



Appeal Decision

Site visit made on 10 September 2019

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal Ref: APP/X5990/W/19/3229792

422 Edgware Road, London W2 1EG

- 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 Ben Stackhouse of Bestplace Limited against the decision of City of Westminster Council.
- The application Ref 18/08998/FULL, dated 22 October 2018, was refused by notice dated 15 April 2019.
- The development proposed is described as: 'Change of use to a mixed use, comprising a ground floor public house and use of the upper floors as a backpackers hostel accommodation and the installation of an emergency stair, fire door, extract duct and works to fenestration, hard standing, external doors, roof and external bar area'.

Decision

1. The appeal is dismissed.

Procedural Matter

2. Whilst not cited on the Council's decision notice, 'saved' Policies H3 and H7 of the City of Westminster Unitary Development Plan 2007 (UDP) were provided with the Council's Questionnaire. As a consequence, I will not prejudice either party in considering these policies in the determination of this appeal.

Main Issues

3. The main issues are:
 - whether the development is detrimental to the delivery of housing choice in Westminster, particularly the supply of Houses in Multiple Occupation (HMO);
 - whether the proposal would amount to an intensification of the use of the property which would adversely affect the living conditions of existing neighbouring residents of the development with particular regard to disturbance, noise and odours; and,
 - whether the development would have a harmful effect to the character and appearance of the appeal site and surrounding area, with particular regard to the proposed external duct on the rear elevation.

Reasons

Housing choice

4. The appeal property comprises a mix of uses with a shisha bar/restaurant at ground floor with associated storage in the basement, and a HMO located on the upper storeys, which is now the subject of the appeal proposal to convert it

- into a public house at basement and ground floor and a hostel for 'backpackers' on the upper floors.
5. I note that the Council refer to limited planning history for the upper floors and state that Council Licensing records show that the upper storeys of the property have been in use as a HMO since at least 1994, and that there is a history of Licencing HMO inspections during this period. Additionally, the Council confirm that the current HMO licence is for 8 units of sleeping accommodation (for 9 people) with shared kitchen and shared bathroom facilities. This is not disputed by the appellant and corresponds with my findings during my site visit.
 6. UDP 'saved' Policy H3 seeks to encourage the amount of housing in the City, and UDP 'saved' Policy H7 states that planning permission involving the loss of HMO/Bedsit accommodation will not normally be granted as this type of accommodation provides a source of less expensive market housing within the City. The Westminster City Plan 2016 (City Plan) Policy S14 states that residential use is the priority across Westminster, and all residential uses, floorspace and land will be protected. Proposals that would result in a reduction in the number of residential units will not be acceptable, except for several criterion, which the proposal does not meet.
 7. City Plan Policy S15 also states that HMO accommodation will be protected on the basis that it contributes towards meeting Westminster's housing needs and creating mixed communities. These policies are consistent with the National Planning Policy Framework (the Framework) insofar as they aim to deliver the size, type and tenure of housing needed for different groups in the community.
 8. The appellant argues that there are issues surrounding the current HMO, such as the access through the bar area and its overall physical condition, amongst other things. However, such considerations do not themselves justify an exception to adopted policy. I accept that some of the bedrooms in the HMO may have been vacant for some time and noted on my site visit that some refurbishment is required. Nevertheless, the supporting text to Policy H7 states that its requirements apply even where the accommodation may have been empty for some time or is of poor quality. As such the further loss of HMO accommodation has not been justified.
 9. For these reasons, I conclude that the proposal would have a detrimental effect on the delivery of housing choice in Westminster, particularly with regard to the supply of HMO accommodation. As such it would conflict with the strategic residential aims of UDP 'saved' Policies H3 and H7, City Plan Policies S14 and S15 and the Framework.

Living conditions

10. The existing premises licence requires the beer garden to be cleared of customers by 23.00, and the sale of alcohol is restricted to 10:00hrs to 23:30hrs on Monday to Thursday; 10:00hrs to Midnight on Friday/Saturday and 12:00hrs to 22:30hrs on Sunday. It is asserted by the appellant that the proposed operation will be consistent with the existing license. Both parties acknowledge that the part of the proposal to revert the ground floor and basement back to a public house will not differ greatly from the existing shisha bar/restaurant. On the evidence before me, I have little reason to disagree with this observation.

11. However, the change of use from an HMO to a hostel would result in a notable increase in the number of people potentially being accommodated on the upper floors. Whilst I acknowledge that Edgware Road is a busy commercial road, such features as the first-floor roof terrace to the front of the host property are likely to be utilised more frequently and by more people, if the scheme was to succeed. This would be more noticeable to neighbouring occupiers, in particular those at no 424 Edgware Road, when compared to the existing situation with it being used in conjunction with the less intensive HMO and to the activities at street level. Unlike, any internal arrangements of the development, this outside area could not be easily controlled by means of a suitably worded condition, and therefore I am not satisfied that the living conditions of neighbouring occupiers would not be harmed through noise and general disturbance.
12. The Council's Environmental Health Officer (EHO) has raised a number of concerns regarding the proposed extraction system for the kitchen. One of these relates to its height where it is a requirement for such systems to be at least 1m above roof eaves (or ideally at chimney height level) and above the height of any building within 20m of the building housing the commercial kitchen. Although, this is not disputed by the appellant, he points out that the existing extract duct in place on the rear elevation discharges at first floor level and there appear to have been no substantial issues regarding cooking smells. Additionally, the appellant envisages no issues arising from the proposed extraction system.
13. Whilst the appellant is happy to accept a condition to install a suitably designed and located duct, I am not satisfied that this would be possible without affecting other issues, such as character and appearance. Therefore, given the misgivings of the current design of the extraction duct, I am not confident that neighbouring occupiers living conditions would not be harmed through excessive odours, even though other food outlets are in the vicinity.
14. The EHO has raised concerns surrounding the submitted acoustic report noise and this is reflected in the Officer Report, where an inaccuracy has been identified surrounding a window to the proposed hostel being sited within 4m of the proposed flue. The EHO has stated that the appellant would need to confirm the operational hours of the plant and use the correct noise impact design criteria in accordance with the proposed and correct operational hours. Again, the appellant refers to the existing extract duct, but this is in a different location on the building. On the Council's decision notice reference has been made to a loss of amenity to neighbouring properties, which is not the case in this instance. However, as I am dismissing the appeal for other reasons, I have not pursued this matter further with the main parties.
15. For these reasons, I conclude that the proposal would result in an intensification of the use of the property that would adversely affect the living conditions of existing neighbouring residents of the development with particular regard to disturbance, noise and odours. This would be contrary to the living condition aims of UDP 'saved' Policies ENV5, ENV6, ENV7 and ENV13; City Plan Policies S24, S29 and S32, and the Framework.

Character and appearance

16. The proposed development would involve a number of external alterations including works to the outside area in the rear yard, the installation of metal

stairs to first floor and alterations to the boundary wall on Boscobel Street, including a new fire exit, amongst other things.

17. However, the Council only raise concerns with regards to the proposed extraction duct. I noted during my visit the presence of the existing duct on the rear elevation that was set further away from the side boundary of the host property and Boscobel Street. Although, the existing duct would be replaced by the proposed system and appears to be taller, I find that it currently integrates well with the building. The proposed extraction duct would be located much closer to the pavement on Boscobel Street and would as a consequence be more prominent in the street scene.
18. This would be further emphasised through the proposed increase in diameter of the new duct when compared to the existing unit. In the context of the area surrounding the appeal site, the proposed extraction duct would form a strident feature that would have a significant adverse impact on the character and appearance of the wider street scene.
19. For the reasons above, I conclude that the proposed development would have a significantly detrimental impact on the character and appearance of the appeal site and surrounding area and hence that it would not accord with the design, character and appearance aims of UDP 'saved' Policies DES 1 and DES 5, City Plan Policy S28 and the Framework.

Other Matters

20. I have also had regard to various other matters raised by the appellant, including how the appellant is an experienced operator of public houses and hostels across London, establishing strong relationships with local residents as a fundamental part of his business model. Additionally, I note the assertion that the hostel accommodation on the upper storeys will provide a revenue stream to complement the operation of the public house. However, on the evidence before me these are not reasons to grant permission in the face of the harm identified. I have considered this appeal proposal on its own planning merits and concluded that the scheme is not acceptable for the reasons set out above.

Conclusion

21. For the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR