The Planning Inspectorate

Appeal Decision

Site visit made on 29 November 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2021

Appeal Ref: APP/Q5300/W/20/3245251
21 Southfield Road, Enfield EN3 4BU

- 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 C Philippou against the decision of the Council of the London Borough of Enfield.
- The application Ref 19/03633/FUL, dated 22 October 2019, was refused by notice dated 17 December 2019.
- The development proposed is described as the creation of a 5 bedroom house of multiple occupation to be occupied by up to 5 persons (Use Class C4).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development has already taken place.

3. The main parties were given an opportunity to comment on any relevant implications of the London Plan, March 2021 (the LP). I have taken comments received into account in my decision.

Main Issues

4. The main issues are whether the development:

    - provides satisfactory living conditions for residents, having particular regard to a communal kitchen;
    - achieves an appropriate energy efficiency standard;
    - meets the travel needs of residents; and
    - provides adequate facilities for the storage and collection of refuse and re-cycling.

Reasons

Living conditions

5. The appeal property is a semi-detached two-storey house. It was in Class C3 use but is now in Class C4[1] use as a five bedroom house in multiple occupation by up to five residents (the HMO). The Council does not object to the principle of this use and I have no reason to differ.

[1] The Town and Country Planning (Use Classes) Order 1987, as amended

6. HMOs are usually occupied by unrelated, semi-independent residents who are likely to have different daily schedules. I accept that all five residents of the HMO would not necessarily want, or need, to use the kitchen at the same time. Nonetheless, a distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. The HMO is a dwellinghouse for five adult residents and the kitchen should, in my view, be sufficient to allow the opportunity and possibility of simultaneous use by up to, and including, this number of people.

7. There is no evidence of any relevant kitchen space standard. The kitchen is linked internally to the rest of the communal living area but no facilities for cooking or reheating main meals are provided in the HMO other than in the kitchen. Despite the other communal living areas, and the overall total of such floorspace including the kitchen, the kitchen is to all intents and purposes a functionally and physically separate room.

8. Its galley style design and layout provides a 4-ring hob, oven, sink with draining board, a work surface and some storage cupboards along part of one side wall. However, a single 4-ring hob and one oven does not provide much flexibility for multiple use of the kitchen by more than one or two residents. In addition, the work surface and cupboards are relatively limited in area and capacity. Moreover, there is no fridge (or freezer) or washing machine. While floor or wall space may exist for some of these items, including in one corner of the kitchen, this has not been clarified in the 'proposed' appeal plans, which also do not entirely match what exists. If additional facilities are to be provided there is, therefore, no suitable mechanism before me to ensure this.

9. Notwithstanding that a washing machine has been provided in each bedroom, there is also a sink with draining board, a worksurface, storage and a fridge which might include a freezer compartment. It is therefore at least possible that some foods can be stored and prepared in each bedroom; indeed, in the absence of a fridge or freezer in the kitchen this must be a distinct prospect. I also note that the appellant only prohibits the cooking or reheating of food in bedrooms and apparatus for this purpose. Consequently, irrespective of the size of the bedrooms and these individual facilities, residents must convey some chilled or frozen foods (prepared or not) to the kitchen in order to cook main meals.

10. I appreciate that the appellant prefers these arrangements for management reasons and that it may suit the personal private preference of some residents. Nevertheless, segregating basic amenities for food storage, preparation and cooking or reheating in this manner for any resident, particularly those residing on the first floor who have to negotiate stairs, is not complementary or conducive to satisfactory living conditions.

11. The kitchen is reasonably long but narrow and the other side is a thoroughfare to the further communal areas and, internally, to the rear garden. This leaves a very shallow 'working' space next to the kitchen fixtures and fittings and the oven and cupboard doors open further into the available width of the room. While this might have relatively innocuous consequences for use of the kitchen by a low number of residents it would, however, lead to significant conflict for movement through the kitchen or congestion from its use by higher numbers of residents, including all five at once. This would unduly detract from the safe, practical and functional use of the kitchen.

12. In occupation by a family of five people, including children, it is likely that food preparation for main meals would take place solely in the kitchen, as would cooking or reheating. It is also likely to be routinely undertaken by one adult, or on occasions both adults and, exceptionally, all five family members who would likely not all be adults. Moreover, with a conventional ground floor layout of the appeal property and use of rooms, it is unlikely that all of the communal lounge or dining area would need to be accessed through the kitchen.

13. I have been referred to a dismissed HMO appeal decision[2] and a subsequent planning permission granted by the Council. The kitchen floorspace in the dismissed scheme was significantly less than in the HMO. It was not substantially greater than the HMO in the approved scheme, which as a four bedroom HMO I note, in any event, provided more kitchen area per resident than in the HMO. These other decisions are not, therefore, comparable to the current appeal.

14. I have also been referred to the Council's Article 4 Direction (A4D). It removed permitted development rights[3] (PDR) for change of use from Class C3 to a Class C4 HMO. I appreciate that but for the A4D the HMO would not require an express grant of planning permission, including with regard to the size and layout of the kitchen and its facilities. However, the Council's development plan seeks to prevent the uncontrolled intensification of residential uses and includes policies relevant to HMOs that, inter alia, seek to maintain satisfactory living conditions for residents. Since the A4D exists there is no potential exercise of PDR or, therefore, 'fallback' position in this respect. In these circumstances, these changes of use must be determined against the development plan and any other material considerations. Furthermore, obtaining an HMO licence under the Housing Act 2004 does not mandate approval for planning purposes.

15. Taking all of the above into account, I find that there is insufficient facilities and space, including in layout, to give the opportunity and possibility for shared use of the kitchen as an HMO by up to, and including, five resident adults at once. Even if additional facilities were provided in the kitchen this would not overcome the issues regarding size and layout, indeed there may be less space as a result. Accordingly, the development does not provide a satisfactory communal kitchen and causes unacceptable harm to the living conditions of existing residents and would cause such harm to future residents.

16. Consequently, it does not comply with Core Strategy[4] (CS) Policy CP4 or Development Management[5] (DM) Policies DMD5, DMD8 and DMD37. These policies include that development should be suitable for its intended function and that the design and form of HMO accommodation should be high quality, including a flexible and functional layout with adequately sized rooms and internal space.

Energy efficiency

17. DM Policy DMD50(2)(b) applies BREEAM[6] to minor development for 'residential refurbishments and conversions' and refers to a 'Domestic Refurbishments'

[2] APP/Q5300/W/16/3159937
[3] The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended
[4] Enfield Core Strategy, November 2010
[5] Enfield Development Management Document, November 2014
[6] Building Research Establishment Environmental Assessment Method

standard. The development therefore falls within the scope of this policy which, I note, must be read with CS Policy CP20 which DM paragraph 10.1.6 states is consistent with DM Policy DMD50. CS Policy CP20 requires that 'where possible' all new developments must address energy efficiency measures 'via a retrofitting process'.

18. I appreciate that the development was a conversion by change of use, not for a new house, that only some structure and fabric was altered and that works complied with Building Regulations. I also note what is suggested with regard to BREEAM where development is already complete, but the extract that I have been referred to is in the context of an 'AP status'. I have not been informed what this means and cannot, therefore, be certain that the extract applies to the circumstances of this appeal. It has also been suggested that but for the A4D the development would not have to demonstrate an energy efficiency standard. However, this is not a material consideration for essentially the same reasons set out in the first main issue.

19. Considering the above, I find that it has not been substantiated why it has not been possible to retrofit any suitable energy efficiency measures (and it is not been suggested that any have been incorporated). Nor have any 'exceptional circumstances' been 'clearly demonstrated' to justify that a required BREEAM standard cannot be met[7]. In these circumstances, the development has not, therefore, achieved an appropriate energy efficiency standard. Consequently, it does not comply with DM Policy DMD50(2)(b) or CS Policy CP20.

Travel needs

20. The appellant has promoted the HMO as a 'car-free' development and suggests that HMO residents typically have lower car ownership. The availability of on-street parking (or other parking elsewhere) and access to residents parking permits are matters to be considered by any resident of the HMO who owns a car. I note that there is advice to this effect in the appellant's residents 'welcome pack'.

21. While the appellant has not conducted a parking survey, there is on-street car parking along both sides of Southfield Road. The Council, as the Highway Authority, has responsibility for the on-street parking restrictions and eligibility to resident parking permits, through Traffic Management Orders, and for the issue of permits, including having regard to the effect of parking on traffic flow and the demand for permits. The Council has not provided any objective evidence in either regard.

22. When occupied, the on-street parking bays reduce the Southfield Road carriageway width for much of its length. However, parked cars owned by residents of the HMO would not alter this situation per se and, in any event, there are passing places either side of the road where dropped kerbs for front garden parking, and white lining, restrict on-street parking. Furthermore, this is a minor residential road, traffic speed and volume was low and it has street lighting and wide pavements either side. The on-street parking bays were well-used towards the High Street end of Southfield Road but there were unoccupied spaces at the other end and in nearby roads which would also be convenient for residents of the HMO.

[7] DM Policy DMD50

23. Notwithstanding the above, the appeal site includes a garage in the large rear garden and a wide, paved side yard and passageway with gated vehicular access onto Southfield Road. These areas can already be used for car parking, including by disabled drivers, and could also be used to provide sufficient secure, covered cycle parking, including stands or shelters. Despite what is shown in the appeal plans, a condition could ensure that details were submitted within a specified time period and once approved thereafter implemented and retained. The HMO is also within convenient walking distance of the High Street, including for elderly or disabled residents. This road includes local shopping parades and some superstores, including a food supermarket, sufficient to meet most day-to-day living needs. High Street is also a bus route, with conveniently located bus stops, giving access or connections to facilities, services and employment elsewhere.

24. I have been referred to LP Policy T6.1 which relates to residential parking. However, I have not been informed which 'location' applies to the appeal site for the purposes of the maximum parking standards in this policy. There is also no evidence to substantiate why it might be necessary or reasonable for any parking that already exists on the appeal site to be leased or to provide active or passive infrastructure for electric or low emission vehicles.

25. In light of the above considerations, and in the absence of any compelling evidence to the contrary, I am therefore satisfied that the location of the HMO meets the travel needs of existing or future residents, including by means other than the private car. Consequently, and in these circumstances, the development does not conflict with CS Policy CP24 or DM Policies DMD8, DMD37 and DMD45. These policies include that development should be appropriately located for ease of movement, accessible, provide adequate parking and encourage sustainable travel choices.

Refuse and re-cycling

26. There is limited suitable space in the kitchen for any significant storage of refuse or items for re-cycling. However, the large rear garden and wide, paved side yard and passageway include sufficient space for this purpose without unduly conflicting with any car or cycle parking or residential amenity use. This would conveniently meet resident's needs, including for carrying rubbish bags or wheeling bins for roadside collection. There is no evidence that the Council's specific requirements[8], including the number, size and siting of bins, could not reasonably be achieved. Despite what is shown in the appeal plans, a condition could ensure that details were submitted within a specified time period and once approved thereafter implemented and retained.

27. Considering the above, I am therefore satisfied that the development could provide adequate facilities for the storage and collection of refuse and re-cycling. Consequently, it would comply with DM Policies DMD5, DMD8 and DMD37. These policies include that development should incorporate adequate refuse storage arrangements and be suitable for its intended function.

Other Matters

28. The HMO has been subject to a planning enforcement investigation by the Council for alleged use with six bedrooms and residents. The Council also has

[8] ENV 08/162 Waste and Recycling Storage Planning Guidance

separate HMO regulatory and licensing powers. The number of current or future residents occupying the HMO is a matter for the Council.

29. I note that the appellant was dissatisfied with the way the Council handled a previous application for an HMO at the appeal site, including its decision to refuse planning permission. These are not matters for me to consider in this appeal. While I appreciate that the appeal application is a re-submission, and that the appellant considers it overcomes the Council's previous objections, I have determined the appeal on its individual planning merits.

Planning Balance

30. The HMO is by definition[9] a dwellinghouse and the development does not result in a net gain in houses. In terms of benefits, the HMO provides a form of specialised, lower cost living accommodation that is supported by the Council's development plan. It is also aligned with objectives of the Framework to meet the needs of people with specific housing requirements in terms of size, type and tenure, including people who rent their homes. Commensurate with the modest scale of the HMO, I therefore give limited weight to this consideration.

31. The HMO does not adversely affect the character and appearance of the area or the living conditions of occupiers of nearby houses. The bedrooms exceed the minimum space standards applied by the Council and there is sufficient communal garden space. Residents have, or could have, a choice of travel modes and be provided with facilities for refuse and re-cycling. The absence of harm, and compliance with the Council's development plan and the Framework in these respects, are therefore neutral factors in my decision.

32. However, the Framework also seeks to achieve well-designed places with development that functions well with a high standard of amenity for existing and future users. The HMO does not provide a satisfactory communal kitchen and this results in unacceptable living conditions in conflict with the development plan. I therefore give substantial weight to this consideration.

33. The development does not incorporate suitable energy efficiency measures. This unduly frustrates what the Council seeks to achieve in its development plan and is at odds with objectives of the Framework which encourage the use of renewable and low cardon energy and heat. Having regard to the scope of the development, I give limited weight to this matter.

Conclusion

34. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.

35. For the reasons given above, I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR

[9] The Town and Country Planning (Use Classes) Order 1987, as amended