The Planning Inspectorate

Appeal Decisions

Site visit made on 13 October 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2020

Appeal A Ref: APP/B5480/C/20/3245901
479 Rush Green Road, Romford RM7 0NH

- 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 C Philippou, Mario HMO Portfolio Limited against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 16 January 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of a dwellinghouse (class C3) to a House in Multiple Occupation (HMO).
- The requirements of the notice are
  1. Cease using the property as a House in Multiple Occupation (HMO); AND
  2. Remove all kitchen and cooking facilities except for one kitchen on the ground floor, and remove all washing/shower facilities on the ground floor and all electricity meters/fuse boxes from the premises except for one which serves the whole premises; AND
  3. Remove all rubble, debris associated with steps 1 and 2 above, from the site.
- The period for compliance with the requirements is 3 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 subject to a variation.

Appeal B Ref: APP/B5480/W/20/3244401
479 Rush Green Road, Romford RM7 0NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr C Philippou against the decision of the Council of the London Borough of Havering.
- The application Ref P1056.19, dated 3 July 2019, was refused by notice dated 13 November 2019.
- The development proposed is described as retention of roof extension and as built dormer window with increase to ridge height and regularisation of conversion to a C4 House of Multiple Occupation.

Summary of Decision: The appeal is allowed in part and dismissed in part.

Appeal A – Preliminary Matters

1. The appellant indicates that the material change of use of the property to a HMO took place prior to the Council introducing an Article 4 Direction to

remove permitted development rights afforded for such changes by the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). Whilst the appellant does not develop the argument further, one could reasonably suggest it is a hidden argument on ground (c), that those matters stated in the notice to give rise to the breach of planning control, did not constitute a breach of planning control.

2. The Article 4 Direction was brought into force on 17 July 2016. Notes from the Council's site visits indicate that the property was visited the day before and there were no clear signs of use of the property as an HMO. It is also said that a Planning Contravention Notice (PCN) was served in March 2019, the responses to which indicated the property was not in use as an HMO at the time the Article 4 Direction came into force. Notably, two lease agreements which the appellant submitted to the Council are said to have post-dated the Article 4 Direction. The appellant presents a certificate under the Building Regulations which was issued to confirm completion of building works on 6 July 2016. However, the works relate only to a rear extension and a loft conversion. There is no indication from the appellant's evidence that the use of the property had materially changed to an HMO on or before that date.

3. Whilst the Council's evidence is limited, in the absence of sufficiently precise and unambiguous evidence from the appellant, I find, on the balance of probabilities, that the material change of use occurred after the Council brought the Article 4 Direction into force. On that basis, at the time the notice was issued, those matters stated in the notice to give rise to the breach of planning control did constitute a breach of planning control.

Appeal B – Preliminary Matters

4. The description in the heading above is taken from the application form. However, the phrases 'retention', 'as built' and 'regularisation' do not describe acts of development. I have therefore dealt with the appeal on the basis that planning permission is sought for a roof extension, dormer window with increase to ridge height and the material change of use to a house in multiple occupation (HMO).

Appeal A on ground (a) and Appeal B

5. Both appeals seek planning permission for the material change of use of the property to an HMO. In addition, Appeal B seeks planning permission for a roof extension, dormer window and increase in the ridge height. These operations do not form part of the matters subject of the enforcement notice.

Main Issues

6. The Council's reasons for issuing the enforcement notice are the same as those for which it refused planning permission. The main issues in respect of both appeals are therefore:

    - the effect of the material change of use of the property to an HMO on the living conditions of the occupiers of 481 Rush Green Road with particular regard to noise and disturbance; and,

    - whether the material change of use of the property to an HMO will provide acceptable living conditions for present and future occupiers with particular regard to internal space.

Living Conditions - Neighbours

7. The appeal site comprises a two-storey, semi-detached property. It adjoins the property of 481 Rush Green Road and is located within a predominately residential area.

8. I note that use of the property as a family home could result in it being occupied by a similar number of persons to its use as an HMO. However, a family home would be occupied by a single household, who are more likely to carry out activities on a communal basis. In contrast, its use as an HMO results in it being occupied by people who are unrelated and therefore by a greater number of households. It is therefore more likely to be higher levels of noise and disturbance arising as individuals come and go separately from one another for work, shopping and other day-to-day activities.

9. Moreover, with several persons occupying the property as individual households, there is a much greater potential for separate visitors to come to the property at any one time and increased potential for use of the outdoor areas, including the rear garden which is accessible to all residents via the communal kitchen. This results in the potential for greater noise and disturbance through the sound of voices, opening and closing of doors and vehicles, including from more visits by delivery and other vehicles than may be the case for a single household.

10. Furthermore, given the lower level of communal activity which typically occurs between individuals in separate households when compared to individuals in the same household, there is likely to be an increase in noise arising from multiple sources of audio or visual media operating at any one time. This is a particular concern since the property adjoins No 481. It would also lead to an increase in the level of noise released through open windows or doors during warmer months. Such noise levels are more likely to occur at times when neighbours would have greater expectations for peace and quiet than would be the case if the property was occupied by a single household. As a result, the level of noise and disturbance experienced by the occupiers of No 481 is likely to increase to the detriment of their living conditions. The appellant's suggestion that a condition could be imposed which limits the rooms to single occupancy only would not overcome the planning harm.

11. I conclude, therefore, that the material change of use of the property to an HMO will have a harmful effect on the living conditions of the occupiers of 481 Rush Green Road with particular regard to noise and disturbance. As a consequence, the development will conflict with Policies DC4 and DC61 of the Havering Core Strategy and Development Control Policies Development Plan Document 2008 (CS) which state that: conversions to HMOs will only be allowed where they will be unlikely to give rise to significantly greater levels of noise and disturbance to occupiers of nearby residential properties than would an ordinary single family dwelling; and, planning permission will be refused where the proposal results in unreasonable adverse effects by reason of noise impact.

Living Conditions – Present and Future Occupiers

12. The HMO has been arranged with three bedrooms on the ground floor, two bedrooms on the first floor and one bedroom in the loft space. A communal kitchen is also located on the ground floor.

13. The Council's concerns in respect of the internal space lie principally with the size of the communal space and the size of rooms 3 and 5. Both room 3 and room 5 are said by the appellant to measure 12.2sqm. I saw from my site visit that both rooms were smaller in terms of floor space than the other rooms within the HMO. Both were only capable of accommodating a single bed unlike the other rooms which could accommodate double beds. Nevertheless, each room had access to reasonably sized en-suites, had sufficient space for a kitchenette with washing facilities. In addition, both rooms had windows which provided a good level of natural light. In themselves, the rooms were not particularly oppressive.

14. However, rooms 3 and 5 were of inadequate size to provide space in which occupiers could eat meals, watch TV, work from home or otherwise relax and undertake everyday household tasks. Occupiers of those rooms would therefore need access to adequately sized communal living space in order to avoid doing such tasks from their beds.

15. To that end, the only communal space provided within the property is a kitchen. It is said to measure 8.9sqm in size. I saw from my site visit that it provided all the necessary facilities for cooking. It also contained a small table which would seat around 3-4 people. As such residents would have somewhere to eat a meal.

16. However, not all residents would be able to do so at one time. Moreover, whilst the appellant indicates there is a strict rule of no food preparation and/or cooking in the bedrooms, given that occupiers of the HMO live as separate households, they may be more likely to chose to eat alone rather than with other households living within the building with whom they may not be familiar. As such, this limited amount of dining space makes the potential for residents to eat meals on their beds in rooms 3 and 5 much more likely.

17. Moreover, the kitchen does not provide any space for the residents to relax, watch TV, read or carry out any other everyday activities. As such, residents, in particular those of rooms 3 and 5, will be confined to their beds for any such activities. As a consequence, I find the lack of adequately spaced, usable communal areas will result in unduly oppressive and restrictive living space for existing and future occupiers of the HMO.

18. I conclude, therefore, that the development will not provide acceptable living conditions for present and future occupiers with particular regard to internal space. As a result, the development will conflict with CS Policy DC61.

Operational Development – Appeal B

19. The Council has raised no concerns with the building operations element of the development, which includes a roof extension and dormer window with increase to ridge height. It is said that is why the works were excluded from the alleged breach of planning control in the enforcement notice subject of Appeal A.

20. Whilst it is evident that those works have been carried out to facilitate the material change of use of the property to an HMO, the parties agree that they do not in themselves result in any planning harm. Based on the evidence before me and my own observations from my site visit, I see no reason to disagree.

21. Whilst those works are visible within the public realm, the increase in ridge height of approximately 10cm is minimal and thus the increase appears somewhat unobtrusive. Moreover, there is little uniformity in the roofscape of the area such that the development does not appear unduly incongruous. Similarly, I am satisfied that the intervening separation distances between the development and the properties to the rear on Barton Avenue are such that they will ensure that there will be no harmful loss of privacy or light nor any harmful effect on the outlook of neighbouring occupiers in those properties. The angle of the development in respect of the properties either side is also such that it is unlikely to give rise to harm to the living conditions of those residents. Consequently, I consider the roof extension and dormer window with increase to ridge height would accord with the development plan as a whole.

22. It seems to me that the operational development is severable from the use of the property as an HMO. On that basis I can exercise the power afforded to me under section 79(1)(b) of the 1990 Act to issue a split decision in respect of Appeal B.

Other Matters – Appeal A and Appeal B

23. The appellant indicates that robust management processes are in place and I have no reason to believe that is not the case. I recognise occupants are required to sign a waiver upon entering a tenancy explaining that they are aware of their responsibilities. However, such measures would not overcome the increased levels of noise and disturbance that would arise simply from the daily activities and comings and goings of several individual households living in one property or the harm that would arise from the limited internal space.

24. I note the benefits the development would have in terms of its contribution towards the range of housing available in the area. However, the development does result in the loss of an existing family dwelling, which similarly detracts from the housing supply in the Borough. As such, it is a benefit of very limited weight.

25. I note the experience and expertise in running HMOs which the appellant brings and that the accommodation on offer is designed to reduce potential anti-social behaviour. Nevertheless, such matters would not outweigh the harm I have identified.

26. The appellant has referred to an appeal decision from March 2017 in respect of a proposal for a material change of use to a HMO in the London Borough of Enfield. My attention is drawn specifically to the Inspector's findings that the patterns of comings and goings of residents would be unlikely to differ greatly to that associated with the occupation of the property by a single household. Whilst I recognise the need for consistency in decision making, it is noted that that decision was concluded against different local plan policies. In any event, I see no reason to come to the same conclusion as my colleague in that instance, as the evidence before me leads me to conclude that the comings and goings of residents in this particular situation would materially differ to the use of the property as a single dwellinghouse. As I have set out above, I consider, based on the circumstances before me, that material difference would result in harm to neighbouring living conditions. The existence of an appeal decision which concludes otherwise does not carry sufficient weight on this occasion to outweigh the harm I have identified.

Conditions – Appeal B

27. The Council has suggested four conditions. Three of the suggested conditions relate to the use of the property as an HMO, for which I have determined planning permission will be refused on the basis that such conditions would not overcome the planning harm.

28. The fourth relates to a condition to prevent any additional windows being inserted into the building hereby approved. However, I see no reason why such a condition would be necessary or reasonable. I will not therefore impose such a condition.

Conclusion on Appeal A on ground (a)

29. 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.

Conclusion on Appeal B

30. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

Appeal A on ground (g)

31. An appeal on ground (g) is made on the basis that the period for compliance with the requirements of the notice is too short. The notice gives a period of three months for compliance. The appellant argues that a period of 12 months is more appropriate for two reasons. Firstly, time is needed for existing tenants to be evicted. Secondly, works are required by professional contractors which will take time to organise.

32. In terms of the first point, I have not been provided with tenancy agreements which make clear the notice period which tenants are to be given. Secondly the notice requires all kitchen and cooking facilities except for one kitchen on the ground floor to be removed, as well as all washing/shower facilities on the ground floor and all electricity meters/fuse boxes from the premises except for one. It seems to me that such works are relatively straightforward

33. Nevertheless, I agree that 3 months seems an unduly short period time to allow residents to vacate the property and find alternative housing elsewhere. In addition, the requirements will likely require the services of qualified plumbers and electricians.

34. The Council's appeal statement indicates that the current Covid-19 pandemic cannot be relied upon by the appellant for justification for a longer compliance period. However, whilst reopening of some businesses has occurred, circumstances in respect of restrictions both on a national and regional scale continue to be fluid, with restrictions being tightened and eased on a continuous basis as a response to the pandemic. On that basis, it seems to me unreasonable to suggest that 3 months is sufficient time for the tenants to vacate and be rehoused elsewhere or indeed for the requisite tradespersons to be appointed, to source materials and to carry out the remedial works.

35. I note the Council's referral to an appeal decision from June 2020 in support of their case. However, whilst the Inspector found no cause to modify the

compliance period, he did indicate that he was conscious of the potential impact of the Covid-19 pandemic on the appellant and pointed towards the Council's power under section 173(1)(b) of the 1990 Act to extend the compliance period. In this instance, I disagree with the Inspector's approach in that case as there are no guarantees of the Council exercising their discretion. Whereas in this instance, it is clear given the ever evolving situation with regard to restrictions, the appellant is much more likely to face difficulties in achieving the compliance period.

36. Nonetheless, a period of 12 months seems to me to be excessive and would be akin to granting a temporary planning permission for the development. In light of my findings above I find a time period of six months would strike the appropriate balance between ensuring the planning harm is rectified with the necessary expedience and ensuring a reasonable period for compliance with the notice.

37. I note that several months has elapsed since the notice was served, however, the appellant is entitled to assume success on the appeal on ground (a). On that basis, I afford very little weight to the Council's argument that the appeal on ground (g) should fail because the appellant has a had more than nine months since service of the notice to comply.

38. The appeal on ground (g) therefore succeeds to a limited extent.

Human Rights

39. The loss of a person's home would be an infringement of their rights under the Human Rights Act 1998 (HRA). The cessation of the HMO use would amount to interference and would engage the right for respect for private and family life, home and correspondence set out in Article 8 of the HRA. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.

40. I acknowledge that the consequence of dismissing the appeal would be that any person presently residing in the appeal property would be required to vacate the accommodation. However, the notice, as varied, provides a six-month compliance period which would allow residents time to find an alternative home. Moreover, there is no indication that those persons would necessarily be made homeless beyond that date.

41. The planning harm I have identified is of such weight that upholding the notice would be a proportionate and necessary response that would not violate those persons rights under Article 8 of the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Formal Decisions

Appeal A

42. It is directed that the enforcement notice is varied by the deletion of 3 months and the substitution of 6 months as the period for compliance.

43. Subject to the variation, 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.

Appeal B

44. The appeal is dismissed insofar as it relates to a material change of use to a house in multiple occupation (HMO).

45. The appeal is allowed insofar as it relates to a roof extension and dormer window with increase to ridge height and planning permission is granted for a roof extension and dormer window with increase to ridge height at 479 Rush Green Road, Romford RM7 0NH in accordance with the terms of the application, Ref P1056.19, dated 3 July 2019, and the plans submitted with it so far as relevant to that part of the development hereby permitted.

J Whitfield

INSPECTOR