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## Appeal Decision

Site visit made on 15 September 2021

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 October 2021**

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**Appeal Ref: APP/N5090/W/20/3259620**  
**345-347 Hendon Way, London NW4 3NB**

- 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 Aviram Cohen against the decision of the Council of the London Borough of Barnet.
  - The application Ref 20/1925/RCU dated 23 April 2020, was refused by a notice dated 21 August 2020.
  - The development proposed change of use of both properties from a single family dwelling (Class C3) to a House in Multiple Occupation (HMO) (Class C4) for 5 people. Alteration to the existing rear dormer windows. Associated cycle parking.
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### Decision

1. The appeal is allowed and planning permission is granted for a change of use of both properties from a single family dwelling (Class C3) to a House in Multiple Occupation (HMO) (Class C4) for 5 people. Alteration to the existing rear dormer windows. Associated cycle parking at 345-347 Hendon Way, London NW4 3NB in accordance with the terms of the application, Ref 20/1925/RCU dated 23 April 2020, subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, HW.345-347. LP; HW.345-347. Pre. EX.01, Pre. EX.02, Pre. EX.03, Pre. EX.04; HW.345-347. PR.01, PR.02, PR.03, PR.04; HW.345-347.PR.SP Rev A; HW.345-347. AB.01, AB.02, AB.03, AB.04.
  - 2) Before the alterations hereby permitted to the existing rear dormer roof windows are carried out, cycle parking and refuse facilities shall be provided in complete accordance with the details shown on Approved Drawing Ref: HW.345-347.PR.SP Rev A, dated 6 January 2020. Those facilities shall be retained thereafter for the use of existing and future occupiers of the HMO.
  - 3) The materials to be used in the external surfaces of the extension hereby permitted shall match those used in the existing building.
  - 4) Each House in Multiple Occupation hereby approved shall be occupied by no more than 5 persons at any time.

### Procedural Matters

2. The description of the development set out in the banner header is taken from the Council's decision notice. It is more precise and clearer than the

description on the application form. I have determined the appeal on that basis.

3. I have dealt with two other appeals (APP/N5050/C/20/3245157 & 3245158) on this site. Those appeals are the subject of separate decisions.
4. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. In addition, the London Plan 2021 has been adopted. The main parties were given the opportunity to comment on the relevant implications for the appeal and have not therefore been prejudiced. I have regard to the responses and the Framework in reaching my decision.

## **Main Issues**

5. The main issues in this appeal are the effect on the:
  - Character and appearance of the host property and surrounding area; and
  - Highway safety, with particular regard to on-street parking.

## **Reasons**

### *Character and appearance*

6. Hendon Way in the vicinity of the appeal site is characterised by modest semi-detached two-storey dwellings which have simple pitched roofs with projecting front gables. I noted on my site visit that a number of the properties in the area have roof additions. The appeal premises are a pair of semi-detached dwellings which have been extended at roof level by the construction of rear dormers.
7. The proposal is to carry out alterations to the existing unauthorised dormer roof extensions. The proposal would reduce the depth of the dormer extensions and the original eaves of the roof would be reinstated. However, the dormer windows, by reason of their size and design, would remain substantial and dominant additions to the roofs.
8. Barnet Local Plan Supplementary Planning Document: Residential Design Guidance, 2016 (SPD) sets out the Council's principles of good design and provides detailed design guidance for extensions to houses, including dormer roof extensions. In particular, the guidance advises that dormer roof extensions should not occupy more than half the width and depth of the roof slope and be set in at least one metre from the party wall, flank wall or chimney stack.
9. In this case the dormers extend across the full width of the semi-detached pair. There is no set in from the flank or party walls and they are neither subordinate nor proportionate to the original roof which would be barely visible. Consequently, they would represent poor design and have a harmful effect on the character and appearance of the host property and surrounding area.
10. I conclude that the proposed development would have a harmful effect on the character and appearance of the host property and surrounding area. There is conflict with the development plan, and in particular with Policies CS1 and CS5 of Barnet's Local Plan Core Strategy, Development Plan Document, 2012 (CS) and Policy DM01 of Barnet's Local Plan Development Management Policies,

Development Plan Document, 2012 (DPD) which seek, amongst other things, to ensure that new development respects local context, preserves or enhances local character and appearance and secures good design. The development is also in conflict with the SPD, the aims of which are set out above.

### *Highway Safety*

11. Hendon Way is a strategic highway where no parking is permitted at any time. In addition, whilst each of the appeal properties has two off-street car parking spaces dedicated to it, access to those spaces from Hendon Way is not authorised. Consequently, there is no off-street parking available on the site. Within 200m of the site there are controlled parking zones (CPZ), pay and display parking, single yellow lines and some unrestricted parking can be found on-street and within Brent Cross Shopping Centre.
12. Policy T6 of the London Plan 2021 (LP) advises that car parking should be restricted in line with levels of existing and future public transport accessibility and connectivity. Maximum car parking standards are set out in Table 10.3 Residential Parking. Taking into account the site characteristics a maximum of four spaces would be required for the proposed development.
13. Policy DM17 of the DPD advises that residential development may be acceptable with limited or no parking outside a CPZ, but only where it can be demonstrated through a survey that there is sufficient on street parking capacity.
14. The planning application was supported with a parking stress survey undertaken by Capita<sup>1</sup>. However, the Council determined that this was not a robust survey due to it being undertaken during the COVID-19 pandemic lockdown. I agree with the Appellant that, given the circumstances of the lockdown, where people were required to stay at home, the Council's reasoning is unexpected. However, the appeal submission has been accompanied by a further survey<sup>2</sup> conducted at a time when lockdown had ceased.
15. In both cases the surveys and analysis demonstrate that there is enough parking availability for the development and that any perceived shortfall could be accommodated on existing streets within a short walk from the site. Furthermore, taking into account the proposed cycle parking provision within the site and proximity of local stores and public transport, the occupiers of the development would not be dependant on a car. In the absence of any evidence from the Council that would contradict or dispute the accuracy of the reports and taking into account my own observations on my site visit, I see no reason to disagree with the Appellant's assessment.
16. I conclude that the proposed development would not have a harmful effect on highway safety, with particular regard to parking provision. There would be no conflict with the development plan and in particular with Policies T6 of the LP and DM17 of the DPD, the aims of which are set out above.

### *Other Considerations*

17. It is the Appellant's case that the amended design of the unauthorised dormers which form the proposed development in this appeal case could be carried out

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<sup>1</sup> Technical Note prepared by CAPITA, dated 9 June 2020.

<sup>2</sup> Technical Note prepared by CAPITA, dated 20 September 2020.

as development permitted by Class B, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015, as amended (GPDO) in the circumstances that the unauthorised dormer windows had been removed and the original roof reinstated. That being the case the Appellant considers that he has a fallback position which is a material consideration in the determination of this appeal. From the evidence before me the Council do not appear to dispute that the proposed scheme would be lawful if it were to be implemented in that way, and I see no reason to disagree.

18. For significant weight to be afforded to the fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission were refused, but it would also need to be equally or more harmful than the scheme for which permission is sought. Despite the cost of reverting to the fallback position, from the evidence before me I am satisfied that there is a reasonable prospect of the fallback position being carried out in the event that planning permission were to be refused. Furthermore, in this case, the proposed development is the same scheme as the available fallback position, consequently, the identified harm would be the same. I am also mindful that there are other properties in the area which have undertaken similar roof alterations with the benefit of permitted development rights. Therefore, in the circumstances of this case I consider that the fallback consideration should be afforded significant weight.

### **Conditions**

19. The Council has suggested a number of conditions which I have considered against the Framework and Planning Practice Guidance. As a result I have amended some for accuracy, consistency and omitted others.
20. I have imposed a condition to specify the approved plans as this provides certainty. A condition specifying the materials of construction is necessary to protect the character and appearance of the host property.
21. A condition requiring the provision of cycle and waste refuse/recycling storage areas to be provided and retained is necessary in the interests of supporting sustainable transport opportunities and to provide acceptable living conditions for existing and future occupiers. I have imposed a condition to limit the number of residents in the HMO to safeguard the living conditions of existing and future residents.
22. Taking into account the lawful use of the appeal properties as residential dwellinghouses it would not be reasonable to impose conditions requiring schemes to mitigate air pollution, external noise generated from traffic or the provision of acoustic glazing or ventilation to the windows.
23. As the use of the properties as an HMO has already commenced, it is not necessary to impose a time restriction on the commencement of development.

### **Conclusion**

24. Whilst I have found that the proposed development would not cause harm to interests of highway safety, it would have a harmful effect on the character and appearance of the host property and surrounding area and conflict with the development plan in that regard. However, I have afforded significant weight

to the identified fallback position which, in the circumstances of this case, is a material consideration which outweighs the conflict with the development plan.

25. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should succeed.

*Elizabeth Pleasant*

INSPECTOR