
Appeal Decision

Site visit made on 3 May 2016

by H Cassini BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 June 2016

Appeal Ref: APP/Y5420/W/16/3143722

110 Mattison Road, Hornsey, London N4 1BE

- 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 George Pyrkos against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2015/2498, dated 24 August 2015, was refused by notice dated 22 October 2015.
 - The development proposed is described as a 'loft conversion with rear dormer window to form additional room within existing HMO'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Ordinarily, the position regarding the lawful use of the property would not be an issue that I would consider under a S78 appeal. There are separate processes under sections 191 and 192 of the 1990 Act to establish lawfulness. However, the development described on the application form includes reference to the existing House in Multiple Occupation Use (HMO) and it is clear that the proposed operational development would be used in connection with this existing use. The use of the property also remains as a matter of significant dispute between the main parties. Against this background I must on this occasion turn my attention to this issue.

Main Issue

3. Therefore the main issue is whether, on the basis of the evidence before me, the appeal site is likely to have a lawful use as a HMO unit and, if so, the effect of the proposed external alterations upon the character and appearance of the surrounding area.

Reasons

4. The proposal would allow the formation of an additional room "within an existing HMO". However, the Council is concerned that there are no planning records related to the existing HMO use and therefore the acceptability of such a use has not been assessed against policy HSG6 from the Haringey Unitary Development Plan Saved Policies 2006 (UDP).
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5. The appellant has referred to a planning permission (LPA Ref: 1987/0942) granted in 1987 to convert the appeal property into two flats and suggested that at that time the 'Use Classes Order' did not contain provisions for separate types of dwelling houses. Consequently a change of use from one use to another use was not a material change of use if the former and latter uses were in the same use class under the provisions of the Housing and Planning Act 1986. However, there are no details to substantiate this claim.
6. I further acknowledge that the appellant states that the Council served notice on the appellant requiring him to carry out works to make the property HMO compliant and that housing benefit was subsequently paid to tenants. Moreover, the Council apparently issued a licence under the Housing Act for a HMO in the upper flat in 2013. However, there is no documentation to support such claims and they relate to actions under different legislation that would not necessarily establish whether or not for the purposes of planning law the property has a lawful HMO use.
7. Accordingly, I do not find that evidence before me reaches the standard required to show that on the balance of probability the HMO use is lawful. Against this background it would be entirely inappropriate to possibly grant planning permission for operational development integral to, and which would thus facilitate a use, that may be unlawful.
8. Therefore, the appeal must fail based on the Council's first reason for refusal and, as such, I do not need to consider the second limb of the main issue.

Conclusion

9. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be dismissed.

Helen Cassini

INSPECTOR