
Appeal Decision

Site visit made on 25 April 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 2 May 2017

Appeal Ref: APP/N5090/W/17/3167352

103 Dean's Lane, Edgware HA8 9PD

- 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 Marius Solovastru against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/6363/FUL, dated 30 September 2016, was refused by notice dated 5 December 2016.
 - The development proposed is the conversion of a dwelling-house to create three (3x) self-contained flats following the erection of a single-storey rear extension, the conversion of a garage into habitable accommodation, a rear roof dormer extension, the installation of two roof lights to the front elevation, associated off-street parking, bin storage and private amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council's statement advises that the scope of its objection in respect of the effect of the proposal on the living conditions of future occupiers has been limited to whether or not the ceiling height in proposed unit B would be satisfactory. I have framed the main issue accordingly.

Main Issues

3. The main issues are the effects of the proposal on:
 - the character and appearance of the area;
 - the living conditions of neighbouring occupiers with particular regard to noise and disturbance;
 - the living conditions of future occupiers with particular regard to the ceiling height in proposed Unit B.

Reasons

4. A certificate of lawfulness was granted in December 2015 (application ref 15/07093/192) to allow the property to be used as a house in multiple occupation (HMO) (Use Class C4). However, the Council advises that a Borough-wide Article 4 Direction¹ has been made subsequently which prevents

¹ Town and Country Planning (General Permitted Development) (England) (Order) 2015

the use of dwellinghouses as HMOs. Section 192(4) of the 1990 Act provides that the lawfulness of any use or operation covered by a certificate of lawfulness shall be conclusively presumed, unless there is a change in the law or other circumstances affecting the status of the land before the use commences. The making of an Article 4 Direction would amount to such a change. The property is described consistently in the appellant's submissions as a dwellinghouse and no evidence has been presented to demonstrate that the HMO use has been instituted. On the basis of the information available therefore, the claimed fall-back position of use of the property as an HMO is no longer available.

Character and Appearance

5. The appeal property is a semi-detached dwellinghouse. Whilst 95 Dean's Lane has been converted into flats, the prevailing form of residential occupation in the area is single family dwellings. The proposed sub-division of the property into three self-contained flats would increase the number of households in occupation from one to three. This would result in a greater number of comings and goings to the property and amount to a significant intensification of the use of the building compared with its current occupation. The activity associated with the proposed occupation of the flats would therefore be markedly different from its use as a house occupied by a single household and would be at odds with the prevailing character of the area.
6. The Council does not object to the proposed physical alterations to the building and I see no reason to disagree. The proposal would also increase the amount of car parking and create a new bin store at the front of the building. This would lead to a loss of existing planting. I recognise that adjoining properties also have extensive car parking in the front forecourts. Nevertheless, the proposed changes at the front of the appeal building would help to highlight its use as flats and, therefore, reinforce the change in its character. Consequently, I consider that the proposal would have a harmful effect on the character and appearance of the surrounding area.
7. As such, the proposal would conflict with Policy CS5 of the Council's Core Strategy 2012 (CS) insofar as it requires development to respect local context and distinctive local character. It would also conflict with Policy DM01 of the Council's Development Management Policies 2012 (DMP) which presumes against the loss of houses and the conversion of dwellings into flats in roads characterised by houses. Nor would the proposal accord with the Council's Residential Design Guidance Supplementary Planning Document 2016 to the extent that it advises that new development should respect the character of the area in which it is situated.

Living Conditions of Neighbouring Occupiers

8. The properties on both sides of the appeal building are in single family use and No 105 is directly attached. For the reasons set out above, the proposal would lead to additional comings and goings at the front of the property and more intensive the use of the building itself and the rear garden by three separate households. This level of activity would be likely to generate considerably more noise and disturbance than may be expected from the single family occupation of the appeal property and its neighbours. I consider that the increased noise and disturbance would adversely affect the living conditions of

the neighbouring occupiers and No 105 in particular, which would be more directly affected.

9. As such, the proposal would conflict with CS Policy CS5 and DMP Policies DM01 and DM04. Together, these policies require proposals to demonstrate community cohesion, a high standard of environmental awareness and presume against development likely to generate unacceptable noise levels close to sensitive uses.
10. I recognise that No 95 has been converted into flats. I have not been made aware of the full circumstances of the approval of the conversion. Nevertheless, the property occupies a corner location and the car parking area is positioned away from the neighbouring dwelling. Moreover, each proposal must be considered on its merits. Therefore, I consider that the conversion of No 95 does not offer a robust justification for the appeal proposal.
11. The first and third reasons for refusal also cite CS Policies CS NPPF and CS1. I deal with Policy CS NPPF below. Policy CS1 concerns the place shaping strategy for the Borough as a whole and the Council's submissions do not adequately demonstrate how the appeal proposal would undermine that strategy.

Living Conditions of Future Occupiers

12. Policy 3.5 and Table 3.3 of the London Plan Minor Alterations 2016(LP) and paragraph 10(i) of the Government's Nationally Described Space Standards (NDSS) require dwellings to have a minimum ceiling height of 2.3m for at least 75% of the gross floor area. The application plans do not include a cross section through the second floor accommodation and, whilst drawing number MD/2044-05/LB Rev A shows the extent of various ceiling heights, it does not give a figure for the area of the ceiling with a height of 2.3m or above. Nor does the appellant's evidence give a figure for the proportion of the total floor area of unit B with a ceiling height of 2.3m or above.
13. The appellant has provided information on the area of the second floor bedroom with headroom of 1.5m or more. However, that does not address the requirements set out above.
14. The Council's evidence puts the area of the second floor bedroom ceiling at 2.3m at 5sqm or 29% of the total floor area of the room. The appellant has not disputed these figures. Nevertheless, the Council's evidence does not give the proportion of the total floor area of unit B with a ceiling height of 2.3m or above.
15. On the basis of the information available therefore, I am unable to reach a conclusion on whether or not the proposal would comply with LP Policy 3.5 or the NDSS and provide satisfactory living conditions for future occupiers with regard to the ceiling height in Unit B. Had I found in favour of the proposal on the other main issues, I would have sought further information from the parties on this point.

Planning Balance and Conclusion

16. National Planning Policy Framework (the Framework) paragraphs 7 and 8 require the social, economic and environmental roles of sustainability to be considered together. The proposal would make a limited, short term

contribution to the economic role through the initial investment in the construction works.

17. Framework paragraph 47 seeks to boost the supply of housing and paragraph 17 favours the effective use of previously developed land. Nevertheless, the creation of two additional dwellings would make a very limited contribution to the supply of housing in the area and, therefore, to the social role of sustainability. Moreover, there is no substantive evidence to suggest that the Council cannot demonstrate a five year supply of housing land or that that there is a particular need for the form of housing proposed. Indeed, DMP Policy DM01 favours the retention of single family houses.
18. I have also concluded that the development would be harmful to the character of the area and to the living conditions of neighbouring occupiers. In these regards, the proposal would have negative effects on the social and environmental roles of sustainability.
19. Overall therefore, I conclude that the proposal would not amount to sustainable development and so is not supported by the presumption in favour of sustainable development set out in Framework paragraphs 14 and 197 and CS Policy CS NPPF.
20. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.
21. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR