



Appeal Decision

Hearing Held on 10 May 2021

Site visit made on 11 May 2021

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2021

**Appeal Ref: APP/N5090/W/20/3249884
64-76 Hendon Way, London NW2 2NL**

- 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 Rooms and Studios Management Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/0083/FUL, dated 7 January 2020, was refused by notice dated 6 March 2020.
 - The development proposed is the conversion of a hotel to a 115 room large HMO (Sui Generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There was an inconsistency between the submitted plans for the proposal and those listed on the Decision Notice and the Statement of Common Ground. Following a discussion at the Hearing I am satisfied that the submitted plans were the ones considered by the Council in refusing planning permission for the appeal proposal¹.
3. The Appellant's Statement of Case included revised plans at appendices 9 and 10. Government guidance is clear that the appeal process should not be used to evolve a scheme, and that what is considered by the Inspector should essentially be what was considered by the Local Planning Authority.² I am not satisfied that interested parties would not be prejudiced as a result of these revised plans and so I have not considered them.
4. With reference to the Procedural Guide, the appellant submitted a number of items that were Late Evidence, which was in part the result of a technical error from the Planning Inspectorate.
5. Following a discussion at the Hearing, I exceptionally accepted Appendix 12 of the appellant's Statement of Case concerning housing need³, together with a recent appeal decision⁴. However, I did not accept a rebuttal of the Council's Statement; a rebuttal of transport issues; a car club proposal; and, a revised

¹ Including Proposed site plan - A20 P07 C; Proposed cycle store elevations and plan - A20 P10 D; and, Proposed basement plan - A20 P01 A.

² Procedural Guide Planning Appeals - England March 2021 - Annexe M.

³ North West London Demand Study (Knight Frank - undated)

⁴ Ref. APP/E5900/W/20/3250665.

ground floor plan, which would also have been a further evolution of the appeal proposal.

6. The London Plan⁵ 2021 was published after this appeal was lodged but prior to its determination. Both main parties have considered the impact of the publication on the appeal proposal and identified the policies which are generally of relevance. I have had regard to the current development plan in determining this appeal.

Main Issues

7. The main issues are the effect of the proposal on:

- The housing needs of the area
- The living conditions of future residents, with particular regard to accessibility, outdoor amenity space, natural light, outlook, and privacy
- The living conditions of nearby residents, with particular regard to noise and disturbance
- Parking provision, highway capacity and highway safety within the area.

Reasons

8. The appeal proposal concerns the conversion of a 3-storey hotel building within a predominantly residential area. The building faces onto Hendon Way, a road with three lanes in each direction and a central barrier.
9. The proposed development would entail a new internal layout for the building so as to provide 115 en suite rooms in a House in Multiple Occupation (HMO), together with a number of common rooms, a gymnasium, a cinema room, a number of shared kitchens and various other ancillary features. Access to the building would continue to be from the front by Hendon Way, whilst the scale of the proposal means it would be a *Sui Generis* use.
10. The existing car park by Garth Road to the north would be retained so as to be able to accommodate 14 vehicles, including three spaces for drivers with disabilities. A cycle storage area would also be provided here, beneath the first and second floor rear overhang of the hotel.
11. The existing yard by Cloister Road would also be retained and would continue to provide access to the bin storage area, whilst a new central yard would be created, next to, but separate from, a gated footpath from Cloister Road.

The housing needs of the area

12. Policy DM09 (Specialist housing – Houses in Multiple Occupation, student accommodation and housing choice for older people) of the Barnet Local Plan Development Management Policies 2012 (BLPDMP) states that new HMOs will be encouraged if, amongst other things, they would meet an identified need.
13. However, the Council does not explain what is meant by *identified need* or how this could be evidenced, and I note that the Council does not have a Supplementary Planning Document to support Policy DM09.

⁵ Spatial Development Strategy for Greater London March 2021

14. I accepted a report⁶ concerning housing need and demand that was submitted as Late Evidence by the appellant. However, there is an *Important Note* on page 1 of the report which states, 'This report is published for general information only and not to be relied upon in any way.' I have, therefore, considered the report on this basis.
15. The proposed development would not be a conventional form of HMO, for reasons of scale, the presence of on-site staff, as well as the provision of a range of ancillary facilities for residents. From the evidence, it is not clear to me that there is a need for this type of accommodation generally or in this particular area.
16. Nevertheless, it is common ground between the main parties that there is an overall need for HMO style accommodation in Barnet and London. The proposed development would offer short-term licences for up to 3 months as well as Assured Shorthold Tenancies (ASTs) of up to 12 months, which could be renewed. Notwithstanding the absence of any compelling evidence regarding need from the appellant, I am satisfied that with the proposed 12-month ASTs the proposal would contribute towards meeting the overall need for HMO accommodation.
17. However, I am concerned that the short-term licences for up to 3 months could be used by tourists or similar groups of non-residents, and so would not contribute towards meeting the need for HMO accommodation. The appellant's general letter dated February 2020, which describes the intended operations of the HMO were planning permission to be granted, includes a number of references which substantiate this concern.
18. Short-term licences would be advertised on websites such as Booking.com, a predominantly tourist website; a two-week licence for a summer camp group is referenced as a type of booking; and, the charge for a short-term licence would be calculated on a daily or weekly rate depending on duration. Furthermore, the appellant's evidence is somewhat inconsistent with regard to the scale of the short-term licences that would be available within the building.
19. There is an overall need for HMO style accommodation in Barnet and London and the proposed development would be such a type of housing. A 3-month minimum tenancy period would be very likely to deter tourists or similar from using the rooms. Following discussions at the Hearing, I am content that this matter could be sufficiently controlled by way of a suitably worded condition were the appeal to be allowed, which would require all rooms to be let for a minimum period of 3 months. I am, therefore, confident all the proposed rooms would be available to contribute towards meeting the need for HMO accommodation in Barnet.
20. For these reasons the proposed development would contribute towards meeting the housing needs of the area. It would, therefore, accord with Policy DM09 of the BLPDMP, and with the National Planning Policy Framework 2019 (the Framework), in this regard.

The living conditions of future residents

21. The on-site car park by Garth Road would be for the use of staff only. A Controlled Parking Zone (CPZ) covers the surrounding streets and operates

⁶ Appendix 12 of the Appellant's Statement of Case: *North West London Demand Study* (Knight Frank - undated)

- seven days a week, restricting on-street parking between 13.00 and 20.00. None of the residents of the proposed development would be permitted to have a CPZ permit, which is one of a number of matters addressed in a counterpart S106 Unilateral Undertaking (UU) submitted by the appellant after the Hearing closed and which I will address in more detail later.
22. Amongst other things, Policy DM09 of the BLPDMP supports new HMOs that would be easily accessible by public transport, cycling and walking. However, the policy does not provide any metrics or guidance against which such accessibility should be assessed.
23. The submitted Transport Statement includes reference to four bus services in the area providing 52 services per hour during weekdays, from Hendon Way and Cricklewood Lane. The Golders Green underground station is some 14-18 minutes' walk from the site, with the Cricklewood railway station just over 10-12 minutes' walk away. The site has a Public Transport Access Level (PTAL) of 3, which indicates moderate accessibility by public transport.
24. Whilst there are no dedicated bicycle routes serving the appeal site, there is a network of streets that would be suitable for cyclists in the wider area; there are also separated or controlled crossings of Hendon Way to the north and south of the appeal site, linked to the roadside footpaths in the area.
25. To some extent, accessibility will vary from person to person, or by journey, and people of different ages and occupations could be expected to inhabit the proposed development. I am satisfied from the evidence that the appeal site is moderately accessible by public transport, cycling or walking.
26. However, with reference to Policy DM09, I would not describe this as an easily accessible location. In general terms, town or district centres tend to be easily accessible locations due to the concentration of shops and services, which makes them destinations that can be readily served by public transport routes. The appellant describes town centres as highly sustainable locations where HMOs and hotels should be directed and accepts that the appeal site is not in a town centre.
27. I recognise that the moderately accessible location of the appeal site applies to the existing and the proposed use. However, these are manifestly different uses and I do not find the Transport Statement's comparison of existing and proposed use trip generation, based upon proxies and with additional sensitivity applied to the proposed use, to be compelling⁷. I am not, therefore, satisfied that the proposed use would not generate a significantly increased number of journeys over the existing use, and so bring this moderate accessibility into much sharper focus for future residents.
28. The appellant's signed UU also contains covenants concerning a Car Club Scheme (CCS) (covenant 2), and a Bus Shuttle Scheme (BSS) (covenant 4). Both of these measures would have a financial cost to the appellant, which they would be unlikely to pay if they did not consider there was some need to do so, such as to improve the accessibility of the site.
29. The BSS would entail a minibus picking up and dropping off residents from the appeal site and Cricklewood and Golders Green stations. The UU specifies that

⁷ Table 5.8 of the Transport Statement also shows that cars would be the single largest transport mode for the proposed development, despite the proposal being car-free to residents.

- the BSS will operate on this basis in the morning and in the evening on weekdays for an initial period of three years, subject to a review with the Council in conjunction with the review of the Travel Plan for the proposal. The CCS would entail free membership to a car club for residents for at least three years, enabling them to access a car at reduced rates on a short-term basis, subject to availability.
30. The current hotel use is said to operate a scheme for guests on the same basis as the BSS referenced in the UU, although no evidence for this has been submitted. The Transport Statement includes no reference to such a scheme operating at the hotel. Furthermore, the Travel Plan for the proposed use does not include any reference to the BSS and limited details of its intended operation have been provided. Whilst reference is made in the Travel Plan to publicising local car clubs, no reference is made to the CCS or anything similar.
 31. The dwellings on Cloister Road and Garth Road would be likely to have a similar if not slightly worse level of accessibility than the appeal site. However, many of these dwellings have off-street car parking spaces and there is no evidence that their occupiers are restricted from applying for CPZ parking permits.
 32. The appeal site is not easily accessible by public transport, walking and cycling, and without car parking provision, this would be detrimental to the living conditions of future residents. However, from the limited evidence, it has not been demonstrated to my satisfaction that either covenant 2 or covenant 4 of the UU would be necessary to make the proposal acceptable in planning terms⁸.
 33. No outdoor amenity space was contained in the proposal that was refused planning permission by the Council. However, there are no standards or guidance for outdoor amenity space for HMOs in the evidence before me, and I note that there are a number of parks and areas of open space reasonably close by. Whilst the lack of outdoor amenity space would detract from the living conditions of future HMO residents, I am content that this would not cause unacceptable harm in this case.
 34. Reference is made to BRE Report 209 *Site Layout Planning for Daylight and Sunlight – a guide to good practice* Second Edition 2011. However, this document is not in the evidence before me. The appellant's Daylight and Sunlight Assessment⁹ (DSA) identifies 123 habitable rooms within the proposed development, 115 living/bedrooms and 8 kitchens. 50 of these rooms failed to achieve the Average Daylight Factor (ADF) targets contained in the BRE guidance for rooms within dwellings, to varying degrees.
 35. The DSA makes no assessment of the proposed common rooms. These are spaces that I would expect future residents to spend time in for social interaction and it is not clear to me why the three common rooms were not assessed for natural light given their intended function. From the evidence none of the common rooms would receive natural light.
 36. The DSA makes no assessment of sunlight to windows because this assessment would only apply to living rooms. Whilst *living rooms* are not defined in the DSA, the 115 private rooms and/or the common rooms would seem to have many of the characteristics of a *living room* in a C3 dwellinghouse. Again, it is not clear to me why these rooms were not assessed for sunlight.

⁸ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 56 of the Framework.

⁹ Ref. 19-02332 (December 2019)

37. A substantial number of the aforementioned 123 rooms would have a very limited outlook. The affected ground floor rooms would have windows onto outdoor yards or passageways, bounded by walls or buildings, including in some cases the bin store. Three rooms would have windows onto a gated passageway by Cloister Road, which would face towards a rear outbuilding and solid timber fence at 1 Cloister Road.
38. The affected first floor rooms would have windows facing onto blank walls as part of what is currently a covered infill space between the front and rear parts of the hotel. Furthermore, whilst the gymnasium and proposed cinema room would not require meaningful outlooks in order to function, none of the three common rooms would have any windows, and therefore any outlook, at all.
39. A substantial number of ground floor rooms would have windows onto publicly accessible spaces: a paved area to the front; the car park and bicycle store area to the rear by Garth Road; and the bin store yard by Cloister Road. Furthermore, a number of rooms have windows facing across the rear central yard and the bin store yard at short distances. The position of these windows would allow for views into these rooms, which would adversely affect the privacy of future residents.
40. HMO residents on 3-month licenses would be more transient than residents of C3 dwellinghouses, although for residents on 12-month ASTs the difference would be substantially less so. However, for the duration of their occupancy, the needs of HMO residents as human beings would be no different to the needs of C3 residents. A period of even 3 months is still a significant time to be living in a place without adequate levels of natural light, outlook, or privacy, and in most cases, would be quite different and considerably longer, to time spent in a hotel room.
41. The absence of outlook and natural light from the three common rooms means they would be unlikely to be attractive to residents and there would be no outdoor amenity space. The residents of the proposed rooms would therefore be likely to spend a significant proportion of their time in their single habitable room, which would also be their sole private space.
42. There are said to be no BRE guidelines for ADF within HMOs. However, in this case I see no reason why a similar ADF standard to that for C3 dwellinghouses, would not be appropriate.
43. Even if I were to accept the appellant's statement that 22 of the 50 rooms that failed to meet the ADF standards were close to their target and by implication would be acceptable, this would still leave a substantial number of assessed rooms that failed significantly, as well as the three common rooms.
44. I note that the Government encourages a flexible approach towards guidance for daylight and sunlight, providing acceptable living standards can be achieved¹⁰. However, in this case acceptable living standards would not be achieved for a substantial number of residents.
45. In terms of privacy, I do not consider the placing of a planter beneath a window to create a buffer space would provide adequate protection. A buffer distance of around one metre would not be significant in this regard. Moreover, were shrubs to grow in the planters this would reduce the outlook from such rooms.

¹⁰ Paragraph 123 c) of the Framework.

46. Furthermore, placing these planters would also disrupt the proposed car parking layout, and in some cases would be likely to restrict the free movement of people along what are shown to be fire escape routes. Consequently, I am not satisfied that such an approach would be compatible with the safe operation of the proposed development.
47. Whilst the use of blinds would protect the privacy of future occupiers, such blinds would as a result also reduce the outlook from these rooms and so would not be an acceptable solution.
48. The proposed HMO would provide a principal place of residence for people for a significant period of time; I am satisfied from the submitted evidence that a very substantial proportion of these people would not have an acceptable level of natural light, outlook, or privacy.
49. The appellant's signed UU identifies rooms that would be subject to a maximum letting period not exceeding 3 months (covenant 5 - Restricted Units). Whilst these rooms would have a restricted outlook, limited privacy and natural light, there are a substantial number of other rooms with similar or worse conditions.
50. In any event, I have already determined that a period of even 3 months would still be a significant time to be living in a place without adequate natural light, outlook, or privacy. I am not, therefore, satisfied that covenant 5 of the UU would make the proposed development acceptable in planning terms¹¹.
51. Neither the comments from the Council's HMO Team Leader, or that the proposal would be a conversion of an existing building rather than a purpose-built development, cause me to reach a different conclusion with regard to the harm I have identified.
52. For these reasons, and notwithstanding the acceptable impact of the proposal in terms of outdoor amenity space, the proposed development would adversely affect the living conditions of future residents, with particular regard to accessibility, natural light, outlook, and privacy. It would, therefore conflict with Policy DM01 (protecting Barnet's character and amenity) of the BLPDMP, and with the Framework, in this regard.

The living conditions of nearby residents

53. The existing hotel has 103 guest rooms as well as a banqueting suite capable of hosting large events such as wedding receptions. Prior to the Covid-19 pandemic, the appellant states that the hotel could accommodate some 250 people at maximum capacity¹², with a further 300 people attending events at the banqueting suite. The appellant has indicated the hotel operates at around 80% occupancy and that there were 320 events held during 2019, although no evidence for these figures has been provided.
54. The pandemic has had a very significant impact on the hotel industry generally and has affected the operation of the hotel, which is currently said to be used to accommodate asylum seekers. Reference is made to an occupancy rate of 150 people, although no evidence has been provided to support this.
55. The proposed development would have 115 living/bedrooms, some of which are single and some of which are double. The number of rooms proposed

¹¹ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 56 of the Framework.

¹² Including double and triple rooms.

- would be more than the number of hotel rooms. However, were these to be restricted to single-occupancy rooms, which could be achieved by way of a suitably worded condition, the proposal would be unlikely to have a significantly greater impact than the hotel use in terms of scale.
56. Furthermore, the proposed change of use would mean that large-scale events would no longer be held at the appeal site, which would mean an end to the kind of noise and disturbance problems that have been mentioned in relation to such events in the past.
57. A substantial number of representations were made by local residents concerned about the proposed HMO development in principle, including on the grounds of noise and disturbance that would be caused in the area as a result.
58. There is a conventional HMO use on Cloister Road, which is also run by the appellant, and for which anecdotal evidence of problems with noise and anti-social behaviour has been provided. I also note the Council's evidence regarding problems that have been experienced elsewhere in Barnet near to HMOs, and their concerns that the large number of HMO residents at the appeal site could intensify such problems.
59. However, the proposed use would be different to a conventional HMO, particularly given the presence of on-site staff. Subject to an appropriate management plan and compliance with the recommendations of the Metropolitan Police in terms of Secured By Design standards, it is not clear that the scale of the proposal would cause any particular problems in terms of noise and disturbance. Such matters could be controlled by appropriately worded conditions, were the appeal to be allowed.
60. The public areas outside the site would not be subject to the appellant's management, and noise and disturbance in these areas would need to be addressed by the Council or the Police. The absence of private outdoor amenity space may lead future residents to congregate outside in public areas, such as the paved area to the front. However, this would be similar to the existing situation with the hotel use. No compelling evidence has been provided that the proposed HMO use would have a greater impact on the area than the existing hotel use, in this regard.
61. For these reasons the proposed development would have an acceptable impact on the living conditions of nearby residents, with particular regard to noise and disturbance. It would, therefore, not conflict with Policies DM01 and DM09 of the BLPDMP and with the Framework, in this regard.

Parking provision, highway capacity and highway safety

62. The proposed development would include 14 off-street parking spaces for staff only. Whilst this number is well in excess of the stated number of staff who would be on-site at any one time, it would be similar to the existing situation and would not affect parking provision in the area, highway capacity or highway safety.
63. It is not clear from the evidence whether the proposed use would have a greater impact than the existing use in terms of trip generation. However, the Council's Highways Department had no objection to the proposal subject to various conditions and to a suitably worded legal agreement that would restrict future occupiers from applying for on-street parking permits, amongst other things.

64. Initially the appellant did not accept the need for such a legal agreement. However, with reference to the UU submitted after the Hearing had closed, I am satisfied that covenants 1 (Permit Restrictions), 3 (Traffic Regulation Order), and 6 (Travel Plan monitoring contribution) of the Schedule within the UU would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to it¹³.
65. For these reasons the appeal proposal would have an acceptable impact upon parking provision, highway capacity and highway safety within the area. It would, therefore, accord with Policies CS9 (providing safe, effective and efficient travel), CS15 (Delivering the Core Strategy) and DM17 (Travel Impact and parking standards) of the BLPDMP.

Other Matters

66. A number of representations were made with regard to the impact of the proposed development on sewer flooding, on local services, and on the character of the area. However, no substantive evidence has been provided that the proposed development would increase the likelihood of sewer flooding occurring or would cause difficulties for local service providers. I note that the Council does not consider the proposal to be unacceptable in this regard.
67. The proposed use, particularly in terms of scale, would be somewhat out of keeping with the predominant suburban character of the area, with its traditional 2-storey dwellings with gardens. However, the existing hotel use is similarly incongruous and on balance, I do not consider the impact of the proposed use would be significantly worse than the existing use in this regard.
68. I note the appeal decision submitted as late evidence by the appellant, in the London Borough of Tower Hamlets. I am not familiar with that proposal or the evidence which informed the Inspector's decision in that case. I also note that the proposal is somewhat different to the appeal before me in terms of the proposed use and the location near to the City of London and Docklands. It does not cause me to reach a different conclusion with regard to this appeal.

Conclusion

69. Notwithstanding the contribution that the proposed development would make towards meeting the need for HMO accommodation in Barnet, the acceptable impact on the living conditions of nearby residents and on parking provision, highway capacity and highway safety, the substantial harm that would be caused to the living conditions of future residents would outweigh this.
70. For the reasons given above, I conclude that the appeal is dismissed.

Andrew Parkin

INSPECTOR

¹³ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 56 of the Framework.

APPEARANCES – 10 May 2021

FOR THE APPELLANT:

- Mr Zack Simons of Counsel
- Mr Duncan Parr BA PgD MRTPI
- Mr Michael Birch BSc (Hons) MSc MRTPI
- Mr Mesam Chohan
- Dr Cyril Ogunmakin

FOR THE LOCAL PLANNING AUTHORITY:

- Mr Joe Mari BSc MSc
- Miss Emily Bell BSc MSc

INTERESTED PARTIES:

- Mrs Melania Ilief
- Ms Victoria Levine
- Mr Brian Wildash

DOCUMENTS SUBMITTED AFTER THE HEARING HAD CLOSED

- Evidence of title for the appeal site
- Organisational structure for Interland Holdings
- Signed counterpart Unilateral Undertaking