
Appeal Decision

Site visit made on 14 February 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 24 February 2017

Appeal Ref: APP/T5150/W/16/3164132

1 Orchard Close, London NW2 6JF

- 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 Ezatolla Nawrozadeh against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/2951, dated 7 July 2016, was refused by notice dated 1 September 2016.
 - The development proposed is described as change of use from Residential House C3 to Sui Generis Large HMO of 12 Rooms, all contained within the existing property.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from C3 (Dwellinghouse) to 9 bed HMO (Sui Generis) (Retrospective) at 1 Orchard Close, London NW2 6JF in accordance with the terms of the application, Ref 16/2951, dated 7 July 2016, subject to the following conditions:
 - 1) The change of use hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Proposed basement, ground and first floor plans; Proposed elevation and sections.

Procedural Matters

2. The Council's Decision Notice refers to Saved Policy BE9 of the Brent Unitary Development Plan (UDP). However, the UDP has now been superseded by the Brent Local Plan Development Management Policies (LPDMP). This plan was adopted on 21 November 2016. Appendix 4 of the LPDMP states that Policies BE1 to BE12 of the Brent Unitary Development Plan (UDP) will not be taken forward in the LPDMP as these are covered by National and London Plan policy.
 3. The Council's second reason for refusal refers to conflict with Policy BE9 of the UDP and Policy 3.5 of the London Plan. Policy BE9 of the UDP no longer forms part of the Development Plan for planning decisions within the Borough. I have therefore considered the Council's second reason for refusal only against the provisions of Policy 3.5 of the London Plan. The Council's statement has not referred to any other policies contained within the London Plan that the change of use may be in conflict with.
 4. The change of use has already occurred and the appeal property was occupied as a House in Multiple Occupation (HMO) at the time of my visit. The Council determined the application on the basis that the change of use was
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retrospective. I have no information to suggest that the occupation of the appeal property is being undertaken otherwise than in accordance with the plans submitted with the application.

Main Issues

5. The main issues are:

- Whether the change of use would undermine the Council's objective of ensuring that the supply of family homes is not reduced.
- Whether the change of use provides satisfactory living conditions for the occupiers of the units within the HMO with particular regard to accommodation space.

Reasons

Supply of family homes

6. The appeal property was formerly a six bedroom dwelling house located on a cul-de-sac of predominantly similar properties. The Council suggest that the conversion to a HMO has resulted in the loss of a family sized unit that would otherwise meet a known local need. In addition, the appellant has failed to show that the 12 bed HMO would meet a known local need within the borough.
7. Policy CP21 of the Brent Core Strategy seeks to provide a balanced stock of Housing in Brent by protecting existing accommodation that meets known needs and ensuring that new housing appropriately contributes towards the wide range of the borough's household needs including an appropriate range and mix of self-contained accommodation types and sizes and family accommodation capable of providing three or more bedrooms. The supporting text to this policy suggests that there is a shortage of family sized accommodation in the borough due to historical conversions to one and two bed units.
8. The appeal property has the benefit of a licence granted by the Council for occupation as a HMO, to be occupied by no more than 15 persons. In addition the Council's Housing Needs Service suggest that the HMO is currently used to accommodate single homeless households from various cohorts, including over 35yrs , pensioners referred from supported housing schemes and households referred from Adult Social Care. The Council's Housing Needs Service identifies that the HMO is an important resource to meet the needs of these households.
9. There is clearly some tension within the Council as to whether the housing needs of the borough are best served by the property as a family unit or as a HMO. It appears to me that Policy CP21 also recognises the competing needs of maintaining an appropriate range and mix of self-contained accommodation types and sizes and family accommodation without being prescriptive as to which accommodation type should take precedence.
10. The appellant has produced recent marketing evidence of a similar sized property on Orchard Close which has a freehold market value of £1,700,000. The appellant also suggests that the marketed property would command a monthly rental of £5,000. I have no evidence to suggest that such values are incorrect or would not similarly apply to the appeal property, given the similarity between the two properties.

11. I concur with the views of the appellant that the value of the property, due to its size and location, would likely be outside of the affordability spectrum of the majority of families within the borough. As such, it would not be a realistic affordable sized unit family unit and its contribution to providing family sized accommodation would be limited to a narrow range of families who could afford such accommodation.
12. The supporting text to Policy CP21 suggests that the average family size in Brent in 2007 was 2.7 persons. As such, the appeal property would have too many bedrooms for the average family size in the borough. Whilst there has been an increase in 6 person households in the borough I have no evidence to suggest that the appeal property, due to its size and value, would likely make a recognisable contribution to meeting the borough's housing needs as family sized accommodation. However, it is clear that the converted property is making a valuable contribution to meeting the housing needs of the borough for specific cohort groups as evidenced by the Council's Housing Needs Service.
13. Against this background, and in particular the size and affordability of the property and the evidence from the Council's Housing Needs Service, I find that the change of use to a HMO has resulted in multiple units that make a more demonstrable contribution to meeting the borough's housing needs than a retained use as a six bedroom dwelling. As such, I consider that the evidence in this case suggest that the appeal property contributes to a balanced stock of housing in Brent by providing accommodation that meets known needs. As such there is no conflict with Policy CP21 of the Brent Core Strategy.

Living conditions

14. The Council recognises that there are no defined space standards in planning terms for HMO accommodation and suggests that the space standards for studio flats of 37sqm Gross Internal Floor Area (GIA), as prescribed in Policy 3.5 of the London Plan, should apply to the bedrooms in the appeal property.
15. The appellant has identified that the London Housing Design Guide requires that the minimum floor size for a double bedroom in a HMO is 12sqm. In addition, the appellant contends that as the property is used as a HMO with communal kitchen and lounge facilities, the rooms cannot be considered to be self-contained facilities and therefore there is no basis for the comparable reference to a studio flat. Although the Council identifies that the building would be capable of accommodating 22 persons, I note that the HMO Licence limits occupation of the building to 15 persons.
16. All of the rooms identified in the HMO Licence granted by the Council exceed the 12sqm. I agree with the appellant that the space standards prescribed for studio flats as set out in Policy 3.5 cannot reasonably be applied to the HMO in this case. In the absence of any defined space standards for HMO accommodation defined in planning policy, I attach considerable weight to the fact that the accommodation space has been subject to inspection by the Council and deemed appropriate to be issued with a HMO Licence pursuant to the provisions of the Housing Act 2004.
17. Consequently, I find that there is no planning basis to suggest that the change of use would conflict with the space standards as prescribed in Policy 3.5 of the London Plan.

18. Although the Council's Statement expresses some concerns regarding the outlook from windows in some of the units, these concerns were not reflected in the reasons for the refusal of planning permission as set out in the Decision Notice. Moreover, I have no evidence as to which of the units in the building may relate to the Council's concerns or any planning policies that the outlook from any of the units may be in conflict with. Whilst some units may have a degree of poor outlook, it appeared to me at my site visit that the majority of windows at the property have an adequate outlook. Taking these factors into account, I have no demonstrable evidence to suggest that the outlook from some the windows of the units in the HMO would be compromised to an extent that would cause unacceptable harm to the living conditions of the occupants of the property.

Other matters

19. I have taken in account the Council's view that Policy DMP 20 of the LPDMP may now be relevant to this appeal following the adoption of the plan in November 2016. No reference to this emerging policy was made in the Officer Report or Decision Notice. This policy, amongst other things, requires accommodation with shared facilities to be of an acceptable quality to meet the needs of its occupants, including the provision of appropriate communal facilities.
20. I have no evidence to indicate how the communal facilities within the HMO may not be appropriate to the extent that there is demonstrable conflict with Policy CMP 20, particularly against the background of a HMO Licence having been granted. Consequently, I am unable to attach any significant weight to this policy in the determination of this appeal.

Conditions

21. The Council has suggested two conditions. As the change of use has already occurred, the suggested standard condition relating to the commencement of the change of use is unnecessary. I have imposed a condition requiring that the development is carried out in accordance with the submitted details. This is in the interests of certainty.

Conclusion

22. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR