



Appeal Decisions

Site visit made on 6 October 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal A Ref: APP/N5090/C/19/3243477

Land at 15 Montagu Road, London NW4 3ER

- 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 Mrs Wei Lei against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 28 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the property into a C4 house of multiple occupation (HMO).
 - 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 six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/N5090/W/19/3243466

Land at 15 Montagu Road, Hendon, London NW4 3ER

- 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 Wei Lei against the decision by the Council of the London Borough of Barnet.
 - The application Ref 19/4887/RCU, dated 5 September 2019, was refused by notice dated 12 November 2019.
 - The development proposed is described as 'change of use from C3 residential to HMO C4 retention.'
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Decisions

1. Appeal A is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B is dismissed.

Preliminary Matters

3. The description, in respect of appeal B, given in the banner heading above is taken from the original planning application form, noting that 'retention' does not describe an act of development.
4. In respect of appeal B, I have taken the appellant's name from the planning application form but have noted the discrepancy between this and the title given on the appellant's appeal form.

Appeal A on ground (a) the deemed planning application and Appeal B

5. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of planning permission for an identical development, the considerations in Appeal B are the same as for Appeal A and I have considered the appeals together.
6. The proposed plans indicate that five bedrooms would be used however, I observed at my site visit that bedroom three was in use for communal storage albeit the submitted plans show this room as a bedroom. The planning application and enforcement notice relate to use as a C4 HMO and I have therefore determined the appeals on the basis of the submitted plans and my site observations.
7. The term 'C4' refers to class C4 or the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO), as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (UCO). The enforcement notice seeks the cessation of the use as a C4 HMO.
8. The appellant stated that there are currently four people living in the property with the intention of increasing to five. However, in respect of Appeal A and the appeal on ground (a), the appellant proposes that permission be granted for either a six-person, five person or four person HMO.

Main issues

9. Based on the reasons for refusing permission and taking action, I consider the main issues are (i) whether there is an identified need for the HMO; and (ii) the living conditions of occupiers with particular regard to the standard of accommodation.
10. In their appeal statement, the Council raised matters relating to the effect on the living conditions of neighbours, character and the accessibility of the site which did not form part of the reasons for refusing the application or for taking enforcement action. Consequently, these have not formed part of my assessment.
11. In any event, even if I had found favour with the appellant's arguments in respect of these matters, they would have attracted only neutral weight and could not have outweighed the harm in respect of the lack of identified need.

Identified need

12. The appeal property is a relatively modest two-storey mid-terrace dwelling. Notwithstanding that there is a school on the opposite side of the road, the immediate context is distinctly residential in character.
13. Policy DM09 of Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012 (the DMP) states that proposals for new HMOs will be encouraged provided that they meet an identified need and 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 HMOs.
14. The appellant referred to criteria b of the policy which relates to proposals for student accommodation however, there is no suggestion that the development

- is intended solely for student accommodation, indeed the appellant stated that the property is currently rented out to young professionals. Consequently, this criterion is not directly relevant and, in any case, also requires that such proposals meet an identified local need.
15. The explanatory text to the policy states that HMOs are an important source of low cost, private sector housing for students, those on low incomes and those seeking temporary accommodation.
 16. Policy 3.8 of The London Plan (2016) requires that Londoners should have a genuine choice of homes that they can afford, and which meet their requirements for different sizes and types of dwellings. It states that boroughs should ensure that, amongst other matters, new development offers a range of housing choices in terms of the mix of housing sizes and types, taking account of the housing requirements of different groups and the changing roles of different sectors in meeting these. The supporting text advises where new proposals for HMO use come forward and are constrained by, for example, Article 4 Directions, that boroughs should take into account the strategic as well as the local importance of HMOs.
 17. The appellant considers that the DMP contains policies which are out-of-date, an assertion which appears to be made primarily based upon the documents age. However, paragraph 213 of the National Planning Policy Framework (the Framework) states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
 18. I find that, through Policy DM09, the Council have found a balance between addressing their need for family housing as well as recognising that HMO uses can be suitable subject to there being an identified need. I also consider that Policy DM09 is consistent with paragraph 61 of the Framework which states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies.
 19. Whilst in general terms there appears to be a need for HMOs in the Borough, as indicated by the explanation to Policy DM09 of the DMP, the policy is clear that proposals for such uses will be encouraged where they meet an identified need. With need being, in my view, an indicator of an existing deficit or shortfall.
 20. In this respect the appellant contends that there is an obvious demand group in the form of Middlesex university, which has 20,000 students and a considerable number of staff, with the university only guaranteeing accommodation for some of the student population.
 21. They stated that the property is meeting the needs of students and young professionals who cannot afford to buy or rent their own property and need affordable single room accommodation. They consider that the demand for such accommodation is evidenced by the fact that the property has been functioning as an HMO since March 2019.
 22. The Council have submitted no evidence to indicate what the identified need, in relation to housing provision, is in the surrounding area. Nonetheless, and

despite the appellant's view that the demand generated by the university should not require statistics, beyond generalised assertions in respect of their observations regarding the demand for such accommodation, the appellant has provided no detailed or precise evidence which demonstrates that there is an identified need for this accommodation. Consequently, I find that the development does not accord with Policy DM09 of the DMP in this respect.

Living conditions

23. I observed that there are two shared bathrooms, one on the ground floor accessed off the communal kitchen and another on the first floor, the appellant's revised plans illustrate this. Although not necessarily relevant, I also noted that despite the Council's comments, the windows throughout were in good order and there is a reasonable outlook from all windows in the bedrooms.
24. The communal space consists of a kitchen/dining area from which there is no outlook. Whilst it is a reasonable size it seems unlikely to me that the occupants could comfortably spend a significant amount of time in that space together. In the absence of alternative amenity space such as lounge areas, it seems occupants would spend a reasonable amount of time in their bedrooms. Furthermore, the garden at the rear of the property is accessed through bedroom two and it appears that only the occupant of that bedroom has access to the garden.
25. In respect of bedroom three, this falls significantly short of the standard and it is my view, considering the need to utilise bedrooms due to the limited communal space available outside of the open plan kitchen, that this bedroom is not adequate in size to reasonably accommodate an adult. However, as already noted, it was in use for storage at the time of my visit.
26. Bedroom four also falls short of the minimum floor area for a one-person room. However, this is a small shortfall and on the basis of my site observations provides an acceptable standard of accommodation.
27. Notwithstanding a breach of the guidance contained in the Supplementary Planning Document: Sustainable Design and Construction October 2016, in respect of the lack of outlook from the kitchen, overall, based on my site observations, including bedroom three being used for storage, I find the accommodation provides adequate living conditions for four occupants and there is no conflict with the amenity protection aims of the Framework.
28. If I were minded to grant planning permission, a condition limiting the number of occupants to reflect the existing circumstances would be necessary as a more intensive use would have different impacts, given the limited amenity space.

Other matters

29. Although the Council have granted a license for the use of the property as an HMO, such a licence is granted under a separate legislative regime and does not confirm the use of the premises as an HMO under planning legislation.
30. That the property is not a listed building nor in a conservation area, there are no external alterations, the property could have been converted to use as a small HMO as permitted development if the Article 4 direction had not been in

place and the property could easily be returned to use as a family dwelling if required, are neutral matters which cannot outweigh the identified harm. Similarly, I noted room for the storage of bins and bicycles at the front of the property however, the Council found no harm in respect of these matters.

31. There is no substantive evidence which demonstrates that the property would remain empty in the event the appeals are dismissed and consequently, this is a matter of little weight in my assessment.
32. The Council referred to Policy CS1 of the Core Strategy which sets out the overarching strategic aims for development in the Borough and Policy CS5 of the Core Strategy which states, amongst other things, that the Council will ensure that development in Barnet respects local context. They also referred to Policy DM08 of the DMP which relates to dwelling size priorities, Policy DM01 which seeks to control the loss of houses in roads characterised by houses and Policy DM02 which relates to development standards, although it is not evident which standards as set out in the policy, if any, are relevant.
33. I consider these policies are not directly relevant to the main issues in these cases and do not advance the Council's case. Nor do I consider, in the absence of explanation, that the Supplementary Planning Document: Residential Design Guidance October 2016 (SPD) is relevant.

Overall conclusion on the ground (a) appeal and the deemed planning application

34. My finding no harm in respect of the standard of accommodation, cannot outweigh the harm in respect of the lack of an identified need. Consequently, the development does not accord with Policy DM09 of the DMP and is contrary to the development plan when taken 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.
35. Given the conflict with local policy, the development cannot therefore be considered sustainable development for which the Framework or Policy CSNPPF of the Core Strategy presumes in favour.
36. I therefore conclude, having regard to all other matters raised, that the appeal on ground (a) fails and that planning permission will not be granted.

The appeal on ground (g)

37. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that with homelessness and the demand for property being so high in Barnet and London, that a period of two years would be appropriate.
38. However, I have not been provided with substantive evidence regarding the availability of alternative accommodation or in respect of the occupants' circumstances, including for example copies of the tenancy agreements held or details in relation to those agreements.
39. I cannot therefore be certain, on the basis of the information before me, that a period of two years is necessary to secure compliance with the notice, which requires only the use to cease, or that the period of six months specified in the notice is not proportionate to the breach of planning control that has occurred.

40. I have had regard to the occupants' rights under Article 8 of the Human Rights Act 1998. However, these are qualified rights. Whilst the current occupants could lose their home, in this case, I am satisfied that the legitimate planning policy aims to manage the use of housing in the Borough can only be adequately safeguarded in this instance by dismissing the appeal and upholding the enforcement notice. This course of action would be a proportionate response necessary in the wider public interest and, as such, would be a justified interference with the occupants' human rights.

41. Accordingly, the appeal on ground (g) fails.

Conclusion

42. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR