
Appeal Decision

Site visit made on 8 February 2021

by D Hartley BA (Hons) MTP MBA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 9th February 2021

Appeal Ref: APP/N5090/W/20/3261065

66 Sturgess Avenue, Hendon, London NW4 3TS

- 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 Sima Montamen-Samadian against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/1266/RCU, dated 3 March 2020, was refused by notice dated 8 September 2020.
 - The development proposed is described as change of use to HMO use.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the property from a single dwelling (Class C3) to a House in Multiple Occupation (HMO) (Class C4) for 5 people at 66 Sturgess Avenue, Hendon, London, NW4 3TS, in accordance with the terms of the application Ref 20/1266/RCU, dated 3 March 2020, and approved plan No ST301 and the 1:1250 red edged site location plan, subject to the following condition:
 - 1) No more than 5 persons shall be resident at the property at any one time.

Procedural Matters

2. The appeal building is already in use as a House in Multiple Occupation (HMO) with five residents occupying it according to the tenancy agreement submitted as part this appeal.
3. The Council's refusal notice describes the proposal as "*change of use of the property from a single dwelling (Class C3) to a House in Multiple Occupation (HMO) (Class C4) for 5 people (Retrospective Application)*". This more precisely describes the appeal proposal, in accordance with the appellant's supplementary planning application statement, and I have considered the appeal on such a basis.
4. The appellant has submitted a recent appeal decision at 58 Sturgess Avenue, Hendon¹ which allows use of the property as a HMO for no more than six people. I have taken this appeal decision into account as a material planning consideration.

Main Issues

5. The main issues are (i) whether there is an identified need for the proposal and the effect of the change of use on the supply of family dwellings in the area;

¹ Appeal Ref APP/N5090/W/20/3246389 dated 21 December 2020

- (ii) the effect of the development on the function and character of the area;
- (iii) whether the accommodation is to an acceptable standard from a living conditions point of view and (iv) the effect of the proposal on the occupiers of neighbouring properties in respect of noise, disturbance and congestion.

Reasons

Need and loss of family dwelling

6. Policy DM09 of Barnet's Development Management Policies Local Plan 2012 (DMP) seeks to encourage HMOs provided that they meet an identified need, do not have a harmful effect 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 an HMO. Policy DM09 does not prescribe the parameters within which 'identified need' should be considered.
7. In this case, the appellant has provided evidence of signed tenancy agreements and it is evident that the property has been used by students for some time. I am satisfied that this does demonstrate that there is an identified need for the HMO and in reaching this view I have taken into account the Council's contrary view. It is also of note that other Inspectors who have dealt with HMO proposals in the area have also reached the same conclusion based on similar evidence. I shall assess the proposal against the other parts of Policy DM09 of the DMP later on in this decision, but I conclude that the proposal does accord with it from the point of demonstrating an identified need for a five person HMO.
8. Although the appeal site is located in an area that is predominantly single family housing, and Policy DM01 of the DMP states that the loss of houses in roads characterised by houses will not normally be appropriate, I have had regard to the number of occupiers and the absence of any external changes to the external appearance of the property. In essence, the property still looks like a house within the street-scene and hence I do not consider that the proposal conflicts with the design requirements of policy DM01 of the DMP.
9. I do not doubt that there is demand for family housing in the area, as promoted by virtue of Policy DM08 of the DMP. However, the evidence before me is that HMOs are not in principle precluded in the area. In fact, paragraph 10.3.2 of the reasoned justification to Policy DM09 of the DMP states that "*HMO are an important source of low cost, private sector housing for students, those on low incomes and those seeking temporary accommodation*". This is reinforced within Policy DM09 of the DMP which states that "*the council will seek to retain existing HMO provided that they meet an identified housing need*". While the proposal relates to a change from a family dwelling to a HMO, Policy DM08 does not in itself prohibit such residential accommodation. Instead, it seeks to promote "*dwelling size priorities*" and paragraph 9.1.6 to the policy states that "*the policy can be applied flexibly*".
10. I conclude that the appellant has demonstrated that there is an identified need for the HMO in accordance with Policy DM09. Whilst use as a HMO has meant the loss of a family dwelling, I do not consider that the Council has provided me with any objective evidence to indicate that such a loss would cause any significant harm to the mix and balance of residential properties in the locality. To this extent, the proposal does not conflict with the overall housing and

sustainability requirements of policies CSNPPF of the Barnet Core Strategy DPD 2012 (CS) or with Policies DM01, DM08 and DM09 of the DMP.

Character and function of the area

11. No external changes have been made to the property. In this respect, the proposal has no visual effect on the pattern of development in the street.
12. The property is in use by five people which is not too dissimilar to use as a single dwellinghouse. There may be a slight increase in the number of comings and goings from visitors to the property when compared to use as a single dwellinghouse, but as the property is only used by five people, I do not consider that this change has materially altered the relatively peaceful residential character of the area. In the context of the above matters, I do not find that the development has resulted in a significant change in the character and function of the area.
13. I therefore conclude that the proposal has not had a materially adverse effect on the character or function of the area and, in this regard, it accords with policies CSNPPF and CS5 of the CS and Policies DM01 and DM09 of the DMP.

Standard of accommodation

14. As part of my site visit, I was able to view inside the property and inspect the quality and standard of accommodation. In addition, the appellant has submitted photographs of bedrooms, the kitchen, bathroom and of the rear garden. I note that the appellant has a five year HMO license for the property, dated 26 November 2019, and has provided a copy of this in appendix 2 of the appeal statement. The nature of occupation, as outlined in note 5 of the license, is on the basis of a '*shared house*'. The evidence is that the HMO has not been let on a room by room basis: all the tenants have shared control of all parts of the property including the bedrooms.
15. In the context of the above, and of course in the knowledge of enduring controls relating to the separate licensing regime, there is no evidence before me to indicate that the continued use of the property as a small HMO is unacceptable from the point of view of the standard of accommodation for occupants. Indeed, the Council has approved a HMO license which states that the property is reasonably suitable for occupation by up to six persons (4 households). I would emphasise, however, that the planning and licensing control regimes are not directly analogous.
16. The Council has referred to the Residential Design Guide SPD 2016 (Design Guide SPD), but this does not include table 1.3 which it is claimed includes HMO space standards. I have, however, been referred to the Council's Adopted Standards for Houses in Multiple Occupation 2016 (HMO Standards) which does include internal space/other standards for HMOs. I am not entirely sure of the planning status of this document, but, in any event, I do not agree with the Council that the appeal development conflicts with it.
17. The evidence is such that the property can be occupied by five persons on a shared basis without having to use the fourth first floor front bedroom for sleeping purposes. Indeed, on my site visit it was apparent that this room did not appear to be in use for sleeping purposes. The three other bedrooms are of a size that meet the aforementioned space standards and can accommodate

the number of people that are the subject of this planning application. On my site visit, it was apparent that these other bedrooms were in use.

18. In addition, the evidence before me is that the shared kitchen is of a size that accords with the requirements of paragraph 4.2.1 of the HMO Standards which state that a shared kitchen may be provided for a maximum of five persons and '*must have a floor area of not less than 6m²*'. I was able to see on my site visit that there were not two sets of kitchen facilities and hence the Council's reference to a minimum kitchen floorspace of 12m² is not applicable in this case.
19. I conclude that evidence is such that the HMO provides an acceptable standard of accommodation. I do not therefore find any conflict with Policies DM02 and DM09 of the DMP; policy 3.5 of the London Plan 2016; the Mayors Housing Supplementary Planning Guidance 2016; the Design Guide SPD or the HMO Standards.

Living conditions – noise, disturbance and congestion

20. The appeal relates to occupation of the building by five people. This would not be too dissimilar to use of the property as a single dwellinghouse by a family who say comprised two adults and three children. I acknowledge that use of the HMO may have the potential to result in slightly more visitors than use as a single dwelling. However, I do not consider that the scale of such activity in respect of noise, disturbance or congestion would be such that it would cause any material harm to the occupiers of neighbouring residential properties. In reaching this view, I am cognisant of the fact that this is a retrospective proposal and that there are no objections from the local community in respect of these matters.
21. I therefore conclude that the proposal would not lead to an over-intense use or harm the living conditions of the occupiers of neighbouring properties. To this extent, the proposal accords with the amenity requirements of policy CS1 of the CS; policies DM01, DM04 and DM09 of the DMP; the Council's Residential Guidance SPD 2016 and the Council's Sustainable Design and Construction SPD 2016.

Other Matters

22. Whilst not forming a reason for refusal, the Council did raise some concern about the proposal in respect of car parking. It is of note that the appeal site falls within a controlled parking zone and the evidence is that this outer London site has a PTAL rating of 1b. The Council has referred to Policy DM17 of the DMP which states that a maximum of 2 to 1.5 spaces per unit should be provided for detached and semi-detached houses and flats (4 or more bedrooms) and that residential development may be acceptable '*with limited or no parking within a Controlled Parking Zone (CPZ), where it can be demonstrated that there is insufficient capacity on street the application will be required to enter into a legal agreement to restrict future occupiers from obtaining street parking permits*'.
23. Whilst my site visit was only a snap shot in time, this was during the National Covid 19 lockdown period when one may expect more people to be at home. However, I was able to see that there were several car parking spaces available to the front of the property. Policy DM17 refers to a maximum

number of spaces and whilst the Council has requested permit control as part of a Section 106 agreement, it has not actually provided me with any objective evidence that there is insufficient car parking capacity to accommodate the appeal development. Furthermore, it is of note that the property was previously used as a single dwellinghouse and hence it is possible that occupants would have had access to a private motor vehicle. For the above reasons, I do not consider that the proposal would conflict with the car parking aims of Policy DM17.

24. Given the status of the 'Intention to Publish' London Plan (21 December 2020), I afford significant weight to Policy T6 (including Table 10.3) as a material planning consideration. In this regard, there is a requirement for a maximum of 'up to' 1.5 spaces for the site based on a PTAL rating of 1b. In this case, there is no evidence of a shortage of car parking spaces to accommodate the appeal development. Furthermore, it is reasonable that I take into account the fact that the property was previously used as a single dwellinghouse and that the appeal development has not resulted in a significantly more intensive use from an overall occupancy point of view. In other words, I consider that the effect of the appeal proposal on car parking demand is likely to be an essentially a neutral one. In this context, I do not find that there is any evidence to indicate that the proposal would conflict with the car parking aims of Policy T6 of the Intended to Publish London Plan 2020.
25. In this case, I do not therefore consider that it is necessary for the appellant to complete a planning obligation for the site.

Conditions

26. As this is a retrospective proposal, it is not necessary for me to impose the standard three year time limit condition or an approved plans condition.
27. A condition limiting the number of occupants is necessary as even a slightly more intensive use could have the potential to have different impacts from a neighbouring living conditions point of view. I acknowledge that the HMO license restricts occupation to no more than six, but the reason for imposing a planning condition relating to no more than five occupants is based on planning/neighbouring living conditions reasons, i.e. retaining control from a noise and disturbance point of view.
28. The Council has suggested a condition relating to cycle parking. However, the evidence is such that there is secure space already for the parking of bicycles to meet both adopted and emerging development plan standards. Indeed, on my site visit I was able to see that there was a relatively large shed that could be used for such a purpose. I have therefore not imposed this suggested condition.
29. The Council has suggested a bin storage condition. However, I was able to see on my site visit that there were areas within the appeal site to store bins and that this was not causing any material harm from a character and appearance point of view. On the basis that the appeal development relates to occupation of the property by up to five persons, which would not be too dissimilar to use of the property as a single dwellinghouse by a family, I do not consider that the suggested condition is necessary.

Conclusion

30. I conclude that the appeal proposal accords with all the criteria within policy DM09 of the DMP. Use of the building as a five bedroom HMO would not conflict with any other policies in the development plan for the area or indeed any of the identified policies relating to the Intention to Publish London Plan 2020. Therefore, the appeal should be allowed.

D Hartley

INSPECTOR