



Appeal Decision

Site visit made on 23 February 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st March 2021

Appeal Ref: APP/R5510/W/20/3262001

46 Bath Road, Harlington UB3 5AH

- 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 M Johar against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 24469/APP/2020/1438, dated 5 May 2020, was refused by notice dated 13 August 2020.
 - The development proposed is Change of use to 10 room house in multiple occupation (sui generis). Provision of car parking and cycle/refuse storage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr M Johar against the Council of the London Borough of Hillingdon. This application is the subject of a separate Decision.

Procedural Matters

3. In an attempt to overcome the Council's objections to the proposal, the appellant has provided alternate drawings in support of the appeal. The drawings show that an existing window in the side elevation of the appeal building would be replaced with a larger one in a similar position. The drawings also show a detailed proposed landscape arrangement.
4. I have considered the matter in light of the principles established by the Wheatcroft¹ judgement. It is important that the proposal that I consider is essentially that which has been considered by the Council and on which interested parties' views have been sought. To do otherwise would be prejudicial to the positions of the Council and interested parties.
5. The drawings would result in operational development being undertaken to the building that was not proposed originally. The proposed window would face towards the window of an adjacent property. Whilst there is a boundary wall separating the properties, the head of the proposed window would be higher than the existing one. The drawings thus materially change the scheme. The occupiers of the adjacent property may not have commented on the application if they were content with it as submitted and may be unaware that a larger

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

window is now proposed. Therefore, I have not taken the proposed window into account as doing so could potentially prejudice the interests of the occupiers of the adjacent property. Additionally, it would not be appropriate to impose a condition to require a revised window arrangement, as I cannot be sure that this would not prejudice the neighbours' interests.

6. The drawings on which the Council based its decision clearly state that a courtyard amenity space is proposed. The landscape drawings provide additional detail and involve the relocation of cycle stands but do not fundamentally alter the scheme. I have therefore taken the proposed landscape arrangement into account.
7. In addition, a highway note and a daylight and sunlight report have been provided with the appeal. These documents constitute evidence to support the appellant's case and do not change the proposal. I have thus also taken these documents into account in making a decision.

Main Issues

8. The main issues are whether the proposal would provide adequate living conditions for the occupiers of the House in Multiple Occupation (HMO) in respect of: (i) outdoor amenity space provision; and (ii) daylight and outlook.

Reasons

Amenity space

9. The site comprises a detached HMO that was converted from a dwellinghouse by means of permitted development rights. It falls within Class C4 of the Use Classes Order² and may be occupied by up to 6 unrelated persons. The site includes a hard surfaced front garden that faces Bath Road. It also has a hard surfaced rear garden that benefits from a gated vehicular access.
10. The Council contends that 15 square metres of amenity space should be provided per bedroom; however, it has not referred to any policies or guidance which support this stance. Policy DMHB 18 of the London Borough of Hillingdon Local Plan Part 2 Development Management Policies (DMP) indicates that houses with 4 or more bedrooms should provide a minimum of 100 square metres of amenity space. Based on the evidence, it is not entirely clear whether an HMO should provide that amount of amenity space. In any case, the policy requires that good quality and usable private amenity space is provided and its supporting text states that matters including the shape and position of spaces should be considered.
11. The majority of the rear garden would be used for the manoeuvring and parking of vehicles. Paved amenity seating areas are proposed immediately to the rear and side of the building, adjacent to the parking spaces and within the circulatory space around the building. The seating areas would be small and feel cramped between the building and parked vehicles and the usability of the spaces would be limited.
12. I note that the rear garden can currently be used for parking; however, in the existing arrangement parking is not formalised. The proposal seeks a formalised parking arrangement and the occupiers of the HMO would be unable

² Class C4, Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 (as amended)

to rely on and likely be discouraged from using the parking and manoeuvring areas as amenity space given the primary purposes of those areas. I do not consider that those areas would constitute good quality or usable amenity space. Moreover, even though the bedrooms are proposed to be let on a single person occupancy basis, the number of bedrooms and thus occupiers and visitors to the site would increase significantly, as would the likelihood that vehicles would be parked within and move to and from the site. In that context, the amenity space would not be adequate.

13. The proposed soft landscaping would not offset the issues identified, nor would the front garden have a sufficient degree of privacy to be regarded as private amenity space. Although there is public open space within walking distance of the site; DMP Policy DMHB18 does not indicate that the need for private amenity space is obviated completely in such circumstances. Although I have taken the site's proximity to public open space into account, I do not consider that the amount and quality of the amenity space proposed within the site would be adequate.
14. Based on the evidence, the parking and manoeuvring arrangement could not be amended so that the issues identified would be resolved. The appellant contends that the proposal is similar to a previous one at the site that was refused for parking and highway safety reasons only³. However, the Council based its decision on drawings that show a different parking arrangement to the one proposed and thus the schemes are not directly comparable.
15. The proposal would not provide adequate living conditions for the occupiers in respect of outdoor amenity space provision. It is contrary to Policies DMH1, DMH5 and DMHB18 of the DMP, which seek to ensure that development provides adequate amenity space and satisfactory living conditions.
16. The Council has also referred to DMP Policy DMHB11 in respect of this main issue; however, it relates to the design of new development and is not directly relevant to considerations associated with outdoor amenity space.

Daylight and outlook

17. The Council's concerns in respect of this main issue relate to daylight to and outlook from proposed Bedroom 7 as shown on the floor plans submitted with the application. Due to the distance from the bedroom window to the adjacent boundary wall and building, the level of outlook would be acceptable. However, the appellant's daylight and sunlight report states that the average daylight factor to the existing window to Bedroom 7 is 0.49 percent, which is significantly below the 1 percent minimum that it indicates would be acceptable having regard to British Standard 8206-2 and BRE guidance⁴. Given the extent of the shortfall, the level of daylight to Bedroom 7 would be inadequate.
18. The Council contends that occupiers of Bedroom 7 would be reliant on artificial lighting and this would be contrary to sustainability and energy efficiency objectives. However, firm and substantive evidence has not been put forward which indicates that the reliance on artificial lighting would result in significant adverse effects. Consequently, the proposal does not conflict with DMP Policy DMHB11 or London Plan (LP) Policy 5.3, which seek to ensure that internal

³ Council reference: 24469/APP/2019/3265

⁴ Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice, Second Edition

designs maximise sustainability and that development demonstrates sustainable design standards.

19. The proposal would not provide adequate living conditions for occupiers of Bedroom 7 in respect of daylight receipt. It is contrary to DMP Policies DMH1 and DMH5 and LP Policy 3.5, which seek to ensure that development provides satisfactory living conditions and amenity space and that housing should be of the highest quality internally.

Other Matters

20. The appellant puts forward that the proposal would provide housing that is affordable and contribute significantly to housing supply, demand and choice. In addition, the parties agree that the site benefits from good accessibility levels. Furthermore, the Secretary of State has confirmed that the emerging London Plan⁵ may be published, it thus attracts significant weight and promotes the efficient use of existing buildings and the optimisation of sites, including small sites. However, these matters do not outweigh the conflicts with the development plan.
21. A unilateral undertaking (UU) dated 19 January 2021 has been submitted with the appeal, which intends to prevent the occupiers from obtaining parking permits in order to address the Council's parking and highway safety concerns. The Council is not defending its second refusal reason as a result. Given that I am dismissing the appeal for the reasons identified above, it is not necessary that I reach a finding on these matters as the outcome of any assessment would not alter the decision.

Conclusion

22. For the above reasons the appeal is dismissed.

Mark Philpott

INSPECTOR

⁵ The London Plan: Publication London Plan