

Appeal Decision

Site visit made on 15 April 2021

by **Peter D Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2021

Appeal Ref: APP/N5090/W/20/3254184

68 Great North Way, Hendon, Barnet, London NW4 1HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr F Rahimtulla against the decision of the London Borough of Barnet Council.
 - The application Ref 19/5682/FUL, dated 21 October 2019, was approved on 1 April 2020 and planning permission was granted subject to conditions.
 - The development proposed is change of use of the property from a single family dwelling (Class C3) to 7 bed House in Multiple Occupation (HMO Use Class Sui Generis) including single storey rear extension and two storey side and back extension.
 - The condition in dispute is No10 which states that: The house of multiple occupation hereby approved must be occupied by no more than 7 persons at any time.
 - The reason given for the condition is: to protect the amenities of future and neighbouring residential occupiers in accordance with Policies DM02 and DM04 of the Development Management Policies DPD (adopted September 2012) and the Sustainable Design and Construction SPD (adopted 2016)
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Decision

1. The appeal is allowed and the planning permission Ref 19/5682/FUL for change of use of the property from a single family dwelling (Class C3) to 7 bed House in Multiple Occupation (HMO Use Class Sui Generis) including single storey rear extension and two storey side and back extension at 68 Great North Way, Hendon, Barnet, London NW4 1HS granted on 1 April 2020 by London Borough of Barnet Council, is varied by deleting condition No 10 and substituting for it the following condition:

10) The house of multiple occupation hereby approved must be occupied by no more than 8 persons at any time with double occupancy to be restricted to Bedroom No 2 (Ground Floor rear) only.

2. An application for costs was made by Mr Fahad Rahimtulla against the London Borough of Barnet Council. This application is the subject of a separate decision.

Main Issue

3. The main issue in this case is whether the condition in dispute (No 10) is necessary and reasonable in order to ensure there are no adverse effects on the living conditions of present and future occupants of the HMO and the occupants of neighbouring houses and no adverse effects on highway safety as a result of limited parking provision on site.
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Reasons

4. Great North Way, where the appeal site is located, is characterised by mainly two storey, semi-detached properties although some, as with the appeal property, have been extended into the roof space. The houses are accessed via narrow side roads running parallel to Great North Way itself which is a busy dual carriageway distributor and part of London's strategic road network. Parking on the side road in the immediate vicinity of the appeal site is not controlled but adjacent streets such as Chatsworth Avenue and Downage are part of the controlled parking zone 'ED'.
5. The appeal property, although according to the Council not licensed as a HMO, is currently in use as a 6 bedroom multi occupancy house with shared kitchen, bathrooms and small common living room. The extensions permitted under permission Ref 19/5682/FUL had not been completed at the time of my visit. It appeared from the site inspection that the houses on either side of the appeal property remained in single occupancy use.
6. It has been put to me that, whilst the application was made to convert the house to a 7 bedroom HMO, at no stage did the appellant indicate or agree to a limitation to 7 occupants and the current restrictive condition is preventing any occupation by couples without affecting the ability to rent all rooms. I have been referred to the fact that other HMOs have been permitted in the area without as restrictive a limitation on occupancy and the appellant therefore considers it is unreasonable use of the condition to restrict the business in this way. However, the capacity of properties and neighbourhoods to accommodate residents on a multi-occupancy basis varies significantly and it is therefore necessary to consider each case on its merits.
7. Condition 10 was imposed as a result of various concerns over the potential intensification of use at the property. These included the likely impact of noise and disturbance in particular from additional comings and goings, more waste and refuse stored around the house, inadequate provision of outdoor amenity space and parking stress and traffic congestion in adjacent streets. It was justified in order to ensure that the proposed conversion did not conflict with policies DM01, DM02, DMO4 and DM09 of the *Barnet Local Plan Development Management Policies* (BLPDMP). Policies DM01, DM04 and DM09 make specific reference to ensuring development does not adversely impact on the amenities of the area. I will consider each of these concerns in turn.
8. In terms of noise and disturbance from the property whilst I note that there is a requirement in condition 9 to provide sound insulation measures to mitigate any noise transfer between the property and its semi-detached neighbour this would only mitigate internal noise across the party wall. The proposal to remove the condition or vary it to allow a maximum of 10 occupants would constitute a 42% increase in occupancy and thereby a much more intensive use of the property. Although I have been referred to occupancy levels at a neighbouring property of a similar level, occupancy by up to 10 persons, given the type and size of property in the vicinity, would be the exception rather than the norm. Comings and goings of 10 occupants rather than 7 accessing the house, bike store, refuse storage and using the outdoor space would have the potential to result in a significant increase in external noise and disturbance and I am satisfied some control is necessary.
9. Provision for waste, refuse and recycling at the property would be separately controlled by condition No 5 in the original permission. The proposed location for

refuse storage is along the western boundary of the front garden area and it was apparent from the site inspection that significant space would be available in that location. Moreover, it is likely that 3 additional occupants sharing rooms would not necessarily result in a significant increase in the need for refuse storage. I am therefore satisfied that condition No 5 would give sufficient control and that some increase in occupancy would be unlikely to result in problems with respect to refuse.

10. With respect to private amenity space the garden to No 68, even allowing for the proposed extensions, is large. I am satisfied that the garden size would not necessarily be a constraining factor that would prevent some increase in occupancy.
11. Finally, with regard to the implications for parking stress the current proposal would provide dedicated parking off road for 2 vehicles. Although the appellant states that 3 cars could be accommodated on the frontage to do so would be difficult and would restrict access to refuse storage and the front door and remove any opportunity to 'green' the front garden space. Looking at the plans and the space on site 2 spaces would be the maximum able to be provided. This means that potentially there could be a number of vehicles owned or used by occupants not provided for on site which would need to be parked on adjacent streets with or without resident permits.
12. The appellant has submitted a parking survey which was carried out on adjacent streets to assess parking stress with beats carried out in February 2020 at night when it could be expected that the area would be most heavily parked. The findings showed a capacity of 157 spaces in the area studied and a 34% occupancy which is a low to moderate level of parking stress. I have been invited to conclude that the selection of roads studied was inadequate but, given the area covered in relation to the distance from the property, the selection would seem reasonable and I am satisfied that the survey provides a reasonable indication of parking capacity. However, removing the control on occupancy, given the poor accessibility of the location by public transport, the likelihood is that the majority of the occupants may have cars. They would need to find an uncontrolled space on the narrow side road along Great North Way adding to parking congestion there or look to acquire a parking permit. In either respect the proposed increase in occupancy would be likely to contribute on a cumulative basis to additional parking stress within the area contrary to BLPDMP Policy DM17.
13. It has been put to me that the area is an accessible one and that some of the current occupants are students at the nearby Middlesex University and walk or use bikes. Provision is proposed to be made for bike storage in the rear garden and this is subject to control under condition No 6. However, the area around the appeal site has a low PTAL score of 1a and the nearest bus route is at Linksway around 500 metres from the appeal site or on Church Road around 1000 metres from the site. The site is therefore not accessible enough by public transport to be considered suitable for a car free development. In any event no planning obligation is before me restricting occupation to residents without cars and without parking permits which would be the normal mechanism to ensure car use did not give rise to parking stress.
14. Having assessed these matters some concerns would not justify retention of a control on occupancy. However, others, notably the result of intensification in terms of noise and disturbance from comings and goings and the additional parking stress, would warrant control and a condition controlling occupancy

continues to be necessary and relevant to planning of the development permitted. It would also be necessary to meet the objectives of BLPDMP Policies DM01, DM09 and DM17 in particular. Nevertheless, I must also consider the current condition against the other tests for conditions, notably whether the degree of control is reasonable.

15. The proposal will result in a HMO with a good level of shared living space, storage provision and outdoor garden space and these facilities could provide for a greater number of occupants. I have therefore considered whether, in terms of the standard of space available in the bedrooms, allowing some increase in occupancy could be achieved without impacting on living conditions as discussed above.
16. The Council's HMO standards for double occupancy of a one room letting requires a minimum floorspace of 14 m². On that basis looking at the submitted proposed floorplan only room Nos 2 and 7 would meet this minimum standard. However, the HMO standards make it clear that where an en-suite bathroom is provided it should not be included in the area calculation. Therefore Room 7 would not be adequate for double occupancy. Room 2 however, given its stated size and as the largest room in the house could be occupied by 2 persons. This would allow some flexibility for the appellant to meet the need for double occupancy in the HMO without reducing occupancy of other rooms and without increasing the occupancy level to the extent that it would create a problem for living conditions for occupants either within the HMO or those in the surrounding area. The limited increase of one occupant to a total of 8 would not result in any undue increase in problems related to parking stress, bike storage, refuse storage, amenity space or noise and disturbance. I note that the HMO standards allow some flexibility on room size where shared community living space is provided but, in this case, given the planning concerns over the impacts of further intensification, it would be inappropriate to allow occupancy above 8 persons.

Conclusion

17. I conclude in respect of condition No 10 that, for the reasons above, it continues to be necessary and relevant to planning to impose a control on occupancy. However, it would not be reasonable to prevent occupancy of the largest room in the property by two persons given that the impact of one additional person at the property would not create any significant harm for the living conditions of either occupants of the HMO or surrounding properties. Therefore I will delete the existing condition No 10 and replace it with a varied condition that restricts occupancy of the HMO to a maximum of 8 persons at any time.
18. The appeal should be allowed and the permission varied with a revised condition No 10.

P. D. Biggers

INSPECTOR