The Planning Inspectorate

Appeal Decision

Site visit made on 27 September 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/B5480/C/21/3279879
253 Elm Park Avenue, HORNCHURCH RM12 4PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Francisco Miguel Rubio Linares against an enforcement notice issued by London Borough of Havering.
- The notice was issued on 9 July 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a dwelling house into a house in multiple occupation (HMO).
- The requirements of the notice are to cease the use of the property as a house in multiple occupation.
- The period for compliance with the requirement is three months.
- The appeal is proceeding on the ground[s] set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is varied by the deletion of "three months" from the requirements of the notice and the substitution with "six months". Subject to this variation, 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 as amended.

Procedural Matters

2. The Council's development plan has changed since the issue of the notice. The London Borough of Havering Local Development Framework Core Strategy and Development Control Policies Development Plan Document from 2008 has now been replaced by The Havering Local Plan 2016-2031, which was adopted November 2021 (the HLP). The appellant has been given an opportunity to comment on the new policies on which the Council now rely and I have proceeded to determine this appeal on the basis of the new HLP.

3. The appellant challenges the Council's finding that there has been a material change of use. He also appears to argue that the use is permitted development. These are arguments that fall to be considered under grounds (b) and (c) but appeals on these grounds have not been pleaded. As they have been addressed by the Council, I shall proceed as though they were.

The ground (b) and (c) appeals

4. For a ground (b) appeal to succeed, the burden of proof is firmly on the appellant to demonstrate that the matters stated in the notice relating to the material change of use of the property have not occurred as a matter of fact.

For a ground (c) appeal to succeed the onus of proof is on the appellant to show that there has not been a breach of planning control.

5. The appellant submits that the use remains as residential, there are only four people who occupy the building and any alterations that have taken place are internal. Whether there has been a material change of use is not assessed for example, by comparing the number of former and existing residential occupiers, but by assessing whether there has been a change in the character of the use. I find that a property that was once occupied by one household is now occupied by four separate households, each living there according to their own timetable, which inevitably leads to a variety of comings and goings. This is sufficient to amount to a change in the character of the use and to result in a material change of use. The appeal on ground (b) therefore fails.

6. When the appellant made an application for his HMO licence, he stated that the HMO use began in October 2019. The Council made an Article 4 Direction that covers the appeal site and the surrounding area, which came into force on 13 July 2016. This has the effect of removing the permitted development right[1] to change the use of a property from Use Class C3 Dwellinghouses to Use Class C4 Houses in Multiple Occupation. Express planning permission is therefore required for the existing use, as it began after the Article 4 Direction came into force, and as the Council have no record of receiving such an application, I find that there has been a breach of planning control. The appeal on ground (c) therefore fails.

The ground (a) appeal and the deemed planning application

Main Issues

7. The main issues are the effect of the development on (i) the stock of family housing in the borough; (ii) the living conditions of existing and future occupiers, having regard to the standard of accommodation; and (iii) the living conditions of neighbouring occupiers, having regard to noise and disturbance.

Reasons

Housing stock

8. The appeal site is a mid-terrace property, two storeys in height, with two rooms and a lean-to at ground level and three rooms and a bathroom on the first floor amounting to a total floor area of approximately 100sqm. The first floor rooms are used as bedrooms (two doubles and a single) and what was probably the lounge on the ground floor of the property is used as a double bedroom abutting the shared kitchen. The lean-to appeared to have no obvious use but contained a table and is accessed from the existing back door of the property.

9. 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 Plan[2] published March 2021 (TLP) and the HLP. Policy GG4 of TLP seeks to create a housing market that works for all Londoners. Policy 8 of the HLP recognises that HMOs can make a valuable contribution to the private

[1] Set out in the Town and Country Planning (General Permitted Development)(England) Order 2015
[2] The London Plan – The Spatial Development Plan For Greater London March 2021

rented sector but this has to be balanced against any harms that may arise. As such, the Council will only support applications for HMOs where it can be demonstrated that the overall size of the property to be converted is not less than 120sqm. This is to protect the supply of small family homes.

10. The Council also rely on Policy 9 of the HLP but this is directed at the conversion of buildings into residential use or the subdivision of existing residential properties into self-contained homes. This is not the case here and, as such, I have afforded this policy limited weight.

11. The appellant relies on Policy H9 in TLP and is critical of the HLP Policy 8. I find Policy 8 has been the subject of a recent Examination in Public and has not long been adopted. The time for challenging the policy has passed but it seems to me that the appellant directs his ire at the alleged interpretation of the policy by the Council, rather than the wording, which has passed scrutiny. To my mind this policy addresses a particular housing need which has to be balanced with other equally pressing housing needs in the borough. The HMO use at the appeal site fails to comply with the first criteria of the policy as the floor area of the property is less than the specified 120 sqm threshold.

12. Policy H9 of TLP is directed at ensuring the best use of the housing stock. In particular, it emphasises the role HMOs can make in meeting local and strategic housing needs. I find this policy sits alongside Policy 8, there being no conflict between the objectives of each policy. Each policy also has equal weight, notwithstanding the appellant's comments, as both policies have recently been adopted and there has been no significant change in national policy with regard to housing provision in the intervening period between the adoption of the policies.

13. The Council are though in a difficult situation, trying to balance the housing needs of those unable to afford more than shared accommodation and those people who require small family units. Their solution has been to adopt a criteria-based policy. As the HMO use does not accord with paragraph i of Policy 8, the remaining requirements do not fall to be considered under my heading of *Housing stock.* Furthermore, the Council have not referred to them in the reasons for issuing the notice. These requirements specify a limit on the number of HMOs per street, that they should meet parking standards and that adequate refuse storage is provided. Paragraphs iii, vi and vii of Policy 8, which deal with noise and disturbance and the standard of accommodation, will be discussed shortly. In conclusion, I find the HMO use has resulted in the loss of a family sized dwelling, for which there is a pressing need, and, as such, there is conflict with Policies GG4 and H9 of TLP and Policy 8 of the HLP.

Standard of accommodation

14. The Council are concerned that the current layout of the property means that, other than the small lean-to, there is no communal area for residents to socialise or sit at a table to eat a meal. In addition, the single bedroom on the first floor appears to be too small to be used as a bedroom. The Council rely on the East London HMO Guidance in making these judgements, a document which has been produced jointly by several east London boroughs. Paragraph vii of Policy 8 sets out that HMOs meet the requirements of this document. The Guidance stipulates that a bedroom for a single occupier should be a minimum size of 8.5sqm. The size guidance for living and dining areas if they are a shared space would result in a requirement for a room a minimum of

15sqm in area. As the ground floor lounge is used as a bedroom and the lean-to is unheated, it is not possible to meet these requirements. Together with the small bedroom, this results in a cramped layout.

15. The appellant submits that the standard of accommodation is satisfactory as the Council issued an HMO licence dated 20 April 2020, which limits occupation to four persons. However, the licence is issued to meet the health and safety requirements of the Housing Act 2004 whereas the Council's reasons for issuing the notice are to meet planning objectives for high quality design as set out in TLP and the HLP. Policies D3, D4 and D6 of TLP require, amongst other matters, the provision of adequately-sized rooms. In addition, Policies 7 and 8 of the HLP require, amongst other matters, attractive living environments and the provision of communal space large enough for all the dwelling's occupants to use simultaneously.

16. In this case the space within the kitchen is too small to accommodate either a dining or sitting area and the lean-to is too small and is not suitable for all year round use. The result is that tenants are confined to their rooms for all activities except cooking and bathing. This is not acceptable especially in the case of the small bedroom which has very little free floor space as most of it is taken up with a single bed and furniture.

17. Overall, I find that the internal layout results in harm to the living conditions of the occupiers, which does not accord with the policies outlined above.

Noise and disturbance

18. The Council have not provided any evidence that the HMO use has resulted in additional noise and disturbance. Their reasoning is based solely on the fact that occupation by four separate households is likely to result in additional noise and disturbance when compared to occupation by one household. The appellant submits the HMO use is similar to occupation by up to six adults in one family but I find that this would be unlikely as the small bedroom can only accommodate a single bed. Be that as it may, a family of five, even five adults, would probably have more co-ordinated comings and goings and would likely share some meals.

19. The HMO use was brought to the attention of the Local Planning Authority by Environmental Health Officers, not as a complaint from a neighbour. In addition, I saw that the location of the property is in close proximity to a local service centre with businesses that are open late in the evening. Elm Park Avenue is also on a bus route with a bus stop a few doors away from the appeal site and Elm Park underground station is just around the corner. I find that the location of the site probably means that there is a higher level of background noise and disturbance than would be found in other residential areas. Any additional noise and disturbance from the HMO use appears to have gone largely unnoticed in this particular area.

20. I therefore conclude that it has not been shown that the HMO use has resulted in harm to the living conditions of neighbouring occupiers, having regard to noise and disturbance. The development therefore accords with Policies D13 and D14 of TLP and Policies 7 and 8 of the HLP. These require amongst other matters, that developments do not result in unacceptable levels of noise, vibration and disturbance.

Other Matters

21. The Council also seek to rely on several policies (Policies 23, 26, 27 and 35[3]) the equivalent of which, if there were any, are not referred to in the reasons for issuing the notice. The appellant submits that they are not relevant to the reasons for issuing the notice and I find that the Council have not explained why they have been submitted. I have therefore given them little weight.

22. The appellant also seeks to rely on a recent appeal decision made following the adoption of the HLP (reference APP/B5480/C/21/3266870). This concerned an allegation related to a material change of use to an HMO (licenced for 7 persons) of a house in another part of the borough. This appeal though can be distinguished from the case before me in that the loss of family housing was not an issue before that Inspector.

23. In addition, with regard to the Inspector's findings on the standard of accommodation, this property was a much larger building than the appeal site. Although it was licenced for 7 persons, the Inspector found that it was necessary to limit the number of occupiers to 5 persons to prevent overcrowding.

24. The appellant also relies on four other appeal decisions[4] to support his case. However, these decisions relate to sites elsewhere in London, to buildings not always comparable to the appeal site and to various ages of development plans with different policies. As such, they do not direct my conclusions on the case before me. I have taken them into account but the decisions rely on their own particular circumstances and the evidence before those Inspectors.

Conclusion

25. To summarise, it has not been shown that there is harm to local residents arising from significantly greater levels of noise and disturbance. However, the size of the property and the internal layout mean the HMO use has resulted in the loss of a family size housing unit and created unacceptable living conditions for existing and future occupiers. The Council have suggested three conditions in the event that the appeal was successful relating to an occupancy limit of six persons and the provision of cycle parking and refuse storage. These, however, would not mitigate the material harm the development has on the stock of family housing in the borough. I therefore conclude that the appeal on ground (a) fails.

The ground (g) appeal

26. This ground of appeal is that the three month period given to comply with the requirements of the notice is too short and should be extended to 12 months. This would allow the appellant time for "individual unwinding" of the tenants' contracts and, having regard to their welfare needs, time for them to find alternative accommodation.

27. The Council draw my attention to another appeal decision[5] to support their case that three months is a reasonable period to cease a residential use, especially as there is no requirement for any building works in the appeal before me.

[3] Transport Connections, Urban Design, Landscaping and Waste Management)
[4] APP/W5780/W/20/3262152, APP/Q5300/W/20/3261879, APP/Z5060/W/20/3254248 and APP/N5090/W/20/3261065
[5] APP/B5480/C/19/3248235

However, in that appeal there were no other grounds of appeal and in that situation the appellant accepted it was virtually inevitable that the unauthorised use would have to cease. By making a limited appeal the appellant had already delayed the date the notice came into effect, knowing that its requirements to cease the use would be upheld. During that time there was nothing that prevented the appellant from making preparations to cease the use while waiting for the appeal to be determined. That is not the case with the appeal before me and I therefore afford this decision limited weight.

28. The notice before me results in the engagement of Article 8 rights and Article 1 rights (1st Protocol) in that there will be interference with the occupiers' home and home life with the use of private property. Those rights are, however, qualified and it is for the decision-maker to ensure interference is proportionate.

29. I accept that a longer period would be helpful to the tenants and, in turn, the appellant but 12 months would be tantamount to a grant of temporary planning permission. In my view the appropriate balance to be struck between the rights of the individuals and the protection of matters of acknowledged public interest, namely the provision of family housing, is to increase the compliance period to six months. For the reasons given the appeal on ground (g) succeeds in part.

Conclusion

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

D Fleming

INSPECTOR