



Appeal Decision

Site visit made on 21 January 2020

by J Hunter BA (Hons) Msc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2020

Appeal Ref: APP/N5090/W/19/3240612

3, Highfield Avenue, Golders Green, London NW11 9EU

- 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 S Kadiwar against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/2366/FUL, dated 23 April 2019, was refused by notice dated 8 July 2019.
 - The development proposed is described as change of use from dwelling house (use class C3) into HMO (use class sui generis) with first floor infill rear extension and associated internal alterations.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I noted during my site visit that building work was already underway at the appeal property although there was no evidence that the property was in use as an HMO. I have determined the appeal on this basis.
3. The description of development on the application form differs from that on the Council's decision notice and the appeal form submitted by the appellant. The decision notice and appeal form include reference to the enlargement of the roof dormer, but the application form does not. I note that what is proposed includes a sui generis HMO use and it would not therefore benefit from permitted development rights. Nonetheless, the appellant considers the enlargement of the roof dormer to be permitted development. In any event, a Section 78 appeal is not the mechanism for determining whether or not the proposed dormer would be permitted development and therefore lawful.
4. The enlargement of the roof dormer and the conversion proposal are inextricably linked because one facilitates the other. Furthermore, the dormer extension is shown on the submitted plans and it is on this basis that the Council made their decision. Therefore, and for the avoidance of doubt, I have determined the appeal based on the description of development contained within the appeal form, which reads "*Change of use from dwelling house (Use Class C3) into HMO (Sui Generis) for up to 14 people. First floor infill rear extension. Insertion of 2no front facing rooflights and enlargement of existing rear dormer.*"

Main Issues

5. The main issues are (i) the effect of the proposal on the character and appearance of the host property and the area; (ii) the effect of the proposal on the living conditions of the occupiers of Nos 1 & 5 Highfield Avenue in respect of noise and disturbance and (iii) whether there is an identified need for the proposed HMO and, if so, whether the development accords with all other development plan policy criteria for HMO proposals.

Reasons

Character and appearance

6. Highfield Avenue is characterised by two storey properties from the inter-war period. The street numbering appears to suggest that generally, the properties are in single family occupation. However, I am aware from the evidence submitted and from what I saw during my site visit that there are some licensed HMOs and flats in the vicinity of the appeal property. Acknowledging the large number of properties on this particular street and the relatively low ratio that are in multiple occupancy as either flats or HMOs, the prevailing character is that of a suburban location where the housing stock is predominantly houses in single family occupation.
7. The appeal property is a two storey, double fronted mid terrace house located at the north western end of Highfield Avenue. To the front there is an area of hardstanding and to the rear there is an enclosed garden. The appeal proposal includes the conversion of what is currently a four bedroomed house into a seven bedroomed HMO with some shared facilities. The development includes external alterations consisting of a small rear infill extension at first floor and the enlargement of an existing roof dormer to the rear. The Council has raised no objection to the small rear infill extension, and I have no reason to disagree with this view.

Dormer

8. However, the proposed enlargement to the dormer window would result in a very large dormer that would dominate the rear roof plane extending almost the full width and depth of the roof slope. It would be set in by around 1 metre on either side and would be set back from the eaves and down from the ridge by only a small amount. The Council's Supplementary Planning Document: Residential Design Guidance 2016 (SPD) states that dormer extensions should be subordinate to the main roof and should not occupy more than half of the width or half of the depth of the roof slope.
9. The appellant argues that there are a number of large rear dormers in the vicinity of the appeal property. Indeed, I was able to see during my site visit a dormer of a similar scale to that proposed at the adjacent property No 1 Highfield Avenue. I am aware from aerial photographs submitted by the appellant that there are others in the street. However, I was unable to see all of the dormers referred to by the appellant from public viewpoints as they were obscured from view by the houses behind. The Council assert that these other dormers were constructed utilising permitted development rights.
10. I consider that owing to its scale and bulk the proposed enlarged dormer would introduce a dominant and incongruous structure to the roof scape. I appreciate that the dormer is to the rear of the property and therefore not visible from

Highfield Avenue to the front. However, due the positioning of the property, the dormer would be easily visible from Highfield Gardens to the rear. Indeed, I was able to view the appeal property from this public vantage point during my site visit. Whilst I accept that there may be other large dormers within the vicinity, the proposed dormer would be of poor design which would unbalance the rear elevation thus causing significant harm to the appearance of the host property. In this case, I do not consider that the presence of other large-scale dormers in the vicinity of the area justifies allowing harmful development.

11. Accordingly, I consider that the design of the proposed enlarged dormer would be contrary to the guidance set out in the SPD and consequently it would conflict with the design requirements of Policy DM01 of the Barnet's Local Plan, Development Management Policies, September 2012 (DMP) and the National Planning Policy Framework (the Framework).

HMO

12. The appeal property is located on a long residential street in relatively close proximity to transport links including a tube station and bus stops. However, on my site visit I noted that it was not a busy location, there were relatively few pedestrians or passing vehicles. Whilst I accept that this was a snapshot in time, the street had a relatively quiet and peaceful suburban feel.
13. The proposed development would allow up to fourteen people to occupy the seven double bedrooms. The Council consider that this would lead to an intensification of the use of the property and that the increase in general activity levels would result in harm to the character of the area.
14. Whilst I accept the appellant's submission that the property may not always be fully occupied and that some rooms may be let to a single occupant, I consider that as there would effectively be seven households of either couples or single people living independent and varied lifestyles, there would be a relative and significant increase in comings and goings at various times of the day and night. Such an increase in general activity would be materially at odds with the relatively quiet and peaceful character as witnessed during my visit.
15. The appellant refers to a number of appeal decisions in the Borough where HMO's have been allowed on appeal after being refused by the Council on the basis of their effect on the character of the area. I do not have the full details of these cases and I am not familiar with their context. In any event, I have determined this appeal on its individual planning merits.
16. For the reasons set out above, the increased level of general activity and the proposed enlargement of the rear dormer window would have and unacceptably harmful effect on the character and appearance of the host property and the area. The proposal would therefore be contrary to the aims of Policies CS NPPF, CS1 and CS5 of Barnet's Local Plan Core Strategy 2012 (CS), Policy DM0, DM02 and DM09 of the DPD, the SPD and the Framework which collectively require development to be of a high quality design that enhances or preserves local character and respects the appearance of local buildings, spaces and streets.

Living Conditions

17. By virtue of the increased size of the property and its sub-division into seven separate units of accommodation, the occupation of the property would be

much higher than that of a single family home with four bedrooms. Consequently, I consider that the increased occupancy would inevitably lead to additional noise and disturbance from the comings and goings of occupants. This would be further exacerbated by associated visitors to the property and at certain times of the year such as during the summer months when there is potential for large numbers of residents and visitors to frequently use the rear garden.

18. Acknowledging that the immediate area is predominantly single family occupancy as well as the close proximity of the private amenity spaces of such residences to the appeal property, I consider that the intensification of the use of the property could give rise to a significant increase in noise and disturbance, which would in turn have a harmful effect on the living conditions of the nearest occupiers, particularly those closest to the appeal property at Nos 1 and 5 Highfield Avenue.
19. For the above reasons, I conclude that significant harm would be caused to the occupiers of Nos 1 & 5 Highfield Avenue in respect of noise and disturbance. Therefore, the proposal would not accord with the amenity aims of DMP Policy DM01, the SPD and the Framework insofar as they require development proposals to respect the amenities of adjoining and potential occupiers and users.

Whether there is an identified need for the proposed HMO

20. The reasoned justification that accompanies DMP Policy DM09 (paragraph 10.3.2) refers to the importance of HMOs as a source of low cost, private sector housing for students, those on low incomes and those seeking temporary accommodation. This indicates that there is a general need for such accommodation as does the local estates agent's letter submitted by the appellant. I note that the appellant also references Policy CS4 of the CS and the Council's Housing Strategy for 2015 – 2025 although I have not been provided with the full wording of these policies.
21. Policy DM09 states that *Proposals for new HMO will be encouraged provided that they meet an identified need, can demonstrate that they will not have a harmful impact 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 HMO*. I note that the Council has raised no objection to the location of the proposal in respect of its accessibility by sustainable modes of transport and has not raised any specific concerns with reference to the relevant housing standards for an HMO and I have no reason to disagree with this view.
22. The Council asserts that the appellant has provided insufficient evidence to prove a need for the proposed HMO in this location. However, the policy wording of DM09 is not prescriptive in detailing the type of evidence that would be acceptable. Nevertheless, as I have already identified harm to the character of the area, the proposal is, by virtue of this, contrary to the requirements of Policy DM09 as set out above. Consequently, establishing whether or not there is a need for the HMO in this location is not, in this case, a determining factor.
23. Accordingly, whilst there is some evidence of a general need for HMO accommodation in the Borough the proposal does not accord with the other development plan policy criteria for HMO proposals and consequently it

conflicts with Policy DM09. Furthermore, it would also be contrary to Policy DM01, which amongst other things, seeks to control the loss of houses in roads characterised by houses.

Other considerations

24. The proposal is located within a highly sustainable location with excellent links to public transport, services and facilities. There would be a limited I also boost to housing supply in the location and some economic benefits at construction stage and as a result of using local facilities and amenities. Nevertheless, given the relatively small scale of the proposal the benefits associated with the proposal would be limited.

Conclusion

25. The position regarding housing land supply is not entirely certain as neither of the main parties have commented on this issue following the publication of the Housing Delivery Test results in February 2020. However, even if the LPA had not met HDT targets or indeed was unable to demonstrate a deliverable five year supply of housing sites, and paragraph 11d of the Framework had been engaged, in this case, I would still have concluded that the identified adverse impacts of the proposal would have significantly and demonstrably outweighed the benefits of the proposal when assessed against the policies in the Framework taken as a whole.

J Hunter

INSPECTOR