



Appeal Decision

Site visit made on 15 April 2021

by **P. D. Biggers** BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2021

Appeal Ref: APP/N5090/W/20/3254257

51F Station Road, Hendon, Barnet, London NW4 4PN.

- 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 Michael Strom against the decision of the London Borough of Barnet Council.
 - The application Ref 19/4432/FUL, dated 7 August 2019, was refused by notice dated 12 December 2019.
 - The development proposed is demolition of existing HMO building and construction of three storey building to provide 12 room HMO with associated refuse storage and cycle parking.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development used above is not that on the application form. The description was varied with the agreement of the appellant as the original description did not make it clear that the development involved the demolition of the existing building. For the purposes of my determination I have therefore taken the revised description from the appeal form.
3. The site benefits from 2 extant permissions, the first (ref H/05532/14) for the construction of an additional floor to the existing House in Multiple Occupation (HMO) to create 8 studio bedroom units and the second (ref 20/3572/FUL) for the demolition of the existing HMO and the erection of a new 2 storey building again to provide 8 studio rooms. It has been put to me that there is therefore two 'fall-back' positions relevant to this appeal. However, case law has established that a fallback can only be a material consideration where there is greater than a theoretical possibility (real prospect) that the development might take place. It is clear from the evidence before me and my observations of the condition of the existing single storey HMO building that it is unlikely that the first 2014 permission would be implemented as it would involve constructing an additional storey on top of the existing building. Therefore, for the purposes of this appeal there would only be one fallback position in the form of the later 2020 permission for a rebuilt 2 storey HMO which could realistically be implemented and would therefore be a material consideration. I deal with the weight to be attached to this material consideration in my reasoning below.

Main Issues

4. The main issues are whether the proposed development would have a detrimental effect on:

- the living conditions of the present and future occupiers of neighbouring apartments principally in Nos 49 and 51 Station Road in terms of proximity, outlook, light levels and overlooking; of future occupiers of the HMO in terms of standards of accommodation and provision of shared facilities and services; and generally for all residents in terms of over-intensification of use.
- the character and appearance of the surrounding area.

Reasons

5. The appeal site is located to the rear of Nos 49 and 51 Station Road and is accessed via a narrow lane between these two properties. The site is currently occupied by a single storey building operated as a HMO which would be removed under the appeal proposal and rebuilt as a 3 storey HMO with 12 studio bedrooms. Nos 49 and 51 Station Road are themselves subdivided into flats and studios resulting in densely populated surroundings in the vicinity of the appeal site. To the north of the site, with its own independent vehicular access, there is a car repair centre. The area immediately in front of the current HMO building is used for car parking (although none is related to the HMO) and the land to the rear of the HMO is used as vehicle storage.

Living Conditions

6. The creation of a 3 storey HMO in this densely populated area and on the footprint of the existing single storey building would inevitably place the building in close proximity to existing residential units in particular those in Nos 49 and 51 Station Road.
7. I acknowledge that the Council in granting consent for a rebuilt 2 storey HMO (Ref 20/3572/FUL) has accepted that the relationship between a 2 storey HMO and existing residential properties would be acceptable. However, the proposal to reconstruct a 3 storey building would be a material increase in volume and height and intensity of use and the effect of this material increase is considered below.
8. The appeal proposal would result in the added height of the additional storey being very close to the residential unit at No 51E. This flat has a bedroom window facing north west which would look into the gable end of the HMO across a short single storey flat roof linking section. The buildings would be at an angle to each other and the separation distance across the width of the window would taper from about 5 metres down to 3 metres at the closest point. Although the permitted 2 storey scheme would also affect this window to some extent, the fact that the building in that case would be a whole storey height lower would mean that the gable end would not be as overbearing on the window as now would be the case. It has been put to me that this room has a second window facing south east. Whilst it is true this second window is likely to have better access to sunlight and daylight and light levels to the flat would be acceptable, as shown in the appellant's light assessment, this would not compensate for the impact of the HMO building being a full storey higher and at close quarters. As proposed, it would be enclosing and overbearing to an unacceptable extent on one of the principal windows to No 51E.
9. I have also been referred to the potential for overlooking and loss of privacy in respect of the window to room T1 and overlooking from it and from rooms T5 and T9 over the small triangular courtyard at the south east end of the proposed building which is in a different ownership to the HMO. From my observations on site this courtyard is set to the rear of a double garage and appeared derelict and unused. I have some concern that just because the courtyard is not currently used

does not necessarily mean it would not be used in the future. However, the Council, in granting permission for the 2 storey HMO, has accepted an identical arrangement in respect of the ground and first floor rooms T1 and T5 which is a valid fallback to the appeal proposal. I am not persuaded that overlooking of this unused courtyard by one further room (T9) would result in any significant additional harm. Nevertheless, to avoid potential future loss of privacy for room T1 and for this courtyard space there would need to be a condition specifying obscure glazed windows which would be less than satisfactory in terms of the living conditions for the occupants of the room as there would be no outlook.

10. It has also been put to me that because rooms T1, T5 and T9 are within 21 metres of rear windows in No 49 Station Road that there would also be overlooking of these properties. However, the angles to No 49's windows are oblique and not dissimilar to relationships that already exist between the units in No 51 relative to No 49 and again, given the fall back permission, I am not persuaded that the additional overlooking from room T9 would, of itself, constitute significant harm.
11. I turn now to consider the living conditions for future residents within the proposed HMO. The stated room sizes would comply with the Council's HMO standards for rooms including kitchen and personal washing spaces and the 12 rooms would be capable of accommodating up to 16 persons.
12. The rooms would share sanitary conveniences however and much has been made of the location of these in relation to the living accommodation. Whilst overall there are sufficient WCs for the maximum number of residents these are poorly distributed around the building in relation to the living accommodation, with 4 on the ground floor and 1 on the second floor. I acknowledge that the distance involved for occupants to travel to access a WC is only one floor, however the *Barnet Adopted Standards for HMO* also stress that WCs should be "*readily accessible*" and "*contained in a room of adequate size and suitably located to the residential accommodation*". At least 2 of the WCs, including the only WC above the ground floor, are very small. It is clear from the evidence before me that the concern over sanitary provision has been raised on previous occasions in relation to applications for this site and remains unresolved in the appeal proposal. In respect of this issue, although the fallback permission was also accepted with only one WC on the first floor, the overall provision and distribution in the building was better than is the case with the additional floor in the appeal proposal. Concern has also been raised regarding the lack of any communal living space or outdoor amenity space for the HMO residents. Whilst this, particularly the latter, is less than satisfactory I acknowledge that the HMO standards make no specific requirement and the fallback permission similarly makes no provision for internal or external amenity space.
13. In respect of refuse/recycling and bike storage it has been put to me that the refuse storage condition in respect of the 2014 permission has been discharged demonstrating that provision can be adequately accommodated internally and externally and that refuse storage for the additional studios now proposed could be provided. However, the proposals shown in the discharged condition are at least in part no longer deliverable in the appeal proposal in that the large, internal understair recycling provision would not be available in the appeal proposal layout as it would be occupied by toilets. In addition, having viewed the proposed bike and bin store on site, it is unlikely that sufficient space would be available for a joint bike and bin store sufficient to accommodate 16 bikes as well as bins. No parking is available for the HMO, so it is essential that a high standard of bike storage is available.

14. To conclude in respect of living conditions, I acknowledge that in some respects the fall back permission carries weight as a material consideration having established that some of the physical relationships between proposed and existing buildings would be acceptable. However, the appeal proposal, in constructing a further floor and increasing the accommodation on site to 12 rooms and a maximum of 16 people, would be an intensification of use where the above matters relating to living conditions, both within the HMO and for neighbouring residents, particularly in No 51E, would amount to a poor standard of housing provision. I accept that some of these matters could be resolved by condition, notably refuse and recycling provision but others could not.
15. Policy DM09 of the *Barnet Local Plan Development Management Policies* (BLPDMP) requires new HMOs not only to meet HMO standards but also not to impact on the character and amenities of an area. Policy DM01 specifically requires that all development should be to a high standard and that it should not adversely impact on the amenity of adjoining and potential occupiers. For the reasons above the appeal proposal would fail to meet these policy objectives.

Character and Appearance

16. The character of Station Road itself in the vicinity of the appeal site is predominantly residential although the surrounding uses in the backland to the road and adjacent to the appeal site are mixed.
17. Residential properties fronting onto Station Road are a mix of heights and styles. Those to the south of Station Road in the vicinity of the appeal site are large, two storey semi-detached properties whilst those on the north side at Nos 35-49 backing onto the appeal site form a terrace of 3 storey properties with rooms in the roof space.
18. It has been put to me that the height, scale and massing of the proposed HMO would be an incongruous feature in the area and detrimental to its character. However, the HMO would face onto the car parking area to the rear of the terrace at Nos 35-49 Station Road where the 4 storey height of that terrace's rear elevation sets the visual context. The HMO would not be readily visible from Station Road itself and, although the properties in Malcolm Court to the north are only two storey, they feature a high steeply pitched roof and are set at a slightly higher level meaning that the proposed HMO would not appear out of scale with the height and mass of the flats. Viewed across the rear yard, in the context of its surroundings the scale and massing of the HMO would not appear visually obtrusive and would not be out of keeping with the character of the surrounding development on Station Road and Malcolm Crescent.
19. The *National Planning Policy Framework* (the Framework) at paragraph 127 requires that developments must be visually attractive and sympathetic to local character to create high quality buildings and spaces amongst other things. The *Barnet Local Plan Core Strategy* at Policy CS5 reflects the Framework in requiring development to respect local context and local character. Similarly, the BLPDMP at Policy DM01 requires proposals to preserve local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets. For the above reasons I am satisfied that the design of the proposal would not be in conflict with these policies' objectives to respect the local context.

Other Matters

20. It has been put to me that the appeal proposal would meet a need for additional accommodation in Barnet and in particular affordable accommodation in the form

of HMO studio units on a previously developed site in a sustainable location with a good PTAL score. Whilst I acknowledge the benefits of the location and the fact that housing provision is a key objective of both the Framework and the Development Plan there is already permission (ref 20/3572/FUL) on the site for 8 studio units allowed to accommodate up to 11 persons. The appeal proposal would only add a further 4 units and an additional 5 persons. Whilst this would be a modest addition to the housing stock and therefore a benefit, the impacts of the additional storey set out above would not justify allowing the appeal. Permitting the scheme would involve the intensification of the use in an already high density setting to the point where it would have a detrimental impact on living conditions for existing and future occupants of No 51E Station Road in particular and future occupants of the HMO in terms of poor standards of housing provision.

Conclusion

21. In reaching my decision I have had regard to the matters before me but for the reasons above and, notwithstanding my conclusions regarding aesthetic character and appearance, the appeal should be dismissed.

P. D. Biggers

INSPECTOR