



Appeal Decision

Site visit made on 17 August 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Appeal Ref: APP/N5090/C/21/3270211

Land at Flat 5 Wykeham Court, Wykeham Road, London NW4 2TE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jorge Sanchez (Oliver Walton Ltd) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 21 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the property into a C4 House of Multiple Occupation (HMO).
 - The requirements of the notice are to cease the use of the property as a House in Multiple Occupation.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Preliminary Matters

2. Since the appeal was submitted the Government has published a revised National Planning Policy Framework (the Framework). Both the appellant and the Council were given an opportunity to comment on any relevant implications for the appeal, and any comments received have been taken into account.
3. The London Plan (March 2021)¹ has been adopted since the notice was issued. I have therefore had regard to the policy referred to from the adopted plan in determining the appeal. The Council referred to that policy in their appeal statement upon which the appellant has had the opportunity to comment so there is no prejudice to the appellant.

The appeal on ground (a) and the deemed planning application

4. The main issues are (i) whether there is an identified need for the HMO (ii) the effect of the use on the character of the area and the living conditions of nearby residents with particular regard to noise and disturbance and (iii) the availability of parking, cycle and refuse storage provision.
5. Policy DM09 of Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012 (DMP) states that proposals for

¹ The London Plan The Spatial Development Strategy for Greater London (March 2021)

new HMOs will be encouraged provided that they meet an identified need and can demonstrate that they will not have a harmful impact on the character and amenities of the surrounding area, are easily accessible by public transport, cycling and walking and meet the relevant housing standards for HMOs.

6. The explanatory text to the policy states that HMOs are an important source of low cost, private sector housing for students, those on low incomes and those seeking temporary accommodation.

Identified need

7. Whilst in general terms there appears to be a need for HMOs in the Borough, as indicated by the explanation to Policy DM09, the policy is clear that proposals for such uses will be encouraged where they meet an identified need. With need being, in my view, an indicator of an existing deficit or shortfall.
8. In this regard the appellant stated that there is demand in the market from working professionals, evidenced by the existence of a further HMO at 12 Wykeham Court.
9. However, beyond generalised assertions in respect of their observations regarding the demand for such accommodation, the appellant has provided no detailed or precise evidence which demonstrates that there is an identified need for this type of accommodation. Consequently, I find that the development does not accord with Policy DM09 of the DMP in this respect.
10. The Council also referred to Policy DM08 of the DMP which relates to dwelling size priorities. Whilst this policy provides some background to housing need, it is not directly relevant to the appeal development and weighs neither for nor against it.

Character and living conditions

11. There are two relatively large blocks of flats, within one of which the appeal property is located, on either side of Wykeham Road close to the junction with Queens Road. Beyond the flats, Wykeham Road is characterised by detached and semi-detached houses which appear to be in use as single dwellings, there is no evidence to suggest that any are in use as HMOs.
12. As already noted, Policy DM09 of the DMP seeks to encourage HMOs provided that they do not have a harmful effect on the character and amenities of the surrounding area. Furthermore, Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document September 2012 (the Core Strategy) states, amongst other things, that the Council will ensure that development in Barnet respects local context. Policy DM04 of the DMP states, amongst other things, that proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted.
13. The Supplementary Planning Document: Residential Design Guidance October 2016 (SPD) explains that conversions of houses into flats or an HMO can harm the character of areas by changing external appearance and increasing activity.
14. There are no external changes to the property and in a building occupied as flats, except for one other HMO, thereby already accommodating multiple residents, I find the additional activity associated with the appeal development

would have no material effect on the character of the area. There is therefore no conflict with Policy DM09 of the DMP, Policy CS5 of the Core Strategy or D3 of the London Plan (2021) in this regard, nor is there conflict with the Council's Residential Design Guidance SPD.

15. The submitted layout plan indicates that there is a shared kitchen however, there appears to be no other amenity space. In the absence of alternative amenity space such as a lounge, it seems occupants would spend a reasonable amount of time in their bedrooms. This is a very different use to that of a family, or possibly a household with a more generous and functional communal space.
16. Furthermore, comings and goings to and from the property are likely to be more frequent due to the movements generated by a collection of individuals occupying the property, rather than a single family, because of different timetables, working and socialising patterns.
17. Consequently, whilst the property may have been in use as an HMO since October 2019, I consider that there is an unacceptable risk that the use would result in materially harmful levels of noise and disturbance to neighbouring residents. This is contrary to Policies DM09 and DM04 of the DMP, and the Framework which seeks a high standard of amenity for existing and future users.
18. Policy DM01 of the DMP seeks to control the loss of houses in roads characterised by houses. In this case, the property is a flat and therefore I find no conflict with this policy.

Parking, cycle and refuse storage provision

19. With a Public Transport Accessibility Level (PTAL) rating of 5 (good) it is evident that occupants of the HMO can easily access public transport and I observed at my visit that the site is within easy walking and cycling distances of services and facilities. Therefore, I find no conflict with Policy DM09 of the DMP in this regard.
20. There is limited off-street parking to the front of Wykeham Court, and I note that it is located within a Controlled Parking Zone (CPZ) which is operational between the hours of 11:00 and midday Monday to Friday. However, many of the houses along Wykeham Road have access to off-street parking with areas of on-street parking also available including to the front of Wykeham Court.
21. I acknowledge that if occupants of the appeal property all had cars this would increase pressure for on-street parking in the area. However, considering the type of accommodation and the accessibility of services and facilities by non-car modes, I consider this reduces the desire to own a car and apply for a parking permit.
22. Overall, whilst the development may result in an increase in demand for on-street parking spaces, given the availability of on-street parking in the vicinity of the site, there is nothing to suggest that the additional vehicles could not be accommodated on-street provided a permit is obtained. There is no evidence before me to suggest that the area is one where parking stress exists which would warrant excluding occupants from obtaining a permit. The development would therefore not result in a significant increase in competition for on-street

parking to the detriment of highway safety and there is no conflict with Policy DM17 of the DMP.

23. The flat, in its pre-existing form, could be occupied by a similar number of people as the existing HMO and although the use has been ongoing since 2019, there is no evidence to demonstrate that the refuse or cycle storage provision is inadequate. In any event, given the short walking distance to a tube station and various bus routes, the lack of on-site cycle storage provision would not have been a reason alone to dismiss the appeal.

Overall conclusion on the ground (a) appeal and the deemed planning application

24. My finding no harm in respect of parking, cycle and refuse storage provision cannot outweigh the harm in respect of the lack of an identified need and the living conditions of neighbouring residents. Consequently, the development does not accord with Policies DM09 and DM04 of the DMP and is contrary to the development plan when taken as a whole.
25. I therefore conclude, having regard to all other matters raised, that the appeal on ground (a) fails and that planning permission will not be granted.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR