
Appeal Decisions

Site visit made on 10 March 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2020

Appeal A Ref: APP/N5090/W/19/3234338

1 Hayes Crescent, Golders Green, London NW11 0DG

- 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 Chaudhri against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/1908/RCU, dated 27 March 2019, was refused by notice dated 6 June 2019.
 - The development proposed is described as 'We have acquired a HMO Licence for this property and are applying for retrospective planning permission. No changes whatsoever have been made to the property bar HMO legal requirements such as change of internal doors. We do not propose carrying out any works but understand we need planning consent for change of use from C3 to C4 please (HMO)'.
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Appeal B Ref: APP/N5090/C/19/3234341

Land at 1 Hayes Crescent, London NW11 0DG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mohammed Iqbal Chaudhri against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1756/18, was issued on 4 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission the change of use from a single dwelling C3 to a House in Multiple Occupation C4.
 - The requirements of the notice are to cease the use of the property as a House in Multiple Occupation.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)[a] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and by virtue of an Article 4 Direction removing permitted development rights no fee is payable, an application for planning permission is deemed to have been made.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed, the enforcement notice upheld and the deemed planning application is refused.

Procedural Matters

3. The appellant has included 'Golders Green' in the site address on his planning application form but this is not included in the Council's decision notice or

enforcement notice. For consistency I have regarded the address as '1 Hayes Crescent, London NW11 0DG'.

4. The appellant's name is given as 'Mr Chaudhri' on his application for planning permission but as 'Mr Mohammed Iqbal Chaudhri' on the appeal forms for both Appeal A and Appeal B. There is no information before me to suggest this is not the same person and that Mr Chaudhri's full name is that given on the appeal forms.
5. The description of development which is given on the planning application form is overly complicated. The description of development is set out on the appeal form as 'Change of use of the property from a single family dwelling (Class C3) to a House in Multiple Occupation (HMO) (Class C4) for 5 people (Retrospective Application)'. However, the Council's decision notice refers to '6 people'. The appellant has made it clear in his statement that he is seeking permission for a 'change of use to... HMO (Class C4) for 5 people' and I have determined Appeal A on that basis.
6. The Council has confirmed that the development alleged in the notice does not benefit from permitted development rights as set out in the Town and Country (General Permitted Development) (England) Order 2015 (as amended) because an Article 4 Direction removing the permitted development right for a C3 use dwelling house to change use to a C4 HMO (the Article 4 Direction) came into effect as of 29 May 2016. For this reason, a fee is not payable, and the appellant is deemed to have made an application for planning permission alongside his appeal under ground (a) (Appeal B).

Main Issues

7. The main issues in respect of both appeals are:
 - whether there is an identified need for the HMO;
 - the effect of the use of the property as a HMO on the character of the area and the living conditions of neighbouring residents with regard to noise and disturbance; and
 - whether the development makes adequate provision for car parking.

Reasons

8. Hayes Crescent is a residential street of predominately semi-detached houses some of which have been converted into flats. 1 Hayes Crescent (No. 1) is at one end of the street close to the junction of Finchley Road where there are a wide range of shops and services.
9. Policy DM09 of Barnet's Local Plan Development Management Policies (DMP) (2012) seeks to encourage HMOs provided that they meet an identified need, do not have a harmful effect on the character and amenities of the surrounding area, are easily accessible by public transport, cycling and walking, and meet the relevant housing standards for an HMO.

Identified need

10. There is no evidence before me to demonstrate that No.1 would meet an identified need for HMOs in the area. The appellant argues that there is a need for one-bedroom low-cost rented units in the Borough which could be met by

HMO accommodation and cites the Council's Housing Strategy in support of his view. He does not, however provide any information regarding the affordability of the current residential units relative to other rental accommodation in the area or the means by which a low-cost rent could be secured in the future. Consequently, he has not shown that the HMO at 1 Hayes Crescent meets an identified need either for HMOs, as required by Policy DM09 of the DMP or any other housing need which could potentially outweigh that policy conflict.

11. I conclude that it has not been demonstrated that the use as a HMO meets an identified need for a HMO. The development is contrary to Policy DM09 of the DPD which requires that proposals for new HMO meet an identified need.
12. I do not find Policies CS1 and CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document (2012) (the Core Strategy) and Policy DM01 of the DMP which set out Barnet's place shaping strategy and require the protection and enhancement of Barnet's character as being of direct relevance to this main issue.

Character and living conditions

13. Policy DM01 of the DMP seeks to protect Barnet's character and amenity in part by resisting the loss of houses in roads characterised by houses. Hayes Crescent is a residential street, however its proximity to Finchley Road results in some noise and activity associated with the primary retail frontage which the appellant identifies.
14. Planning permission has been granted for the conversion of the appeal site into two self- contained flats (Council Ref. F/04400/13) (the 2013 scheme). Although this consent is no longer extant the DMP has not changed and it is reasonable to assume that should planning permission be applied for again, it would be approved. Thus, the conversion of the property into two flats is a viable fall-back position.
15. The Council also acknowledges that some of the other houses in the street have been subdivided into flats and this is reflected in the multiple doorbells and bins associated with some properties. While the Council says that the majority of the conversions were approved prior to the introduction of Policy DM01 of the DMP, there is no evidence of this or any other information to contradict the fact that the existing flats contribute to the overall character of the area.
16. By virtue of the intensity of use, the noise and disturbance arising from increased comings and goings and the likelihood for enhanced demands for servicing and parking a HMO often has a different character to a house in use as a single dwelling or flats. However, in this case the appeal relates to a HMO which is currently licenced for use by not more than 5 persons. At this scale the difference in character between the HMO and a single house occupied by a large family or two flats which could accommodate seven people, as was approved under the 2013 scheme, would not be pronounced.
17. Drawing these strands together, given the limited size of the HMO and that the site context is not entirely one characterised by houses, I do not find that the appeal scheme offends Policy DM01 in terms of its effect on the character of the area. For similar reasons I do not find that the comings and goings

associated with the HMO use would be harmful to the living conditions of neighbours in terms of noise and disturbance.

18. I conclude that the use as a HMO does not have a harmful impact on the character of the area and the living conditions of neighbouring residents with regard to noise and disturbance. The development accords with Policy CS5 of the Core Strategy and Policies DM01 and DM09 of the DMP. These policies require the protection and enhancement of Barnet's character and support HMOs where they do not have harmful effect on the character and amenities of the surrounding area.
19. I do not find Policy CS1 of the Core Strategy which sets out Barnet's place shaping strategy as being of direct relevance to this main issue.

Car parking

20. There is a dispute between the parties with regard to the availability of car parking on the site. The Council say there is no parking in its officer report but indicates that there is some car parking provision in its statement. On the other hand, the appellant refers to two spaces being available. I observed that there is space for a car to park in front of the house and that a white line on the road facilitates access to this area. The appellant says that this white line allows for another car to park on the road. However, a parked car would block access to the car parking space and given that multiple individuals occupy an HMO this may not be a workable solution to providing a second space.
21. Notwithstanding the lack of clarity regarding the level of car parking provision associated with the HMO, it is clear that in practice there is insufficient, useable off-street car parking to accommodate the 2/3 spaces required by the Council. To that extent the car parking provision is limited. Policy DM17 of the DMP requires that in situations where residential development is proposed with limited car parking a survey should be carried out to demonstrate that there is sufficient on street parking capacity. There is no evidence before me that a survey has been undertaken.
22. If a survey had been carried out and it concluded that there was insufficient capacity, the Council suggests that this could be addressed through an agreement which prevents residents from obtaining parking permits. However, such an agreement is not before me and does not weigh in favour of the appeal scheme in this case.
23. The appellant argues that the HMO would not generate a need for car parking due to its affordable nature, however this has not been secured or the implications for car ownership shown. He also cites the proximity of local shops and services as likely to reduce the need for car parking. There is no dispute between the parties that the site has a PTAL level of 3 which indicates only an average position in terms of public transport and local facilities which may constrain access to employment and other destinations in the wider area. On these bases the arguments put forward by the appellant do not outweigh my concerns regarding the demonstration that an appropriate level of car parking is provided in the absence of a survey and/or mitigation agreement.
24. The appellant has expressed a willingness to provide cycle parking, which could be secured by planning condition. However, there is no evidence to show that

such provision would mitigate against the effect of limited car parking which are unknown in the absence of a parking survey.

25. The Council is concerned that the demand for on-street car parking would result in conditions that would be detrimental to the free flow of traffic and highway and pedestrian safety. However, there is no substantive evidence of this impact. My own observations are that there is sufficient space for two vehicles to pass between cars parked on both sides of Hayes Crescent and that, while there is extensive on and off-street parking, pavements and crossing points are not compromised. On this basis I do not find the development to be contrary to Policy CS9 of the Core Strategy which promotes safe, effective and efficient travel. However, this does not outweigh the conflict with Policy DM17 of the DMP because it is necessary to assess the adequacy of car parking to ensure that the residential development is acceptable on its own terms.
26. I conclude that it has not been demonstrated that the change of use to a HMO makes adequate provision for car parking. The development is contrary to Policy DM17 of the DMP which requires a survey of on-street car parking capacity when car parking is limited and mitigation measures to be employed.

Other matters

27. The appellant notes that the site benefits from a HMO Licence and he argues that this shows that the house meets all relevant HMO standards. However, the licence is granted in respect of a different legislative regime and its existence does not outweigh the harm that I have found in relation to two of the main issues.
28. I have no evidence before me to demonstrate that the change of use to a HMO complies with Development Standards as required by Policy DM02 of the DMP or that it is in accordance with the Council's Residential Design Guidance SPD or the Sustainable Design and Construction SPD (the SPD documents). Nevertheless, even if the development were shown to be in accordance with Policy DM02 and the SPD documents this would also not outweigh the harm that I have found in relation to two of the main issues.
29. The appellant refers to Policy DM07 of the DMP which he says seeks to prevent the loss of residential accommodation, including HMOs and he observes that this policy is not cited by the Council. This is because the change of use would not be contrary to Policy DM07 since it would not involve the loss of residential accommodation.

Conclusion

30. Whilst the development does not harm the character of the area or the living conditions of the neighbouring residents, this consideration does not outweigh the conflict with Policies DM09 and DM17 of the DMP in so far as it has not been demonstrated that there is an identified need for an HMO or that adequate provision has been made for car parking.
31. As such, the material change of use to an HMO is contrary to the development plan when read as a whole. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.

32. For the reasons set out above, and considering all other matters raised, I conclude that Appeal A and Appeal B should be dismissed, that the enforcement notice (Appeal B) should be upheld and that the deemed planning application (Appeal B) should be refused.

Sarah Dyer

Inspector