



Appeal Decision

Site visit made on 20 October 2020

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 November 2020

Appeal Ref: APP/A5270/W/20/3251794
23 The Avenue, London, W13 8JR.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Trentwood Limited against the decision of the Council to the London Borough of Ealing.
 - The application Ref 193589VAR, dated 11 July 2019, was refused by notice dated 30 October 2019.
 - The application sought planning permission for conversion of ten self contained flats into an eight-room, eight person Large House in Multiple Occupation (HMO) (Sui Generis) without complying with conditions attached to planning permission Ref 191406FULL, dated 14 June 2019.
 - The conditions in dispute are Nos. 5 and 6 which state that:
 - 5. A minimum of eight (8) secured cycle parking spaces shall be in accordance with the adopted standards of the London Plan (2016). Such provision shall be brought into use prior to first occupation and retained permanently.
 - 6. Food waste, refuse and recycling storage shall be provided in accordance with the standards adopted by the Local Planning Authority. Such provision shall be brought into use prior to first occupation and retained permanently.
 - The reasons given for the conditions are:
 - 5. To provide adequate facilities for cyclists and increase the use of active and sustainable modes of transport, in accordance with policies 6.1, 6.9 and 6.13 of the London Plan (2016).
 - 6. To protect the living conditions of occupiers of the area and in the interests of the future occupants of the development in accordance with the Ealing Council's Waste Management Guidelines for Architects and Developers, as well as, policies 5.17 of the London Plan (2016); 1.1 of the adopted Ealing Development (Core) Strategy (2012); and 3.5 and 7B of the Ealing Development Management Plan (2013).
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Decision

1. The appeal is allowed and planning permission is granted for conversion of ten self contained flats into an eight-room, eight person Large House in Multiple Occupation (HMO) (Sui Generis) at 23 The Avenue, London, W13 8JR in accordance with the application Ref 193589VAR, dated 11 July 2019, without compliance with condition numbers 5 and 6 previously imposed on planning permission Ref 191406FULL, dated 14 June 2019 and subject to the conditions set out in the schedule attached to this decision.

Main Issues

2. The first main issue is whether Condition 5 is necessary and reasonable to provide suitable access to cycle parking facilities to provide for a wider transport choice and to encourage sustainable modes of transport.
3. The second main issue is whether Condition 6 is reasonable and necessary to provide acceptable living conditions for the occupiers of the proposed development and to protect the living conditions of the occupiers of nearby properties.

Reasons

4. The proposal is for the removal of conditions 5 and 6 attached to a planning permission for the use of a property as a House in Multiple Occupation (HMO) for up to eight persons. Conditions 5 and 6 require the provision of 8No. secure cycle storage spaces and the provision of food waste, refuse and recycling storage facilities.
5. The building on the appeal site comprises an inner terrace building that projects up to the back edge of the pavement. It has a rear garden, but there is no vehicular or pedestrian access to it from the street and no access to it from the proposed HMO.
6. The proposed HMO would occupy the upper floors of the appeal building and access to the upper floors would be from an entrance door located at the front of the building and along a narrow hallway and staircase. The remainder of the ground floor is occupied by a property agency and access to the rear yard area is from this business unit. As such there is no scope to provide accessible cycle or waste storage facilities at the front or rear of the site to serve the proposed HMO.
7. Paragraph 55 of the National Planning Policy Framework (Framework) states that conditions should be both necessary and reasonable. As advised in the Planning Practice Guidance (PPG) planning conditions should not be wider in their scope than is necessary.

Condition 5

8. Policy 6.1 of The London Plan 2016 (London Plan) seeks to improve the capacity and accessibility of cycling. Together, policies 6.9 and 6.13 of the London Plan state that new developments should provide secure, integrated, convenient and accessible cycle parking facilities in line with the minimum standards set out in Table 6.3 of the London Plan.
9. Table 6.3 of the London Plan does not set any specific cycle parking standards for large HMOs, which are a Sui Generis use. Instead it states that cycle parking for Sui Generis uses should be provided as per the most relevant use class included in the table.
10. The Council has not stated which class they have assessed the proposal against, although it is assumed that they have used the class for studio and one bedroom flats, for which the standard is one space per unit. This would result in a requirement for the storage of eight cycles.
11. However, studio and one bed apartments are self-contained whereas the proposal is for an eight person HMO with two communal kitchen and dining

areas. As such it would not be unreasonable to compare the proposed HMO to 2No. four bedroom dwellings, which would attract a need for four cycle parking spaces. Another option would be to compare the proposed HMO to student accommodation, which can operate in a similar way to HMO's. The standard for student accommodation is one cycle space for every two bedrooms, again resulting in a need for four cycle parking spaces.

12. The supporting text to table 6.3 of the London Plan advises that where it is not possible to provide adequate cycle parking within residential dwellings, boroughs are encouraged to engage with developers that propose innovative alternatives that meet the objectives of the parking standards. It would appear that no such discussions have taken place, although the appellant has stated that it may be possible to provide some cycle storage space under the stairs, but that it could not accommodate eight cycles. Also, it is noted that there are three cycle stands along this stretch of The Avenue.
13. It is acknowledged that the premises benefit from a Certificate of Lawfulness for use as 10 self-contained flats. Planning conditions cannot be imposed on applications for Certificates of Lawfulness and so the Council was unable to ensure that proposal complied with current planning policies. Whilst the current lawful use of the site is relevant in the consideration of this appeal, it is also necessary and reasonable to seek to ensure that current cycle storage policies and standards are complied with where possible. This is to provide the occupiers of the HMO with greater travel flexibility and choice.
14. Taking all of these factors into account I consider that it would be reasonable and necessary to either provide storage for four cycles within the building, potentially under the stairs as suggested by the appellant and for such storage to be made available and used solely for the storage of cycles by the occupiers of the proposed HMO. Alternatively, for arrangements to be agreed with the local planning authority for the provision of enhanced private or public cycle parking facilities in the locality, as an alternative to providing four on-site cycle parking spaces. Clearly, if possible, cycle parking storage within the building would be more convenient for the occupants.
15. I conclude that Condition 5 is wider in its scope than is necessary and so fails the tests of need and reasonableness as set out in the Framework. It does however need to be replaced with a condition which seeks either four on-site spaces or alternative enhanced off-site provision. Such a condition is both necessary and reasonable to provide adequate access to safe and secure cycle parking facilities for the occupiers of the proposed HMO and to encourage and facilitate active and sustainable modes of transport, consistent with policies 6.1, 6.9 and 6.13 of the London Plan.

Food waste, refuse and recycling storage

16. Conditions 4 and 6 duplicate each other and so both have been addressed. Neither of the conditions stipulate that food waste, refuse and recycling storage facilities need to be placed outside the proposed HMO.
17. Ealing Council's Waste Management Guidelines for Architects and Developers (WMG) seeks to ensure that arrangements for storing, collecting and managing waste are appropriate, whether this is undertaken externally or internally.

18. Where waste is stored internally and to encourage the occupiers of new residential units to recycle their waste, developers should provide adequate internal storage, usually within the kitchen, for the segregation of recyclable materials from other waste, based on a fortnightly waste collection service. They are also encouraged to install in-sink food waste disposal units to help reduce the amount of waste being presented for collection. It is advised that developers should consider methods to integrate the reusable sacks for recycling into the design of the kitchen areas to enable and encourage residents to make full use of them.
19. The requirements of the WMG are consistent with the objectives of policy 5.17 of the London Plan, policy 1.1 of the adopted Ealing Development (Core) Strategy 2012 (Core Strategy) and policies 3.5 and 7B of the Ealing Development Management Plan 2013, (DMP).
20. The Ealing Supplementary Planning Guidance 2004 – Storing waste for recycling and disposal (SPG 4) provides no waste storage advice for properties that have no external areas available for storage. As such it adds little to the consideration of the appeal proposal.
21. To provide suitable living conditions for the occupiers of the proposed HMO and to protect the living conditions of local residents it is important that adequate and suitable storage facilities are provided for refuse and recycling. Such provision is also important to minimise the need for landfill sites and to encourage recycling.
22. The proposed HMO includes two dedicated kitchen areas, which are shown with a range of fitted cupboards. The appellant has given no reasons as to why these kitchen areas could not include adequate and suitable refuse and recycling storage facilities in accordance with the requirements of the WMG. Given the importance of refuse and waste storage facilities if adequate provision could not be accommodated within the proposed kitchen areas, it would need to be made elsewhere within the property.
23. I conclude on this main issue that a condition which requires the above storage facilities for refuse and recycling is both reasonable and necessary to provide adequate and safe living conditions for the occupiers of the proposed HMO and to protect the living conditions of existing local residents. This is consistent with the objectives of the WMG, policy 1.1 of the Core Strategy and policies 3.5 and 7B of the DMP. However, as this matter is fully addressed by condition 4, condition 6 is unnecessary and unreasonable.

Other matters

24. As part of this Appeal all other conditions imposed on planning permission ref: 191406FULL have been examined to ensure that they pass the tests set out in the Framework.
25. It is not stated whether or not the development has commenced and so condition 1 is required to ensure the development complies with the provisions of the Town and Country Planning Act 1990 (as amended). The plans condition is required for the avoidance of doubt and in the interests of proper planning and condition 7, which relates to sound insulation, is required to ensure that satisfactory living conditions are provided for the occupants of the proposed

development. However, for reasons of clarity I propose to refer to the development as HMO rooms rather than dwellings.

Conclusion

26. Having regard to all matters raised the Appeal is allowed on the terms set out in this decision.

Elizabeth Lawrence

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be begun before 14 June 2022.
- 2) The development hereby permitted shall be carried out in accordance with drawing Nos: 201903/TA/S1 and 201903/TA/02.
- 3) The development hereby permitted shall not be occupied until refuse and recycling storage, in accordance with the local planning authority standards, has been provided for all occupants of the development, in the curtilage of the proposed premises, and fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
- 4) Prior to the first occupation of the development hereby permitted cycle parking storage facilities for four cycles shall be made available within the premises and thereafter used solely for the storage of cycles used by the occupiers of the development hereby permitted; or provision shall be made for new or enhanced private or public cycle parking facilities in the locality as an alternative to providing four on-site cycle parking spaces and in accordance with details that have been submitted to and approved in writing by the local planning authority.
- 5) Enhanced sound insulation for the approved residential building shall be installed to achieve an enhanced sound insulation value $D_{nT,w}$ [and $L'_{nT,w}$] of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/uses in adjoining HMO rooms (e.g. kitchen/living/dining/bathroom above/below bedroom of separate HMO room). The enhanced sound insulation measures shall be installed and fully completed prior to the first use and/or first occupation of the HMO rooms and maintained thereafter.