

REPORT FOR NOTING

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	23 January 2024
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

Contact Details:-

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**Planning Appeals Lodged
between 11/12/2023 and 14/01/2024**



Application No.: 69392/FUL

Appeal lodged: 08/01/2024

Decision level: DEL

Appeal Type:

Recommended Decision: Refuse

Applicant: Mr Stewart Sivvery

Location Further Davises Farm, Mather Road, Bury, BL9 6TJ

Proposal Change of use of a building to additional living accommodation; Two storey side extension and Single storey front extension; external alterations including alterations to windows / doors and removal of 2 no. windows

Application No.: 69882/FUL

Appeal lodged: 20/12/2023

Decision level: DEL

Appeal Type:

Recommended Decision: Refuse

Applicant: Mr Craig Timbrell

Location 46 Oak Lane, Whitefield, Manchester, M45 8ET

Proposal Hip to gable roof extension at side and loft conversion with rear dormer

Total Number of Appeals Lodged: 2

**Planning Appeals Decided
between 11/12/2023 and 14/01/2024**



Application No.: 69132/FUL

Decision level: DEL

Recommended Decision: Refuse

Applicant: Emerald Property Capital Ltd

Location: 104 Ainsworth Road, Bury, BL8 2RS

Proposal: Change of use from existing 6 no. bedroom house in multiple occupation (HMO - Class C4) to 7 no. bedroom (7 person) house in multiple occupation (HMO - Sui Generis)

Appeal Decision: Dismissed

Date: 08/01/2024

Appeal type:



Appeal Decision

Site visit made on 18 December 2023

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2024

Appeal Ref: APP/T4210/W/23/3324587

104 Ainsworth Road, Bury BL8 2RS

- 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 Ciaroni, Emerald Property Capital Limited, against the decision of Bury Metropolitan Borough Council.
 - The application Ref 69132, dated 29 November 2022, was refused by notice dated 15 March 2023.
 - The development proposed is the conversion of existing 6 bed C4 HMO to 7 bed Sui Generis HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Government published on 19 December 2023 a revised version of the National Planning Policy Framework (the Framework). Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issue of this case are largely unchanged. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.

Main Issue

3. Whether satisfactory living conditions would be provided for occupiers of the host property, with particular regard to the provision of indoor and outdoor space.

Reasons

4. This appeal concerns a mid-terraced property which, at the time of my site visit, was in use as a 6 bedroom house in multiple occupation (HMO).
5. I note the Council's concerns regarding the loss of communal internal space at the property as a result of the appeal proposal. It seems to me that, whilst the proposal would not result from the loss of a communal room as the room with which this appeal is concerned is currently used as storage, it would nevertheless result in an overall reduction in internal communal space available within the property by virtue of the proposed intensified occupation.
6. With the exception of the bathroom on the second floor, the existing kitchen/dining room would be the only communal room provided in the property. I acknowledge that this room provides all necessary facilities for day to day living and meets the Council's licensing requirements. Nevertheless,

there is no further living room or other space which residents could spend time and relax in.

7. The appellant asserts that not all of the rooms in the appeal property are occupied on a full-time basis and that occupiers of HMOs are unlikely to prepare food and eat together at the same time, thus this communal room would never be at full capacity at any one time. There is no conclusive evidence to support the suggestion that occupiers would cook and dine at varying times and, moreover, it is important that I consider a worst-case scenario.
8. Should seven persons be using this space at one time, either to cook, eat or relax, it would feel very cramped, with space around the table restricted and additional options for seating away from the table very limited. The proposed occupancy level would significantly restrict the functionality of this communal room, to the detriment of the living conditions of occupiers.
9. In terms of the private outdoor space provided at the property, this is predominantly located at the rear and comprises an enclosed yard. Whilst it is a somewhat narrow strip, I nevertheless observed that outdoor seating could be provided as well as areas to dry clothes.
10. There is also a generously sized and secure garage/outbuilding which provides adequate space for bicycle stands and the storing of bins. As such, the external space would be sufficient to meet the domestic needs of seven occupiers.
11. Whilst the appeal property has been finished to a high standard, and even if it is well managed, this does not overcome the harm resulting from the lack of suitable internal communal living space for occupiers.
12. Accordingly, the proposal would fail to provide satisfactory living conditions for occupiers of the appeal property and thus would conflict with Policies H2/1 and H2/4 of the Bury Unitary Development Plan (1997) (the UDP). Together, these policies aim to ensure that developments consider the impact on residential amenity.
13. The Development Control Policy Guidance Note 13: Conversion of Buildings to Houses in Multiple Occupation (May 2007) sets out general guidance for HMO's and notes that this type of conversion should provide an acceptable standard of accommodation for occupants. The proposal would fail to do so for the reasons given above.
14. Policies H1/2 and H2/2 of the UDP are referred to in the Council's decision notice however they do not appear to be of direct relevance to the main issue in this case.

Other Matter

15. Within its officer report the Council noted that the proposed additional bedroom would have limited, if any, outlook given the positioning of the rooflight. I observed this at the time of my site visit. However, this concern was not reflected in the reason for refusal or the Council's statement of case. Nonetheless, even if I had considered this matter as part of this appeal, it would not have altered my overall conclusion.

Conclusion

16. The proposal would provide an additional bedroom in an HMO and it is suggested that there is a need and demand for this type of accommodation in the locality. I afford this benefit limited weight due to the small scale of the proposed development.
17. The proposal would fail to provide satisfactory living conditions for occupiers, harm which leads to conflict with the development plan as a whole. There are no material considerations which indicate a decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

H Ellison

INSPECTOR

8 January 2024

Complaint reference:
23 013 325

Complaint against:
Bury Metropolitan Borough Council

The Ombudsman's final decision

Summary: We will not investigate this complaint about how the Council dealt with a breach of planning control. This is because we are unlikely to find fault and the complainant has not suffered any significant injustice.

The complaint

1. Ms X has complained about how the Council dealt with a breach of planning control. She says the Council has failed to take any action in relation to the breach and there have been delays. Ms X also complains the enforcement officers did not properly communicate with her or keep her up to date. Ms X says she has been caused significant stress by the matter and her property is overlooked by the development.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure', which we call 'fault'. We must also consider whether any fault has had an adverse impact on the person making the complaint, which we call 'injustice'. We provide a free service, but must use public money carefully. We do not start or continue an investigation if we decide:
 - there is not enough evidence of fault to justify investigating, or
 - any injustice is not significant enough to justify our involvement.(Local Government Act 1974, section 24A(6), as amended, section 34(B))

How I considered this complaint

3. I considered information provided by Ms X and the Ombudsman's Assessment Code.

My assessment

4. Planning authorities can take enforcement action where there has been a breach of planning control. A breach of planning control includes circumstances where someone has built a development without permission. It is for the council to decide if there has been a breach of planning control and if it is expedient to take further action.

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5. In this case, the Council granted Ms X's neighbour planning permission to extend their home. Once the development was completed, Ms X contacted the Council as she was concerned her neighbour had not built the extension in line with the approved plans or complied with the planning conditions.
 6. The Council looked into Ms X's concerns and the enforcement officer agreed there had been a breach of planning control. The Council decided it would not be expedient to take enforcement action in relation to the decking built by Ms X's neighbour due to the degree of the breach and the existing screening in place. Ms X may disagree, but the Council was entitled to use its professional judgement in this regard.
 7. The Council did accept that further action was required in relation to the remaining breaches. It invited Ms X's neighbour to either submit a retrospective application or to make changes to ensure the development complied with the plans originally approved.
 8. Ms X's neighbours submitted a retrospective application, and the Council has since granted permission for the changes to the development. I understand Ms X says the Council should take formal action against her neighbour. But councils do not need to take enforcement action just because there has been a breach of planning control and it is not unusual for a retrospective application to be submitted to regularise a development. Ms X had the opportunity to comment on the proposal and I am satisfied the Council properly considered her comments and assessed the acceptability of the changes to the plans before granting permission for the development.
 9. Ms X has complained about the Council's enforcement investigation and said there were long delays and officers failed to properly communicate with her or keep her up to date. The Council has already apologised for the communication issues, and I do not consider Ms X has suffered any significant injustice because of any delays with the Council's enforcement investigation as it ultimately decided the changes to the plans were acceptable.

Final decision

10. We will not investigate Ms X's complaint because we are unlikely to find fault by the Council. Ms X has also not suffered any significant injustice because of how the Council dealt with her concerns about the planning breach.

Investigator's decision on behalf of the Ombudsman