
Appeal Decision

Site visit made on 10 September 2020

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2020

Appeal Ref: APP/C5690/W/20/3248352
113 Tyrwhitt Road, London SE4 1QE

- 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 R and N Patel against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/19/112841, dated 25 June 2019, was refused by notice dated 20 August 2019.
 - The development proposed is change of use from HMO for up to six residents (Use Class C4) to HMO for up to ten residents (sui generis).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not the site is suitable for the proposed development, in light of development plan policies for the range of housing provision including family accommodation.

Reasons

3. The appeal building is currently in use for occupation by 6 individuals, with shared kitchen/lounge/dining-room, and a spare storage room. A Lawful Development Certificate was granted in February 2019 establishing the use of the premises as a House in Multiple Occupation (HMO) under Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended. This permits use of the property by not more than six residents. Nonetheless, there are no constraints on changing use from Class C4 HMO to Class C3 dwelling, and vice versa. The two uses are, in effect, interchangeable.
4. Paragraph 61 of the National Planning Policy Framework (the Framework) states that the type and size of housing needed for different groups in the community should be reflected in planning policies including, but not limited to, families with children. The introduction to the Lewisham Development Management Local Plan (2014)(LP) indicates that the Council's development strategy and key policy directions for providing new homes includes ensuring appropriate provision of family housing and a mix of dwelling types and sizes.
5. This strategy is enabled by policy DM6 of the LP which relates specifically to HMOs. In defining what comprises an HMO for the purpose of this policy, paragraph 2.35 states that the aim is to provide controls for HMOs that are a sui generis use, that is, HMOs where there are more than six individuals forming a household who share facilities. As the appeal proposal is to create a

new HMO for up to ten residents, which would be sui generis, as opposed to the existing HMO under Class C4, policy DM6 is engaged. This policy states that the Council will only consider the provision of new HMOs where, amongst other things, they do not result in the loss of existing larger housing suitable for family accommodation.

6. The appeal property is located in a residential area which predominantly contains a mix of family sized dwellings and former family dwellings divided into smaller accommodation. The layout of the property is such that it would function as a good sized four to six bedroom family dwelling. The site is adjacent to the Hilly Fields park and play area, within walking distance of local schools, located within a network of relatively quiet residential streets, and with no conflicting land uses in the immediate vicinity. From my observations on site and from the evidence before me, I can see no reason why the property would be unsuitable for use as a family dwelling. As such, the proposal would result in the loss of existing larger housing suitable for family accommodation, notwithstanding when it was last used as such, or when it will be next.
7. Policy DM6 additionally presumes against the loss of good quality HMOs. The quality of the appeal HMO is not disputed, nor is the quality of service provided to its occupants. However, as the current lawful use is Class C4 HMO, the proposal would not result in loss of a good quality sui generis HMO, for the purpose of this policy, notwithstanding that the appeal property benefits from an HMO license. Although the property may be capable of being licenced for 14 persons, HMO licencing is separate from the land use planning framework under which this appeal must be assessed.
8. Correspondence suggests that there is no need for another family house in the locality, but that there is a need for HMOs. However, I give more weight to the Council's development plan policy position which is based on housing need evidence that has been subject to examination. The Council's decision at 76 Albacore Crescent has been cited as precedent, however, I do not have the full details of that proposal or the circumstances of its approval and, in any case, I must determine the appeal on its merits. Finally, the appellants would accept a condition limiting occupancy to seven persons to bring the current spare storage room into use. Although this would make more efficient use of the premises, it does not outweigh the policy conflict.
9. I therefore conclude that the site is not suitable for the proposed development, in light of development plan policies for the range of housing provision and family accommodation, contrary to policy DM6 of the LP.

Other matters

10. Although the level of investment required to have created the existing HMO may have been high, this does not outweigh the harm to the Council's strategy of providing a suitable mix of housing, nor would the economic and social benefits deriving from the proposed use, which would be limited. The lack of local objection to the proposed development is effectively a neutral matter in the planning balance.
11. The effect of the development on the Brockley Conservation Area is not of concern to the Council, and I see no evidence to persuade me that the proposal would not preserve the character and appearance of the conservation area.

Conclusion

12. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Patrick Hanna

INSPECTOR