
Appeal Decision

Site visit made on 20 November 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 14 December 2017

Appeal Ref: APP/T5150/W/17/3179629
173 Wembley Hill Road, Wembley HA9 8EL

- 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 Jones against the decision of the Council of the London Borough of Brent.
 - The application Ref 17/0843, dated 24 February 2017, was refused by notice dated 28 April 2017.
 - The development proposed is the change of use to a 9 bedroom house in multiple occupation.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to a 9 bedroom house in multiple occupation at 173 Wembley Hill Road, Wembley HA9 8EL in accordance with the terms of the application, Ref 17/0843, dated 24 February 2017, and the plans submitted with it (Location Plan; As Built Plans- Drawing No. ST_feb17_173 WEM_01 Revision A).

Procedural Matters

2. The application that led to this appeal was retrospective. I have treated the appeal on this basis, and in the description of development given above I have used a modified version of the form of words given on the decision notice rather than the description given in the application form¹. This amendment is necessary because retention does not constitute development for the purposes of the Town and Country Planning Act 1990 (as amended).

Main Issue

3. The main issue in this case is whether the appeal development supplies an appropriate mix of housing for the purposes of local planning policy.

Reasons

4. The appeal property is a substantial semi-detached house in a streetscape of various types and sizes of properties. Some properties in the environs of the appeal building show visible signs of conversion and subdivision including multiple doorbells, letterboxes and rubbish receptacles. The appeal development has resulted in internal changes to the property to facilitate its use as a house in multiple occupation (HMO).

¹ Which is "retention of 9 HMOs"

5. Policy CP21 of the Brent Core Strategy (adopted 12 July 2010) (the Core Strategy) seeks to manage the mix and balance of housing stock within the Borough. Amongst other things it seeks an appropriate range and mix of types and sizes of self-contained accommodation in house subdivision and conversion schemes; and is permissive of accommodation that is not self-contained only where it meets identified needs. Moreover, Policies DMP16, DMP17 and DMP20 of Brent's Development Management Policies (adopted November 2016) (the DM DPD), taken together, and amongst other things, seek to resist the net loss of residential units, including through conversions of family sized homes to smaller units; and seek to support the development of accommodation with shared facilities where it would be located with good access to public transport and other amenities, include management arrangements suitable to its proposed use and size, and meet a specific Brent need.
6. The established use of the appeal property is a residential one. However, the precise nature of its lawful use is unclear from the material that has been supplied to me by the parties. I note that the appeal property received planning permission for conversion to three flats in 2013; however, it is unclear whether that proposal has been implemented, and in any event, I am conscious that enforcement action was progressed following a conversion of the appeal property to six flats.
7. However, whether the last authorised use of the appeal property was as a single dwelling house, or as the Council contend, three flats as per the 2013 permission, both of these arrangements would have supplied accommodation suitable for families, with the flat conversion including a large ground floor unit with access to the property's rear amenity space. Consequently, in this regard the appeal development, in sub-dividing the property, conflicts with Policy DMP17 of the DM DPD, insofar as it seeks to resist the conversion of family-sized units.
8. Moreover, no substantive evidence has been supplied to establish that the appeal development meets a specific Brent need, or is supported by management arrangements suited to its use and size. The appeal property's location in an area with a Public Transport Access Level Rating of 2 also indicates a low level of access to public transport and I saw few amenities and services within its immediate environs. Consequently, the appeal scheme does not meet the requirements of Policy DMP20 of the DM DPD, insofar as it seeks to manage the supply of HMOs in the Borough. These considerations, taken together with my conclusions regarding Policy DMP17 lead me to the view that the proposed development would also conflict with Policy CP21 of the Core Strategy insofar as it seeks to ensure that house conversions achieve an appropriate range and mix of self-contained accommodation types and that occupation that is not self-contained should meet identified needs. However, as the appeal development has not lead to a net loss of residential units or floor space, I consider that it would not conflict with Policy DMP16 of the DM DPD, insofar as it seeks to resist the loss of housing in the Borough.
9. I am mindful, however, of the permitted development right² drawn to my attention by the appellant which allows conversion of dwellinghouses to small HMOs occupied by up to six unrelated individuals. The appellant indicates that should permission not be forthcoming for the appeal development then their

² Arising from the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

intention would be to implement this permitted development right to supply a smaller HMO.

10. Whilst cognisant of the uncertainties relating to the authorised use of No 173, I have been supplied with no substantive evidence to suggest that the permitted development right cited by the appellant is not available for the appeal property, and as it would supply a similar albeit less intensive use to that of the appeal development I consider that the prospect of such a use coming forward is of reasonable likelihood, and much more than a theoretical possibility. Therefore, to my mind this constitutes a legitimate fall-back position to which I attach considerable weight in the overall planning balance.
11. In this regard, I am cognisant that beyond the policy objections to the scheme, the Council has raised no other substantive issues in relation to, amongst other things, the standard of the accommodation provided, the appeal development's effects to residential amenity or character and appearance, or its effects related to parking and highway safety. Consequently, the appellant's assertion that the appeal development has had no material effects in these regards over and above those that would be concomitant with the fall-back position is a persuasive one. Moreover, the fall-back scheme would also result in a loss of a larger residential unit, and the provision of an HMO, so again its effects would not be materially different to these aspects of the appeal scheme. Furthermore, I consider that the proposed development would lead to a more efficient use of the available space than the fall-back scheme through its provision of three additional units, which according to the Officer Report are of a 'broadly good' quality.
12. Consequently, for the reasons set out above, I conclude that the proposed development does not supply an appropriate mix of housing for the purposes of local planning policy. However, the lack of material differences between the appeal development and the fall-back scheme in regards to the matters that led to these policy breaches, the appeal development's lack of harmfulness in other planning terms, and the appeal development's more efficient use of the appeal building's space are matters that, taken together, are material considerations that clearly justify a departure from the policies of the development plan in this instance.

Conditions

13. I sought from the Council the wording of conditions that could be attached to a planning permission in this case. However, the Council has not supplied any. Whilst I note in the Officer Report references to matters that could be handled by conditions, no draft wording of such conditions is included within it.
14. I have, however, taken into account the Officer Report in my assessment of the appeal scheme and as sound insulation is covered by the Building Regulations 2010 (as amended), the attachment of a condition relating to details of this is unnecessary in this case. I saw that the bin storage arrangements at the appeal property, and the hard landscaping and parking provision in its frontage are similar to those of properties within its immediate environs. As a consequence, I consider it unnecessary in character and appearance terms to attach conditions related to bin storage or landscaping of the appeal property's forecourt. Neither have I been supplied with any substantive evidence sufficient to justify a reduction in parking provision available on the appeal property's front forecourt. Moreover, the necessity of a condition requiring

implementation of secure cycle parking has not been demonstrated in this instance.

15. The retrospective nature of the application that led to this appeal means that it is not necessary for me to attach the standard condition relating to implementation, and as the wording of the formal decision above includes a reference to the plans submitted with the application, a plans condition is not necessary in this case.

Conclusion

16. The appeal scheme would conflict with the development plan insofar as the policies cited above are concerned. However, for the reasons set out above, other material considerations justify a departure from those policies in this instance.
17. Consequently, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR