



Appeal Decision

Site visit made on 26 October 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 23 NOVEMBER 2021

Appeal Ref: APP/T5150/W/21/3274568 29 Mora Road, London NW2 6SJ

- 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 Mrs Rawaa Rassam against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/0699, dated 26 February 2021, was refused by notice dated 23 April 2021.
 - The development proposed is use of the property as a seven-bed, seven-person HMO.
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Decision

1. The appeal is allowed, and planning permission is granted for use of the property as a seven-bed, seven-person HMO at 29 Mora Road, London NW2 6SJ in accordance with the terms of the application, Ref 21/0699, dated 26 February 2021, subject to the conditions set out in the attached schedule.

Preliminary matters

2. The National Planning Policy Framework (the 'Framework') was revised on 20 July 2021 and the new London Plan (2021) published during the appeal period. Both parties have had the opportunity to comment on the implications of this for their case. In addition, the new draft Brent Local Plan was consulted on this year. However, no emerging policies relevant to this case have been brought to my attention, so I have not considered this further.

Main issue

3. The main issue is the living conditions of occupants of the property, with particular regard to the adequacy of communal facilities.

Reasons

4. The property is a 2-storey, bay fronted terraced house with a garden near Cricklewood town centre. It has previously been converted to an HMO and now has 7 bedrooms, 2 kitchens, 2 toilets, a bathroom and shower room.
5. Enforcement action was taken in September 2018 because the building was being used as an 8-bedroom HMO. The smallest upstairs room was deemed too small to be used as a bedroom and has since been converted to a kitchen. The notice required that the property revert to a 6-bedroom HMO.

6. The Enforcement Notice was subsequently upheld at appeal in November 2020¹. The Inspector did not assess the suitability of a 7-room HMO, being constrained by the terms of the breach.
7. In the meantime, the Council issued a 5-year licence² for the property for use as a 7-bedroom, 10-person HMO.

Living conditions

8. Criterion (b) of Policy DMP20 of the London Borough of Brent Local Plan: Development Management Policies (2016) (the LP) requires that shared development should be of acceptable quality, meeting appropriate standards for the needs of its occupants, which includes communal facilities.
9. No specific minimum standard or guideline for the size of kitchens and communal facilities in HMOs has been presented by either party. No further definition of 'appropriate' is provided in Policy DMP20 but the supporting text states that 'HMOs must meet the standards of Brent's HMO licensing scheme'.
10. The standards in Brent's HMO licensing scheme have been provided by the appellant³. These require a kitchen for every 5 people, not more than one floor distance from the user's bedroom. The proposal meets these criteria. A minimum floor area for communal areas is not provided.
11. The ground floor kitchen is approximately 8.7 m² in area and the first-floor kitchen is 5.8 m². Both were fitted out with basic kitchen facilities and had a small table that would seat one person. I estimate that the kitchen space could be used by up to 2 people at a time. There is no other internal communal space, although the garden is a reasonable size and could potentially be used in good weather. To this extent, communal space is provided, albeit it is not generous in extent nor would it support significant shared activity year round.
12. However, with the link between 'appropriate' living standards and the Council's licensing scheme in mind, I note that Condition 1.7 of the extant licence for the property merely states that 'some form of readily available communal area/circulation space should be considered'. This suggests that communal space is not mandatory and, in the context that some has been provided in the kitchen and garden, I conclude that the proposal meets the standards of the HMO licensing scheme and, using the definition above, is therefore appropriate.
13. Policy DMP18 of the LP requires that new dwellings should be consistent with the standards in the London Plan. The proposal is not a new dwelling and the standards cannot therefore be applied as a strict requirement of policy. Notwithstanding that one of the bedrooms is slightly below the standard in the London Plan, the Council and previous Inspector assessed the adequacy of the room and found it to be satisfactory, in addition to exceeding the minimum HMO licence requirement. I see no reason to come to a different conclusion and do not find conflict with Policy DMP18 in respect to the size of bedrooms.
14. I conclude that the communal facilities are acceptable, and that the proposal meets the requirements of Policy DMP20 of the LP. I also do not find conflict

¹ 3215408 (November 2020)

² HMOL/11683/15 (20 January 2020)

³ Conditions for the mandatory/additional HMO property licensing scheme (London Borough of Brent) October 2019

with Policies DMP1, which controls the quality of development or DMP18, which requires consistency with space standards for new dwellings.

Conditions and conclusion

15. The Council has recommended 6 conditions. I have imposed 5 of these, with amendments to the wording in the interests of precision and clarity, and to comply with advice in the Planning Practice Guidance.
16. In addition to the standard timescale, a condition to secure accordance with the approved plans is required in the interests of enforceability. I have also imposed conditions to restrict occupation to 7 persons and to limit the installation of kitchen facilities in rooms, unless otherwise agreed. These are for the purpose of protecting the living conditions of the occupants.
17. The Council has requested a condition to secure a plan for management of the premises. I have noted that the appellant's objections to this but am satisfied that it is reasonable that management of the development is in accordance with a plan secured by a condition.
18. I have no evidence that the plan has been agreed between the parties and I note that there is at least one error in it, in referencing No 26 rather than No 29. For these reasons, I consider that agreement of the plan with the Council prior to occupation is necessary. The purpose of this condition is to ensure a satisfactory standard of living for occupiers and to protect the amenity of neighbours.
19. I have not imposed a condition to restrict development permitted under the Town and Country Planning Act 1990 (General Permitted Development) (England) Order 2015 because I do not consider this to be relevant to the appeal before me, which concerns occupation levels. No other justification for such a condition has been provided.
20. The development would not conflict with local policies and there are no other material considerations that indicate a determination other than in accordance with the development plan. I conclude that the appeal should be allowed.

B Davies

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall take place not later than 3 years from the date of approval.
- 2) The development hereby permitted shall be carried out in accordance with approved plans:
 - LDC/LP/BP/01 'Location Plan and Block Plan', 20 March 2018
 - A1-EO1 'Certificate of Lawfulness Existing 8 Bed HMO (Sui Generis)', 12 June 2017
- 3) The premises shall not be occupied by more than 7 persons without the prior written consent of the local planning authority following the submission of a planning application.
- 4) No kitchens, kitchen worktops, kitchen sinks, cooking facilities or other kitchen facilities, with the exception of a fridge, shall be provided in the bedrooms without the prior written consent of the local planning authority following the submission of a planning application.
- 5) Prior to occupation of the development hereby approved a Statement outlining management of the premises as an HMO shall be submitted to and agreed in writing by the local planning authority. The development hereby approved shall be managed in strict accordance with the Statement, or any revision of the Statement subsequently agreed in writing by the local planning authority.