
Appeal Decision

Site visit made on 13 March 2017

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 24th March 2017

Appeal Ref: APP/N5090/16/3165082

53 Bertram Road, Hendon, London NW4 3PR

- 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 and Mrs Chen against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/6190/FUL, dated 22 September 2016, was refused by notice dated 18 November 2017.
 - The development proposed is change of use from Class C3 dwelling house to C4 house in multiple occupation (up to 4 bedrooms and 6 people).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal property is within an area subject to an Article 4 Direction which removes permitted development rights for a change of use from Class C3¹ dwelling to Class C4 small house in multiple occupation (for between 3 and 6 unrelated persons sharing basic amenities) (HMO). This allows the Council to control such changes of use via the need for planning permission.
3. The property has been extended at ground floor level and the roof space has been converted to living accommodation. At the time of my site visit refurbishment works were taking place at the property.

Main Issues

4. The main issues for this appeal are: whether the change in character arising from the replacement of a single family dwelling with a HMO accords with local planning policies relating to the distribution of housing types; the effect of the proposed development on the living conditions of the occupants of adjoining residential properties taking particular account of noise and disturbance; and the effect of the proposal on the safe and efficient operation of the highway.

Reasons

Planning policies relating to housing distribution

5. Planning applications and appeals should be determined in accordance with the development plan² unless material considerations indicate otherwise³. This is

¹ Town and Country Planning (Use Classes) Order 1987 as amended.

² The Mayor of London Plan 2016 and the Barnet's Local Plan Development Plan Document Core Strategy (the CS) and Development Management Policies (the DMPD) September 2012

- reflected in Policy CSNPPF of the CS which also cites the National Planning Policy Framework (the Framework) as a material consideration. The Residential Design Guidance Supplementary Planning Document 2016 (the RDG); and the Supplementary Planning Document "Sustainable Design and Construction" (the SDCD) are also material considerations.
6. The appeal property is a mid-terrace house in a residential area. Policy DM08 of the DMPD, whilst recognising the need for a mix of dwelling types and sizes to provide for a growing and diverse population, identifies that the priority for homes across all types of tenures is for those of three bedrooms or more. The loss of a house of four bedrooms, as shown on the existing plans, would conflict with this priority. I give this significant weight in my considerations.
 7. Policy CS4 of the CS aims to maximise housing choice by providing a range of sizes and types of accommodation that can meet aspirations and increase access to affordable and decent new homes. HMOs are recognised as an important source of private sector housing to meet the needs of students, those on low incomes or those seeking temporary accommodation.
 8. Policy DM09(a) of the DMPD states that proposals for new HMOs will be encouraged provided they meet four criteria. I have seen no evidence to show that there is a particular identified need for accommodation of the type proposed in the locality of the appeal site. The proposal therefore fails to meet the first of the criteria which weighs substantially against the proposal. The appeal site is easily accessible by public transport, cycling and walking with a PTAL Rating of 3. I see no reason to doubt that the proposed development would meet the relevant housing standards for HMOs. Meeting these two criteria weighs in favour of the proposal. The remaining criterion, effect on amenities, is considered in more detail below.
 9. Amongst other things, Policy DM01(i) of the DMPD resists the loss of houses in roads characterised by houses and Policy CS5 seeks to protect and enhance the distinctive character of local areas. The Council considers that Bartram Road is characterised by single family houses, with no recent planning permissions for conversions and that, although some properties have historically been converted into flats, the number of these is too small for them to be part of the prevailing character of the area. The appellant has provided some evidence to indicate that about 12.5% of the properties on Bertram Road are flats⁴. The Council has not indicated a particular threshold above which an area is not characterised by houses. In my view the judgement is not merely one of percentages.
 10. During my site visit I observed that the houses along Bertram Road appeared to be well maintained and I found few instances of properties with the numbers of bins that might indicate occupation by more than one household. Whilst HMOs may also be well maintained, on the balance of probabilities I conclude the overall character of Bertram Road is that of single family houses irrespective of the precise numbers of properties that contain flats. I consider this view to be reinforced by the indications that about 87.5% of the properties are recorded as single households.

³ Section 38 of the Planning and Compulsory Purchase Act 2004

⁴ Appendix A of the Grounds of Appeal

11. There would be no physical alterations that would affect the appearance of the building. There is a rear access to the property which could be used to store cycles and bins. The likely impracticality of using either the narrow path or taking such items through the building means it is likely that they would be stored in the front garden area and indeed the Design and Access Statement indicates space would be provided at the front of the building for bin storage. I therefore conclude there would be likely to be a small negative impact on the appearance of the street arising from the likely proliferation of bins and cycles stored in the front garden.
12. Planning policies can sometimes pull in different directions. Taking all the above together I conclude that the loss of a four bedroomed family house and the failure to identify a particular local need for the accommodation proposed outweighs the benefits of additional smaller units of accommodation irrespective of whether they would be in an accessible location or that the standards for HMO accommodation would be met. Accordingly I conclude that the proposed replacement of a single family dwelling with a HMO would not accord with those parts of local planning Policies DM01, DM08 and DM09 of the DMPD; Policy CS5 of the CS; the RDG; and the SDCG that seek to prioritise the availability of larger homes, unless there is a specific identified need for the accommodation being proposed, and that seek to retain the distinctive character of local areas.

Living conditions

13. The appellant says that up to 8 people could be accommodated in a four bedroomed house under the Housing Act 1985 Part X Space and Room Standards⁵. In practice I consider this would be unlikely to be the case. It is likely that occupation by four households as proposed would result in an intensification of use that would result in more comings and goings and activity within and around the property with some potential for increased outside noise and disturbance. However, a certain level of outside noise and disturbance would not be unusual from the occupancy of a house with four bedrooms. I consider the potential of a small, but adverse, effect on the living conditions of occupiers of neighbouring properties in terms of noise and disturbance arising from the use as a HMO would be unlikely to be so severe as to justify refusing the proposal on these grounds alone.
14. I see no reason to doubt that the appellants would be other than responsible landlords and I acknowledge that the intention is for professional tenants to occupy the appeal property. However, planning permission runs with the land and circumstances may change in the future. Accordingly these matters do not carry significant weight.
15. On balance for the reasons set out above I conclude that the proposed development would not affect the living conditions of occupiers of neighbouring properties to the extent that planning permission should be withheld. Accordingly it would not conflict with those parts of CS5 of the CS; Policies DM01, DM04 and DM09 of the DMPD; the RDG; and the SDCG that require new HMOs to have no harmful effect on the amenities of the surrounding area or those principles of the Framework that seek a good standard of amenity for existing and future occupiers of land and buildings.

⁵ Paragraph 2.10 of the Grounds of Appeal

Highway safety and efficiency

16. The appeal site is within a Controlled Parking Zone (CPZ) with parking restricted to residents at specified times during the day. No off-street parking would be provided. Policy DM17 says that new residential development in CPZs may be acceptable with limited or no parking when it can be demonstrated that there is insufficient capacity and a legal agreement restricting future occupiers from obtaining on-street parking permits is in place. No convincing evidence has been provided in respect of capacity and I have seen no evidence that a legal agreement has been put in place.
17. On the basis of the available information I cannot safely conclude whether there is sufficient capacity on the street or not; or whether a legal agreement would be required. I therefore conclude that it has not been demonstrated that the proposed development would not adversely affect the safe and efficient operation of the highway. Accordingly the proposal would not meet those requirements of Policy CS9 of the CS or Policy DM17 of the DMPD that seek to manage parking for the benefit of all users of the highway.

Other Matters

18. My attention has been drawn to examples where HMOs have been granted planning permission. The two appeals⁶ I have been referred to relate to proposals in a City Council elsewhere where different planning policies apply. I do not have all the details relating to the HMO which was granted permission in Selborne Gardens⁷ but during my site visit I observed that the area is more spacious and appears to have fewer parking issues. In any event each planning application and appeal must be determined on its own merits as the circumstances of each case are different. Nothing I have seen or read leads me to any different conclusion in respect of the appeal before me.
19. The appellants have expressed concerns about the way in which the Council dealt with the proposal. However, such concerns have no bearing on material planning considerations and I have considered the appeal on the relevant planning merits only.

Conclusion

20. As set out above there would be some benefits arising from the proposal. However in failing to fully comply with Policies DM01, DM04, DM08, DM09 and DM17 of the DMPD and Policies CS5 and CS9 of the CS the proposal would not comply with the development plan taken as a whole. For the reasons set out above, and taking into account all other relevant matters raised, I conclude the appeal should not succeed.

SHarley

INSPECTOR

⁶ APP/Q1445/A/14/2214205 and APP/Q1445/W/14/3001930

⁷ Application 15/02664/FUL