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# Appeal Decision

Site visit made on 1 September 2020

**by J Bowyer BSc(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> September 2020**

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**Appeal Ref: APP/N5090/W/20/3251995**

**67 Vivian Avenue, Hendon, London NW4 3XE**

- 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 H Mejrubi against the decision of the Council of the London Borough of Barnet.
  - The application Ref 20/0449/FUL, dated 28 January 2020, was refused by notice dated 31 March 2020.
  - The development proposed was described as 'change of use to large HMO for up to 15 persons'.
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## Decision

1. The appeal is allowed and planning permission is granted for change of use to large HMO for up to 11 persons at 67 Vivian Avenue, Hendon London NW4 3XE in accordance with the terms of the application, Ref 20/0449/FUL, dated 28 January 2020, subject to the conditions set out in the attached schedule.

## Procedural Matters

2. The application was originally made for a House in Multiple Occupation (HMO) for up to 15 occupiers. At appeal stage, the appellant submitted amended plans (drawings A101,A and A102,A) which reflect the terms of an HMO licence granted for use of the property as an HMO. The licence is subject to a condition limiting occupancy to a maximum of 11 people, and includes a maximum occupancy schedule for rooms within the building. In line with this, the amended plans alter 2 bedrooms originally proposed at first floor level to storage, and one bedroom at each of the ground and second floor levels from 2 person to 1 person occupancy. The appellant has requested that I determine the appeal on the basis of the amended plans and a reduced maximum occupancy of up to 11 persons.
3. I am mindful that the Planning Appeals Procedural Guide advises that it is important that what is considered by the Inspector is essentially what was considered by the Local Planning Authority<sup>1</sup>. I must also consider whether acceptance of revised proposals would prejudice the interests of any parties in accordance with the Wheatcroft Principles<sup>2</sup>.
4. I have taken into account the Council's comments on this matter, and I note its position that there are no exceptional circumstances to justify acceptance of the amended proposals. However, and not unreasonably, the amendments seek to reflect the changed circumstances resulting from the HMO licence which was granted subsequent to the submission of the application to the Council. The

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<sup>1</sup> Annexe M of the Procedural Guide Planning Appeals – England 2020

<sup>2</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment & Harborough DC [1982] JPL P37

revisions reduce the maximum occupancy of the building by 4 people, but I consider that the resulting level of accommodation would not fundamentally or materially alter the nature of the development overall, and it would in essence remain much the same as that originally proposed and considered by the Council and interested parties. Given also the nature of the changes which would represent a reduction, I am satisfied that my consideration of the revised proposals would not prejudice the interests of any party who considered the greater occupancy originally proposed. I have therefore determined the appeal accordingly, and have amended the description in my formal decision above in line with the reduced occupancy sought.

5. The main parties refer to the proposal as retrospective. I saw at my visit that the appeal property was occupied as an HMO. Nevertheless, it did not reflect the internal arrangement now proposed, and I have determined the appeal on the basis of the development shown on amended drawings A101,A and A102,A.

### **Main Issues**

6. The main issues in this appeal are:
  - i) whether or not there is an identified need for the proposal;
  - ii) the effect of the proposal on the character of the area and the living conditions of the occupiers of neighbouring dwellings with particular regard to noise and disturbance;
  - iii) whether or not the proposal would provide acceptable living conditions for occupiers with particular regard to the amount and quality of internal space; and
  - iv) the effect of the proposed parking arrangements on the safe and efficient operation of the highway network in the vicinity of the site.

### **Reasons**

#### *Need for the Proposal*

7. The appeal relates to a substantial detached house on Vivian Avenue, close to the junction with Foscote Road and Rundell Crescent. Vivian Avenue accommodates a mix of buildings, including some with commercial uses at ground floor level which are concentrated between the junction with Rundell Crescent and the A41 Watford Way. Beyond these, buildings on the part of Vivian Avenue which includes the appeal site are predominantly in residential use and there is a more suburban character. However, as well as single dwellings, some buildings appear from the multiple door entry systems and property numbering to have been altered to accommodate varying numbers of households. There are also flats including fairly large blocks at the junctions with Neeld Crescent and Sevington Road.
8. In my view, Vivian Avenue, including the section on which the site is located therefore has a fairly diverse character. As a consequence, I do not find a presumption against the loss of the house on the appeal site under Policy DM01 of Barnet's Local Plan Development Management Policies 2012 (DMP) which resists the loss of houses in roads characterised by houses.
9. Nevertheless, Policy DM08 of the DMP also seeks to ensure a variety of sizes of new homes to meet housing needs. With regard to market housing, it outlines that the highest priority is for homes with 4 bedrooms, and that homes with 3 bedrooms are a medium priority. Alongside this policy, Policy DM09 states

that proposals for new HMOs will be encouraged subject to considerations which include that they will meet an identified need.

10. Although I acknowledge the appellant's comparison of rents currently charged for rooms within the appeal building and for studio flats in Barnet, I do not know how these relate to income levels in the area. I am therefore unable to draw any firm conclusions on the comparative affordability of the accommodation on the appeal site. In addition, I have not been provided with clear evidence of a specific need within this area, on the basis of affordability or other factors, which would be met by the development.
11. Nevertheless, Policy DM09 does not prescribe the parameters within which 'identified need' should be considered. The appellant points to Policy CS4 of Barnet's Local Plan Core Strategy 2012 (CS) as seeking a range of dwelling sizes and housing types to provide choice for all households and enable residents to progress on a housing journey. My attention has also been drawn to the London Plan - The Spatial Development Strategy for London Consolidated with Alterations Since 2011 (LP) which notes a pressing need for more homes in London in order to promote opportunity and provide real choice for all Londoners in ways that meet their needs at a price they can afford. The Mayor of London's Housing Supplementary Planning Guidance 2016 (HSPG) further identifies that HMOs in London are a strategically important housing resource. It notes that they can provide flexible and relatively affordable accommodation through the private market, and reduce pressure on publicly provided affordable housing.
12. I am in no doubt that there is a real and urgent need for low cost housing in London. I additionally note representations submitted in support of the proposal which refer to a need for this type of accommodation, and while not determinative in itself, the building is currently occupied as an HMO. The proposal would offer flexible and relatively affordable accommodation as recognised by the HSPG, and I am satisfied it could contribute towards meeting the general need for a range of housing to cater for different groups. This would accord with the National Planning Policy Framework (the Framework) which includes an objective to significantly boost the supply of homes, and highlights the importance of ensuring a sufficient amount and variety of land to address the needs of groups with specific housing requirements.
13. Moreover, even if 2 ground floor bedrooms shown on the pre-existing plans of the appeal building were used as living spaces as is more typical of a dwelling, there would remain 8 bedrooms on the upper floors. This is significantly larger than the three and four-bedroom dwellings which DMP Policy DM08 indicates are of the greatest priority. The Council has not provided substantive evidence of a shortfall or identified requirement for dwellings of this scale, nor that the loss would be detrimental to the supply of housing to meet needs. Although the building could be occupied by a smaller household, the probability of such an eventuality would be likely to be inhibited by the economics of acquiring and running a much larger property than is necessary to meet needs. I further agree with the appellant that under-occupation of the building would not be an effective use of land, at odds with objectives included within the Framework.
14. I have had regard to an appeal decision at 99 Booth Road<sup>3</sup> where the Inspector found that a need for low cost housing across London did not overcome the

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<sup>3</sup> Appeal reference APP/N5090/W/18/3201486

requirement to demonstrate a specific need for the HMO accommodation proposed. However, from the limited details provided, that appeal related to a smaller existing property, and I can draw little firm comparison with the circumstances of the appeal before me where I have found no clear evidence that the mix or availability of housing in the area would be undermined.

15. The proposal would not result in a loss of characteristic housing or existing accommodation identified as a priority to meet needs. It would however contribute to meeting a general need for housing, and for low cost housing. I find with regard to the specific circumstances of the appeal before me that these aspects would outweigh the lack of a demonstrated specific need for the proposed HMO accommodation in this location. I therefore conclude on this main issue that the proposal would help to increase housing choice and would accord generally with Policies DM01, DM08 and DM09 of the DMP. I also find no conflict with CS Policy CSNPPF which outlines a positive approach reflecting the Framework's presumption in favour of sustainable development.

#### *Character and Living Conditions of Neighbouring Occupiers*

16. No alterations are proposed to the exterior of the appeal building. It would change from a single dwelling to an HMO, but I have already found that there is a mixed character to this part of Vivian Avenue including both flats and residential buildings which accommodate varying numbers of households.
17. I have no firm information on the number of occupiers within these properties, and I note the Council's suggestion that no nearby detached buildings have a level of occupancy close to that proposed on the site. However, while they would form multiple households, the suggested maximum occupancy of up to 11 people would not differ significantly from the number of potential occupiers of the site as a single dwelling of at least 8 bedrooms, many of which would offer double rooms. Given this and existing examples of detached buildings occupied by multiple households present nearby on this part of Vivian Avenue, I do not find that the proposal would be out of keeping or incongruous, or that it would fundamentally alter the established character of the area or its function. I also see no reason that implementation of appropriate refuse storage on the site could not be secured by way of a planning condition.
18. I accept that occupation of the building by different households would be likely to result in greater activity and increased comings and goings at different times compared to a single dwelling. However, beyond general assertions that this would harm neighbouring occupiers, no substantive evidence to show how increased activity would result in excessive noise and disturbance so as to cause harm to the living conditions of neighbouring occupiers has been provided.
19. During my visit, the flow of traffic along Vivian Avenue was fairly consistent and I also noted a fair degree of activity associated with the commercial uses beyond Foscoote Road which are very close to the site. The bicycle store adjacent to the boundary with 65 Vivian Avenue is enclosed, and would largely serve occupiers of the site rather than deliveries or similar so that likely impacts of usage would not be significant. No additional vehicle parking would be provided on the site, and the entrance door to the building is set away from neighbouring buildings. Together with the fairly spacious plots to buildings here, and against the existing background context of activity, I find that the effect of occupation and use of the site including the garden area on neighbouring occupiers' living conditions would be of limited significance. There

is also no firm evidence before me that the number or turnover of occupiers would be detrimental to local identity or sense of place.

20. Moreover, the site is already used as an HMO with more occupiers than are now proposed, but I have not been provided with any records of complaint or details to indicate that this has resulted in harm to adjacent occupiers. To the contrary, I note representations received in support of the proposal from two of the adjoining properties.
21. I acknowledge that the Council has introduced an Article 4 direction which removes permitted development rights for conversion of dwellings to HMOs, although the size of the proposal means that permission would in any case be required. Be that as it may, for the reasons above I conclude on this main issue that the proposal would not unacceptably harm the character of the area nor the living conditions of neighbouring occupiers. Accordingly, I find no conflict with Policies CS1 or CS5 of the CS or Policies DM01, DM02, DM04 or DM09 of the DMP which include requirements to broadly conserve and enhance the distinctiveness of Barnet and its character and amenity. I also find no conflict with guidance in the Residential Design Guidance Supplementary Planning Document 2016 (RDG) or the Sustainable Design and Construction Supplementary Planning Document 2016 which generally seek protection for existing living conditions.

#### *Living Conditions – Site Occupiers*

22. Turning to consider the living conditions of occupiers of the site, the Council has not objected to the size of the bedrooms within the building or the provision of external amenity space for occupiers. The internal heights of the rooms are not clear from the submitted drawings. However, I was able to view all but one of the rooms internally at my visit and I am satisfied that they offer adequate floor to ceiling heights in accordance with relevant standards. The room that I was unable to access was at second floor level, but given the configuration of the building and the steep pitch of the mansard roof form which I was able to view externally, I see no reason that the internal height of this room would not be comparable to others on this floor.
23. With regard to communal spaces, the proposal includes a large shared kitchen on the ground floor level which I saw provides generous space for the preparation and consumption of food, as well as for storage. The Council has not raised concerns over the suitability of this space to serve 10 people as is proposed, and I see no reason to take a different view.
24. An additional second-floor kitchen is indicated to serve 5 people. The layout is not illustrated on the drawings, but I saw that it includes an oven with hob, full height fridge freezer, sink with drainer, storage cupboards and shelves as well as worktop areas for food preparation. The space is relatively narrow which would be likely to hinder practical use by multiple residents at the same time. The Council further indicates that its area would be around 0.2sqm below the minimum sought by the Adopted Standards for Houses in Multiple Occupation 2016 (ASHMO) for a kitchen serving 5 people. The width of the available worktop space would also appear to be some way below the 2.6m which the ASHMO would suggest should be provided for 5 people.
25. However, given the availability of the large ground-floor kitchen, I consider it unlikely that occupiers of the ground and first floors would rely on the

second-floor kitchen. The appeal proposals indicate only 3 occupiers at second floor level. In my judgement, the area of the kitchen and facilities within it would be sufficient to meet the needs of this reduced number of occupiers who in reality would be likely to rely on it and the consequent reduction in the probability of multiple residents wanting to use it simultaneously. Accordingly, the deviation from the ASHMO guidance for a 5-person kitchen would not in this case be detrimental to the living conditions of occupiers.

26. I therefore conclude on this main issue that the proposal would provide accommodation of suitable quality to ensure acceptable living conditions for occupiers. As a consequence, the development would accord with the objectives of CS Policy CS5 and DMP Policy DM09 which seek, amongst other things, high quality buildings and an appropriate standard of accommodation. It would also reflect the HSPG and RDG which seek schemes of good quality which meet relevant standards and requirements.

### *Parking*

27. With regard to the accessibility of the site which is very close to Hendon Central Station and bus stops, the Council advise that 2 parking spaces would be sought to serve the 15 occupiers originally proposed on the site. Given the layout of the driveway to the front of the appeal building, I agree with the Council that this would hinder parking by more than one vehicle, resulting in a shortfall of one space.
28. The site is within a Controlled Parking Zone (CPZ) which restricts parking to permit holders between certain hours. Within CPZs, DMP Policy DM17 indicates that development may be acceptable with limited or no parking, but that where insufficient on-street capacity can be demonstrated, a legal agreement to restrict future occupiers from obtaining on street parking permits will be required. Where a proposal is close to the edge of a CPZ, Policy DM17 further states that a survey will also be required to demonstrate sufficient on street parking capacity on streets outside the CPZ.
29. No parking surveys are before me, but at the time of my visit, there were a significant number of spaces available on both Vivian Avenue and Foscoote Road, as well as spaces on the section of Rundell Crescent which is outside of the CPZ area. There were also many available time-limited 'pay and display' spaces outside of the nearby commercial parade. I accept that this was a snapshot and that the situation may be different in the evenings and overnight. Nevertheless, many of the buildings along these streets also have some provision for off-street parking, and there is no firm evidence before me to indicate a high level of parking stress locally.
30. Furthermore, the Framework states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The submitted evidence and my observations on site do not lead me to conclude that an overspill of one vehicle from the site as suggested by the Council would result in unacceptable parking pressure or in harm to the safety or operation of the surrounding highway network. In this context, I am also not persuaded that it would be necessary to prevent future occupiers from obtaining permits to park within the CPZ.

31. Consequently, I conclude on this main issue that the proposed parking arrangements would not be harmful to on-street parking capacity or to the safe or efficient operation of the highway network. The proposal would comply with DMP Policy DM17 and with Policies CS9 and CS15 of the CS which seek safe, effective and efficient travel and the mitigation of development impacts.

### **Other Matters**

32. I have taken into account concerns raised by interested parties beyond those which relate to the main issues. However, the fact that the building is already being used as an HMO is not a reason in itself to dismiss the appeal. Given the scale of the proposal, it is unlikely to result in unacceptable levels of traffic or congestion and the provision made for cycle storage is in accordance with objectives within the development plan and Framework to promote this as a means of travel. There is no compelling evidence that the development would place undue strain on local services or exacerbate any existing drainage problems. I also have no firm information which would suggest that the proposal would result in crime, anti-social behaviour, litter or other nuisance either individually or cumulatively with other HMOs in the area. None of the other matters raised alter or outweigh my conclusions on the main issues.

### **Conditions**

33. The Council has suggested conditions in the event that the appeal is allowed. I have considered these having regard to the tests set out at paragraph 55 of the Framework and the comments of the appellant, and have amended them where necessary for the sake of clarity and precision.
34. I have imposed a condition specifying the approved plans (1) for the avoidance of doubt and in the interest of certainty given that these show a different arrangement to that currently present on the site. To ensure that living conditions would be suitable for occupiers of the site, including with regard to the available kitchen space, I have imposed a condition restricting the number of occupiers on the site to 11 people to reflect the amended proposal (2).
35. Conditions to require the submission, approval and implementation of provision for refuse and recycling (3) and submission of sound insulation certificates (4) are necessary in the interests of the character and appearance of the area and living conditions of occupiers. There is a strict timetable for compliance because it is not possible in this case to use negatively-worded conditions to secure the approval and implementation of these details before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met, however I have adjusted the time limit for compliance at Condition 3 as I consider the 1 month period for submission of details suggested by the Council to be unduly onerous and unreasonable.

### **Conclusion**

36. A specific need for the proposed HMO accommodation in this location has not been demonstrated, but I find that the proposal would comply with the development plan when it is read as a whole. For the reasons given above, I therefore conclude that the appeal should be allowed.

*J Bowyer*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: E100; E101; E102; A101,A and A102,A.
- 2) The premises shall only be used as a House in Multiple Occupation for a maximum of 11 occupiers.
- 3) The use hereby permitted shall cease and the property restored to a single family dwellinghouse together with the removal of locks from internal separating doors and one set of kitchen units, sinks, cookers and food preparation areas within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
  - i) within 3 months of the date of this decision details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection, shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation. The arrangements shall be permanently retained thereafter.
  - ii) if within 5 months of the date of this decision the Local Planning Authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) the approved scheme shall have been carried out and completed in accordance with the approved details and timetable.
- 4) The use hereby permitted shall cease and the property restored to a single family dwellinghouse together with the removal of locks from internal separating doors and one set of kitchen units, sinks, cookers and food preparation areas within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iii) below:-
  - i) within 3 months of the date of this decision copies of Pre-completion Sound Insulation Test Certificates shall be submitted to the Local Planning Authority, confirming compliance with Requirement E of the Building Regulations 2010 (or any subsequent amendment in force at the time of implementation of the permission).
  - ii) if within 5 months of the date of this decision the Local Planning Authority refuse to approve the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.