUND (C)

20. Ground (c) is that what is alleged does not constitute a breach of planning control. A breach occurs where ‘development’, such as the carrying out of building operations or making of a ‘material’ change of use, takes place without the necessary planning permission. There are statutory provisions governing whether some changes of use are material. If they do not apply, a material change of use is taken to have occurred where there is some significant difference in the character of the activities taking place on the land as a matter of fact and degree.
21. Under s25A of the Greater London Council (General Powers) Act 1973, the use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use. If s25A applies here and conditions on it (as discussed below) are met, the introduction of the hotel use would not require planning permission or be in breach of planning control. However, for that to be the case, the pre-existing HMO use would need to be lawful. I must interpret “any residential premises” in law as meaning any premises in a lawful residential use.
22. The appellants bought the appeal property in April 2014, having moved next door the previous June. By that time, there is no dispute that the use of the building had already been changed from its original use as a single dwellinghouse (falling within use class C3) to use as an HMO. Whether the change of use was carried out by the previous owner or their tenant sub-letting some rooms, there were never more than five unrelated occupiers just as there were only three bedrooms and two reception rooms. The first change of use was to a small or C4 HMO use.
23. I assume for the sake of argument that the change of use to a C4 HMO did not constitute a breach of planning control. It took place between 2010 and June 2013 when planning permission was granted for a change from, in short, C3 to C4 use via the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO 1995)². The Council did not introduce an ‘Article 4 Direction’ to remove that ‘permitted development’ right until September 2014. However, whether the change was permitted or not, my crucial finding at this point is that the building was in C4 HMO use when the appellants bought it.

² The GPDO 1995 was amended in October 2010 to grant planning permission, via Article 3(1) and Part 3, Class I of Schedule 2, for development consisting in the change of use of a building from a use falling within use class C3 to one falling within use class C4.

24. Upon purchase, the appellants proceeded to enlarge the building through the construction of a dormer window and a single storey rear extension³. These works resulted in the creation of eight bedrooms plus the two kitchens and dining room. The appellants completed a first floor rear extension in November 2016 and then made internal changes so that the building was laid out as it is now.
25. The appellants sought authorisation for the **building operations** where required:
- Under Article 3(1) and Part 1, Class B of Schedule 2 to the GPDO 1995, planning permission was granted for the extension of a dwellinghouse consisting of an enlargement of the roof without any requirement for a 'prior approval' process.
 - 'Prior approval' (ref: 2014/1238/PA) was granted for the single storey rear extension pursuant to the planning permission granted by the GPDO 1995 under Part 1, Class A for a [large] extension to a dwellinghouse.
 - Planning permission (ref: 16060) was granted by the Council on 21 April 2016 for the first floor extension.
 - Works affecting only the interior of a building do not amount to development that requires planning permission.
26. However, the plans submitted to the Council in 2014 and 2016 did not accurately depict how the building would be laid out inside, and the works were not carried out to a building in use as a dwellinghouse. The appellants suggest that, before and after 2014, the building was used as an HMO the same. I disagree and find that they enlarged the building to facilitate a change of use from C4 to use as a large HMO with more than six residents.
27. The number of households living in the building was increased from four or five in April 2014 to eight by around the end of that year and then to ten in or after 2016. It was stated in the HMO licence application of June 2020, the same month that the building was let to GHE, that ten households comprising sixteen people were "currently liv[ing]" in the property. The significant increase in the size of the HMO probably affected the character of the use, as shown by a 2017 email from the appellants to LA4U referring to neighbour "discomfort" about noise.
28. I find that the change from a small to a large HMO use in 2014 was probably the second material change of use of the building. The appellants have not shown otherwise or, yet, that planning permission was granted. For the avoidance of doubt, no change of use was permitted with the extensions. The GPDO does not permit any change to use as a large HMO⁴. The grant of HMO licences, and the knowledge of the HMO use by Council Tax and building control officers, did not confer or remove the need to obtain planning permission.
29. The change from C4 use to use as large HMO was probably an unauthorised material change of use. It follows from that finding and my workings below on ground (d) that the alleged or the next or third change of use, which introduced the hotel or temporary sleeping use, was probably not exempted under s25A from being a material change of use. The residential premises, meaning the large HMO

³ Building control records show that the loft and single storey extensions were completed on 5 and 14 September 2014, respectively.

⁴ Under the current Town and Country Planning (General Permitted Development) (England) Order 2015

use subsisting in June 2020, was not lawful. The Council's point that s25A only applies to whole premises adds weight to that finding and so it would not help the appellants if the "90 nights" and "Council Tax" conditions on s25A were met.

30. It is still necessary to make a fact and degree assessment as to whether the appeal change of use was a material one. There is little from the appellants to show that it was not. The change of use led to the building being occupied to the same extent but by a combination of permanent and transient adults. It led the Council to receive more complaints about parking stress as well as noise. The change from the already unlawful large HMO use to use as a large HMO and hotel probably amounted to development that requires planning permission.
31. With no evidence of the requisite planning permission being granted, I conclude that, on the balance of probabilities, there is a breach of planning control as alleged. The appeals fail on ground (c), but I shall exercise the powers set out under s176(1)(a) of the TCPA90 to correct the notice. Since the last use was probably as a large HMO alone, the notice should not allege that the material change of use was from a 'dwellinghouse C4 use class'.
32. I also find that the allegation should describe the new use as a 'mixed use' without any reference to use classes but as comprising use as a large HMO and use for hotel or temporary sleeping accommodation. I can correct the allegation in these respects without causing injustice to the appellants or the Council because the notice will be made more precise but no different in substance.

APPEALS A AND B ON GROUND (D)

33. Ground (d) is that no enforcement action may be taken in respect of any breach of planning control constituted by the matters alleged by the notice. Under s171B(3) of the TCPA90, no enforcement action may be taken in respect of a material change of use of a building, either to a large HMO or to a mixed use, after the end of the period of ten years beginning with the date of the breach.
34. The appellants have submitted substantial evidence designed to show that no enforcement action could be taken against the use of the building as a large HMO. However, I would date the material change from C4 to the large HMO use to September 2014 at the earliest, when the loft and ground floor extensions were completed and more than six bedrooms were provided.
35. The large HMO use could only have become 'immune' from enforcement action if it continued for ten years from September 2014. That cannot have happened because the material change to the mixed use probably occurred before May 2021 and will have reset the clock again. The use of the building as a large HMO alone did not take place for any ten year period, and I make that finding to support my earlier conclusion that the appeal change of use does not benefit from the provisions of s25A of the Greater London Council (General Powers) Act 1973.
36. Since the notice concerns the material change to the mixed large HMO and hotel use, these appeals could only succeed on ground (d) if the mixed use itself took place for a ten year period. Again, that cannot have happened because there were less than ten years between June 2020 – the earliest possible date for the start of hotel lettings – and 7 December 2023 when the Council first purported to take enforcement action. The mixed use had not taken place for ten years even by 30 April 2024, the date of the appeal notice.

37. I conclude that it was probably not too late for the Council to take enforcement action when they did against the material change of use of the building to a mixed use comprising use as a large HMO and use for hotel or temporary sleeping accommodation. The appeals fail on ground (d), and it is not possible for me to grant a lawful development certificate in respect of either the alleged mixed use or the large HMO component on its own.

APPEAL A ON GROUND (A) AND THE DEEMED PLANNING APPLICATION

Main Issues

38. Ground (a) is that planning permission ought to be granted for the development described by the notice which, as corrected, shall allege in full: the making of a material change of use of the land to a mixed use comprising use as a large house in multiple occupation with more than six residents and use for hotel or temporary sleeping accommodation.
39. The main planning issues are:
- Whether the appeal change of use has caused an over-concentration of similar uses and/or loss of family homes in the area,
 - The effects of the mixed use on the living conditions of occupiers of the appeal and nearby properties,
 - Its effects on car parking along Huxley Road, and
 - The effects of a refusal of planning permission on the appellants and on the occupiers of the appeal building.
40. I assume that the ground floor, first floor and roof extensions to the building are all lawful. Even if they did not enlarge a “dwellinghouse”, the basis on which they were permitted, they have been in place for eight plus years. It is too late for the Council to take enforcement action against the extensions, and they do not do so⁵.
41. In that situation, and given the appellants’ and MF’s evidence, I shall consider the main issues on the basis that the mixed use would normally be carried out with rooms 2 and 9 being used for dining and storage, seven of the other numbered rooms being let to HMO residents, and the last two being let on an Airbnb basis.
42. I shall also consider planning merits in the context of the building probably having nil lawful use. The appellants cannot revert to the last use as a large HMO alone, because that was unlawful⁶. Planning permission would be required for a material change back to use as a large HMO alone, or to a C4 HMO, or to a single dwellinghouse or flats, because there are no permitted development rights for a change to any of those uses from a mixed large HMO and hotel use.

⁵ Under s171B(1)(a) of the TCPA90, no enforcement action may be taken in respect of a breach of planning control consisting in the carrying out of building operations on land after the end of the period of four years beginning on the date on which the operations were substantially completed, where that was before 25 April 2024.

⁶ Under s57(4) of the TCPA90, where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out. S57(4) means that, following the issue of a notice, the landowner may revert to the **last** use of the building **if** that was lawful.

Reasons

Concentration of Uses and Loss of Family Homes

43. Policy 20/A of the Waltham Forest Local Plan (WFLP1) resists the “conversion” of larger homes to any kind of “multiple residential occupation” where the original house had a gross internal floorspace of less than 124 square metres (sqm) or the result would be an over-concentration of HMOs in one street or the local area.
44. In my view, a grant of planning permission for the appeal change of use would not conflict with Policy 20/A because:
- The building “was” in a “Restricted Conversions Ward” for “the previous local plan”, but Policy 20 makes no mention of restricted conversion areas.
 - The reasons for issuing the enforcement notice include that the “unauthorised mixed use results in the **over-intensified use of** a dwellinghouse...” but objection pertains to living conditions and cannot be read as meaning that there is an over-concentration of HMOs in a street or area.
 - The Council said in its statement of case that the appeal change of use did “not result in an overconcentration of similar uses”. It does not matter exactly what the Council meant by “similar uses” because they make no claim of there being an over-concentration of large HMOs and/or hotels in the area.
45. Since the harm that Policy 20/A seeks to prevent is not caused, I record that the appeal change of use was not even made from “a larger home”. The loss of a single dwellinghouse use occurred with the change to C4 use several years earlier. Thus, I will not speculate on the limited evidence before me as to whether there is any need or demand to use buildings of this size as family homes. I conclude that the appeal change of use has not caused an overconcentration of large HMO and/or hotel uses, or a harmful loss of family homes, in this street or the wider area. The development does not conflict with WFLP1 Policy 20/A.

Living Conditions

Space Standards

46. WFLP1 Policy 20/C states that the conversion of homes with a gross internal floorspace of more than 124sqm into HMOs will only be permitted where criteria are met. Criteria i) is that the room sizes in an HMO must meet specified sizes. Regardless of what the change of use was from, the appeal mixed use does include an HMO component, and the building almost certainly has a floorspace exceeding 124sqm, so I find the space standards applicable⁷.
47. Policy 20/C requires that kitchens serving seven or more occupiers are 15sqm large with an extra sqm for each additional occupier (over seven). The appeal kitchens fall short even just for seven permanent occupiers, because they only cover around 14.6sqm⁸. Policy 20/C also provides that living rooms which serve seven plus occupiers, and where there are dining facilities in another room, should

⁷ The Council's floorspace figures for the kitchens and numbered rooms total 123.76sqm. Floorspace in the bathrooms and circulation areas would be added to calculate the gross internal floorspace.

⁸ I agree with the Council that the space connecting the kitchens, to the side of the ground floor bathroom, is tantamount to a corridor and not usable for kitchen purposes. It provides access to rooms 2, 3 and 4 as well as to the bathroom and between the kitchens.

be 18sqm with an extra sqm for each occupier over seven. There is no living space here except for the dining room and that has less than 11.5sqm.

48. Policy 20/C further requires that bedrooms in shared houses with a communal living room should provide at least 10sqm floorspace where there is one occupier and 16sqm if there are two. The Council estimates that bedrooms 3, 4, 5 and 6, as well as the current storage room 9, all have less than 10sqm in floorspace and are therefore too small even for one person.
49. The substandard measurements of those rooms translate into inadequate space for the occupiers. I saw that bedrooms 3, 4, 5 and 6 are all furnished with a small double bed and a (usually wall-mounted) TV plus either a chest of drawers **or** a wardrobe, and either a fridge or bedside tables or desk with office-type chair. None of the rooms had sufficient storage space, shown by clothes and other personal items being on the floor. None had anywhere other than the bed where the occupiers could sit to relax.
50. Even the bedrooms with floorspace exceeding 10sqm only meet the minimum standards for single person occupation and then only if there is a communal living room, which there is not. I saw that the 'larger' bedrooms generally included more furniture or circulation space than the smaller, but rarely both. The two largest bedrooms, 1 and 8, were the only ones with comfortable seating but, in the case of no. 8, the sofa was provided at the expense of storage furniture.
51. I have stressed the lack of space for relaxing in the bedrooms because there is no compensatory living room, while the dining room is spartan as well as small. It contains a fridge freezer and ironing board, perhaps because of lack of room in the kitchens, plus a table for four, about six dining chairs, a sideboard and a TV, but nowhere to sit at ease. Likewise, that the kitchens are under-sized and bathrooms shared increases my concern at the lack of private storage space in the bedrooms.
52. WFLP1 Policies 20/C and 56 expect that communal external amenity spaces must be a minimum of 50sqm and easily accessible to all residents of the development. However, the Council estimates that the back yard at the appeal building is only about 30sqm. It is large enough to include a shed, barbeque and few items of garden furniture. It is also accessible to all occupiers via the kitchens and supplemented by a front garden area where bins are stored. Even so, I consider that there is insufficient outdoor amenity space for the scale of the mixed use and that will add to the harm caused by the substandard internal accommodation.
53. The appellants do not dispute the Council's floorspace calculations or persuade me that living conditions for the HMO occupiers are acceptable. The permissions for the extensions do not justify the intensity of use. Building control and HMO licensing officers will only have considered the safety and layout of the property for the purposes of other legislation. I consider that all HMO occupiers, especially but not only any residing in rooms 3-6, live in unacceptably cramped conditions. They do not have reasonable space for cooking, relaxing and/or storing possessions.
54. That harm will be exacerbated by the building being in a mixed use. The Council does not suggest that conditions are too cramped for hotel occupiers, but any short let room may be let to more than one person staying together. Anyone staying even for just one or two nights will need to use the kitchens and bathrooms, as the guest notices recognise. Short let occupiers will add to pressure on the permanent residents to use their own bedrooms for relaxation and storage.

55. The online reviews suggest that hotel occupiers have been uncomfortable sharing facilities with permanent residents, and I expect that the feeling is mutual. Any HMO occupiers with no say in which rooms are let via Airbnb may feel that their home is less private, if not less safe, because it is shared with a turnover of people who shortly disappear. However, the Council did not object to the mixed use on this ground and so I simply conclude at this point that the large HMO component of the mixed use fails to meet Policy 20/C and 56 space standards, and the result is that HMO occupiers have unacceptably crowded living conditions.

Noise and Disturbance

56. The day-to-day activities of permanent and transient occupiers of the building are likely to involve walking within as well to and from the property, opening and closing doors, talking in communal areas or on the doorstep, and using washing machines and other audible equipment or devices. While none of those activities are intrinsically disturbing or abnormal in a residential setting, the effect of them being carried out by nine plus people in and around their confined accommodation is likely to be incessant noise. The five online reviews of the hotel use put before me all described the accommodation as noisy, consistent with nearby residents making the same complaint to the Council.
57. It is not appropriate to compare the number of trips to and from the building generated by the mixed use against numbers generated by a single family dwellinghouse as far as that is no longer the lawful use. I am not aware of the extent to which nearby dwellings are used as family homes, flats, HMOs or other purposes. However, most properties in this area are in some kind of residential use and their occupiers, as well as those of the appeal building, should not be expected to live in an unduly noisy environment.
58. The Council's evidence of anti-social behaviour associated with this property either predates the mixed use or could be remedied by granting permission subject to a condition requiring improved refuse storage facilities. Nonetheless, and although the appellants live next door, I consider the appeal mixed use likely to cause unacceptable harm to the living conditions of occupiers of the appeal and nearby building through noise and disturbance.

Conclusion on Living Conditions

59. The harms caused by the appeal use could not be remedied through planning conditions. I could not grant planning permission for the mixed use on the basis that all rooms with less than 10sqm are used only for temporary sleeping or storage purposes because a communal living or dining room would still be needed and then only five bedrooms (1, 7, 8, 10, 11) would be left, making the grant of permission for a mixed use including a **large** HMO useless.
60. I conclude that the mixed use is carried out so that permanent residents of the building live in substandard and cramped accommodation and will, like the hotel guests and nearby occupiers, experience unacceptable noise and disturbance. As indicated above, permitting the mixed use would conflict with the requirements of WFLP1 Policies 20/C and 56. It would also conflict with WFLP1 Policy 53, London Plan Policy D6, and the National Planning Policy Framework (NPPF), because the accommodation is not comfortable, functional or fit for purpose and it does not promote a high standard of amenity or quality of life.

Parking and Highway Safety

61. The Council's final objection is that the trips generated by the appeal mixed use will create increased pressure for on-street parking spaces in an area where the demand cannot be met. There are no car parking spaces on the site, and it would not be feasible to create any.
62. The building stands in a location with a public transport accessibility level rating of 5, exceeding what is required by Policy 20/C. There are no secure cycle parking facilities on site at present, but a condition could require provision in accordance with WFLP1 Policies 20/C and 61/F, albeit at the expense of space for recreation in the back yard. The HMO component of the mixed use need not significantly increase demand for nearby parking spaces, and this part of Huxley Road is in any event within a controlled parking zone, where on-street parking is managed by the Council through a residents' permit scheme.
63. However, any persons staying in the building pursuant to the hotel component of the mixed use would not be eligible for a parking permit. It follows that a grant of permission would conflict with WFLP1 Policy 66 because I could not impose a condition requiring that the appeal development is car-free and yet no specific [off-street] parking can be provided for the different uses in this mixed use scheme.
64. It seems to me that the Council's description of "complaints...relating to increased parking pressures" is not evidence of the mixed use causing an unacceptable loss of highway safety. However, I saw that demand for on-street parking spaces in this built-up residential area is generally high, even during the working day. I am satisfied that the mixed use has increased local parking stress at least to the extent of aggravating the harm caused by noise to the living conditions of nearby occupiers, if not also to reduce the availability of safe parking spaces.

The Appellants and HMO Occupiers

65. I have noted that the appellants live next door to the site. They bought the appeal building as a "hard earned lifetime property" and I do not doubt that they rely on rental income given their separate evidence of serious health issues. I appreciate that a refusal of permission for the mixed use would have serious consequences for them, especially given my earlier finding that the building has no lawful use to which they could revert without a grant of planning permission.
66. Dismissing Appeal A on ground (a) would also mean that the enforcement notice is upheld, and thus that the permanent occupiers of the building lose their homes. I have considerable sympathy for them and the precarious positions they could well end up in. There is no evidence that the hotel use gives rise to any public benefits, but I attach substantial weight to the appellants' and the permanent occupiers' needs for the HMO component of the mixed use.

Other Matters

67. The appellants suggest that the Council took two years to review their evidence submitted in response to the PCN and then issued the enforcement notices without properly investigating the use or following due process. The appellants are also aggrieved that the last HMO licence was granted for one year rather than five, pending a grant of planning permission, causing them to incur financial loss. These procedural concerns, however, are outside of my remit.

Conclusion on Ground (a) and the Deemed Planning Application

68. I have found that the appeal mixed use does not result in an over-concentration of HMOs in the surrounding area. The absence of harm on that count does not weigh for or against Appeal A on ground (a).
69. The mixed use is harmful to the living conditions of occupiers of the appeal and nearby properties, and it increases pressure on local on-street parking spaces. It conflicts with WFLP1 Policies 20/C, 53, 56 and 66, London Plan Policy D6 and the NPPF. Those negative findings must be balanced against the appellants' and occupiers' positive needs for the development.
70. In my view, the deficits in the accommodation and resultant noise and disturbance are compelling objections. Without prejudice to any future planning application, it seems unlikely that the building could not be put into some other residential use which provides the appellants with an income **and** affords adequate living conditions. As things stand anyway, conditions are so poor that upholding the notice would have less harmful impacts than allowing the mixed use to continue.
71. Dismissing Appeal A on ground (a) would interfere with the appellants' rights to peaceful enjoyment of their possessions under Article 1 of the First Protocol as set out under the Human Rights Act 1998. It would interfere with the HMO occupiers' rights to private and family lives and homes under Article 8. However, those are qualified rights and interference with them would accord with the law and the legitimate aim of protecting living conditions. A refusal of permission is necessary and proportionate. The protection of the public interest cannot be achieved by means that are less interfering with the rights of the appellants and occupiers.
72. With regard to all other planning matters raised, I conclude that Appeal A must fail on ground (a) and the deemed planning application must be refused.

APPEALS A AND B ON GROUND (F)

73. Ground (f) is that the requirements of the notice are excessive to remedy the breach of planning control or the injury to amenity caused by what is alleged by the notice. Given that the notice requires cessation of both the HMO and hotel uses, it follows that the purpose of the notice is to remedy the breach.
74. The appellants' case for ground (f) largely repeats their submissions on lawfulness and is therefore of little assistance to them. I have found that the mixed use is unlawful **and** should not be permitted. It is not excessive but necessary, to remedy the breach, for the notice to require the cessation of what is unauthorised and the restoration of the property to its previous condition.
75. I pause here to note that, since the unauthorised use is best described as a mixed use, the notice should require cessation of the same and not the individual HMO and hotel uses separately. However, I can correct the requirements to that end because no injustice will be caused. The notice will be made no more or less onerous to comply with than it already is.
76. The appellants suggest that the second kitchen and third bathroom in the building should be allowed to remain because they were installed when the extensions were constructed with planning permission. However, the 2014 prior approval plans simply showed that the ground floor extension would contain a "kitchen/diner", while the 2016 permission was strictly for the first floor extension.

77. It is not excessive for the notice to require the removal of the second kitchen and third bathroom because they were installed to facilitate the unlawful large HMO use and they now serve the unlawful mixed use. I conclude that, subject to being corrected as described, the requirements of the notice are not excessive to remedy the breach of planning control. Appeals A and B fail on ground (f).

APPEALS A AND B ON GROUND (G)

78. Ground (g) is that the period specified by the notice for compliance with the requirements falls short of what should reasonably be allowed. Although they pleaded this ground, the appellants have given me little reason to find the six month period for compliance unreasonable. They have not suggested any alternative period either.
79. The permanent occupiers of the building will need time to look for alternative accommodation. The appellants will need time to make a planning application for a change of use of the building. Absent any evidence to the contrary, however, I find the six month period afforded by the notice to be reasonable and proportionate for those purposes. Appeals A and B fail on ground (g).

OVERALL CONCLUSIONS

80. For the reasons given above, I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990.

Jean Russell

INSPECTOR