
Appeal Decision

Site visit made on 15 March 2021

by P D Sedgwick BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2021

Appeal Ref: APP/T5150/W/20/3261123

52 Blenheim Gardens, London, NW2 4NT

- 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 Abbeylord Properties Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/1803, dated 20 June 2020, was refused by notice dated 21 August 2020.
 - The development proposed is described as "Alterations to internal layout of the main building to provide 2 self-contained residential units at basement and ground floor level with 6 units of HMO accommodation at levels 1 and 2. Retention of the existing self-contained unit in the rear garden. Minor works of alteration to the external appearance of the building. All as shown on the plans and drawings attached."
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Decision

1. The appeal is dismissed.

Background

2. The application subject of this appeal was made following a previous appeal decision¹ on the same site. With the exception of the self-contained dwelling known as the garden unit, which was allowed, the previous appeal was dismissed, and the enforcement notice was upheld with a varied compliance period of 12 months for the change of use to a large House in Multiple Occupation (HMO) comprising sixteen units of accommodation and one adjoining self-contained dwelling and planning permission was refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
3. The existing layout remains that of a 16 unit HMO, with an adjoining self-contained dwelling on the lower ground floor, and a self-contained dwelling in the garden.

Main Issues

4. The main issues in this appeal are:
 - whether the proposed development would contribute appropriately to meeting local housing need; and

¹ Appeal Ref: APP/T5150/C/18/3203606

- the effect of the proposed development on the living conditions of future occupants, with particular regard to external space and internal space, light, outlook, and privacy.

Reasons

Local housing need

5. Policy CP21 of the London Borough of Brent Core Strategy 2010 (CS) seeks to maintain and provide a balanced housing stock, with a range and mix of housing types and sizes, including non-self-contained accommodation. Additionally, Policy DMP1 of the London Borough of Brent Development Management Policies Document 2016 (DMD) requires that development provides a good quality environment for its future occupiers, complements the locality, and avoids general disturbance. DMD Policy DMP20 requires, amongst other things, applications for non-self-contained or self-contained residential accommodation with shared facilities to include management arrangements and to meet an identified Brent need secured by planning agreement.
6. The supporting text to DMD Policy DMP20 suggests that evidence of need and how a property would be managed should be provided in a planning statement with the application. It also states that where appropriate the Council will seek to ensure local occupancy initially, and in some cases for subsequent future occupants. The justification given for this approach is that comparatively low property values may increase pressure for relocation to Brent from outside the borough.
7. The Council has submitted its emerging Local Plan for examination. This emerging Plan sets out the unfulfilled need for new homes in the Borough and notes the role that HMOs play in meeting housing need while avoiding concentrations of HMOs. Although the appellant has highlighted that emerging policy BH7 does not include the same requirement for securing the accommodation via a legal agreement as DMD Policy DMP20, the emerging Plan is still at examination. As it is not clear what changes are likely to occur to the emerging policy and plan during the examination, the weight I afford this emerging policy is limited at this time.
8. The appellant makes reference to Brent Council's Strategic Housing Market Assessment Update (October 2018), the West London Strategic Housing Market Assessment (November 2010), and the London Plan - Intend to Publish Version (December 2019) including Policy H9 which was carried forward into the adopted London Plan. The documents variously refer to an increase in single person households and the contribution HMOs can make to meeting their housing needs. Whilst the appellant has provided no specific numbers on the need arising, it seems clear that a need exists, and an HMO could contribute to meeting that need. Additionally, the Council's assessment indicates that the appeal site is an acceptable location for an HMO in terms of access to public transport, shops, and other services.
9. In addition to a six room HMO, the proposed development would include a three-bedroom and a two-bedroom unit, both of which would be self-contained. Notwithstanding that the proposed development would provide accommodation appropriate for a family and a significantly lower level of HMO accommodation than in the previous appeal, this does not obviate the need for the appellant to

evidence appropriate management and the local need for the proposed development.

10. The appellant has not provided a planning agreement controlling occupancy to meet an identified Brent need, or information on its management. I acknowledge that the management of an HMO is governed by the Housing Act 2004, as reflected in the Council's licensing conditions provided to me by the appellant. However, the licensing conditions deal with living conditions, space standards, safeguarding and general management. They do not control occupancy. A planning agreement is the appropriate mechanism for securing occupancy tied to need, rather than a planning condition requiring a management plan aligned with the licensing requirement, as the appellant suggests.
11. The appellant has provided a draft HMO licence as an indication of the suitability of the property and of the appellant's existing management experience. Although based on the existing rather than proposed layout, the draft licence, was temporary because the property was overcrowded and contained over twice the number of occupants deemed reasonable in the terms of the licence. Under these circumstances and notwithstanding the previous Inspector's comments based on the evidence before him, it is reasonable to require information on the management of the proposed HMO units.
12. Reference has been made by the appellant to using the proposed development for holiday lets. While housing units can be used for short term holiday lets for a limited period each year without a material change of use having occurred, if units were to be used for short term holiday lets, they would not meet the locational requirements of DMD Policy DMP6. This is because the site falls outside the Wembley Strategic Cultural Area or a Town Centre and no sequential test justifies the location. Furthermore, I cannot see how the proposed development could be managed in a way that would ensure the units were genuinely available to meet local needs if they were to be used as holiday lets.
13. The Council's Article 4 Direction for C3 dwellinghouses to C4 houses in multiple occupation Consultation Statement (October 2019) refers to the role that HMOs have in meeting housing need, but also to the need prevent an overconcentration of HMOs to avoid adverse impacts such as waste and noise, and to ensure a reasonable amount of larger homes for families remain available. The appellant contends that the proposed development would not lead to an overconcentration of HMOs, and as a family sized unit would be provided there would be no conflict the Council's aims in this respect, or in terms of meeting housing needs. However, the main issue that I have identified is whether the proposed development would meet a housing need that is secured by a planning agreement, and no such agreement has been provided.
14. Therefore, while the appellant has considered the previous Inspector's decision and made a number of amendments following that appeal decision, the changes made do not include sufficient detail to ensure policy compliance and to address the concerns I have set out above.
15. A fallback position has been suggested. This would take the form of a planning application to convert the property to a family house and then convert the property into a small HMO under permitted development rights. However,

despite the recent Lawful Development Certificate for 8 Blenheim Gardens, I have no evidence that an application to convert the property back to a house would be submitted and that it would be approved in this instance. As such, it is a matter of negligible weight.

16. The appellant has highlighted issues in validating the application. This is a matter between the Council and the appellant in the first instance.
17. I conclude that, in the absence of details on the management of the proposed development and a planning agreement securing occupancy restrictions to meet an identified local need, the proposed development fails to meet the requirements of CS Policy CP21, and DMD Policies DMP1 and DMP20 as set out above.

Living Conditions

18. The Council contend that, due to a lack of internal space in the form of a communal living/dining room as well as external space, the HMO units would be overcrowded and would provide substandard living accommodation.
19. The Council refers to Policies DMP18 and DMP19 of the DMD in respect of dwelling sizes, and consistency with London Plan minimum internal space requirements, and outdoor space, respectively. However, these requirements relate to new dwellings rather than shared housing such as HMOs for which the Council has its own set of space standards.
20. Criterion b. of Policy DMP20 refers to development meeting appropriate standards with regard to external amenity space and communal facilities. The appellant has provided the Council's licensing conditions for HMOs, 'Conditions for the Mandatory/Additional HMO Property Licensing Scheme' (October 2019) (HMOPLS). Appendix 1 of the HMOPLS provides the amenity and space standards the Council applies when determining the suitability of a property as an HMO. The HMOPLS standards differ from the London Plan standards, which relate to houses and flats rather than HMOs, and are in my view the appropriate ones against which to assess the proposal.
21. All the rooms exceed the HMOPLS minimum bedroom size standards. Units 5 and 6 would have their own kitchen facilities and units 1-4 would use the shared kitchen on the same floor. According to the HMOPLS, shared kitchen facilities should be provided for every three households or every five persons, whichever is the smaller, and a kitchen containing two sets of kitchen facilities should be a minimum of 11 sqm. The proposed shared kitchen is 14.5 sqm and contains 2 sets of facilities suitable for 6 households or 10 persons. Even if occupiers of units 5 and 6 occasionally used the shared kitchen it would be a suitable size.
22. The HMOPLS contains no requirements regarding external space. Furthermore, there is open space within reasonable walking distance of the property, including Gladstone Park approximately 1.2 kilometres distant. The only requirement regarding communal space is for a dining area if the kitchen is shared over 2 floors. Although units 5 and 6 are on a different floor, because they have their own kitchen facilities there would be no such requirement. I am

therefore satisfied that the proposed HMO units would meet the appropriate standards and the living conditions of the occupants would not be harmed.

23. The proposed 3 bedroom flat would be at the rear of the property with the kitchen, living area and bathroom at basement level and the bedrooms on the first floor. A side passage runs past the windows serving the dining room and one of the bedrooms. It provides access to the rear garden proposed for the 2 bedroom flat, and to the rear garden property. The passageway slopes down towards the rear of the property with steps down to different levels. The bedroom window is above the head height of anyone passing it. Views into it would be from below and therefore indirect and limited to a small section of the bedroom close to the window. I consider there would not be overlooking or loss of privacy to an unacceptable degree or that would warrant the window being obscure-glazed.
24. The dining room side window extends from just above the footpath level to hip height. As a result, from normal head height views into it would be restricted looking downwards. I agree with the appellant that passers-by would be concentrating on negotiating the various steps in the side passage and would be unlikely to stop, or in the case of the dining room window crouch down, to look into the windows.
25. Outlook from the dining room window is currently poor with views across the side passage to a fence. However, the dining room would open onto the living room which would have views out into the garden. As such, I consider views from the dining room would not have a detrimental effect on the quality of accommodation provided for future occupants. The Council has suggested that the window would need to be obscure-glazed to provide privacy and, as a result, would reduce the level of light to the room and outlook from it to an unacceptable degree. However, the room would not be a bathroom or bedroom where one might expect greater levels of privacy. Therefore, in my view, it would be acceptable for the window to remain clear glazed and for blinds or curtains to be installed, as is currently the case, to provide a level of privacy if required. In any case, even if the window were to be obscure-glazed, it would provide a reasonable level of light in combination with the living room windows, and as already noted, I consider outlook from this window would be satisfactory in the particular circumstances here.
26. Concluding on this main issue, I find that the proposed development would provide acceptable living conditions for future occupants with particular regard to external space and internal space, light, outlook, and privacy and would not therefore conflict with Policy DMP1 and criterion b of Policy DMP20 of the DMD which seek development that provides high levels of amenity and meets appropriate standards. For the reasons given above, I consider policies DMP18 and DMP19 would not be directly relevant in regard to the HMO units and the Council has no concerns over the external amenity space provided for the proposed flats.

Conclusion

27. In the absence of details of management and a planning agreement securing occupancy restrictions, the proposed development would conflict with the Council's strategy of ensuring that HMO accommodation is appropriately managed and meets local needs. Having taken into account all other

considerations, including the provision of family sized housing and the living conditions of future occupiers, they do not in my view outweigh the conflict I have identified.

28. For the reasons given above, the appeal should be dismissed.

P D Sedgwick

INSPECTOR