
Appeal Decision

Site visit made on 16 May 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 06 July 2022

Appeal Ref: APP/N5090/C/20/3264585

Land at 32 Bernhart Close Edgware HA8 0SH

- 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 Vishad Doshi against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 25 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission change of use of the property to a House in Multiple Occupation (Use Class C4).
- The requirements of the notice are Cease the use of the property as a House in Multiple Occupation.
- The period for compliance with the requirements is 7 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. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

The Notice

1. The notice refers to a 'change of use' of the property to a house in multiple occupation (HMO). Since it is a *material* change of use (MCU) that is the act of development in statute, I shall correct the notice accordingly. This minor change can be made without injustice.

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

Main Issues

2. The main issues are the effect on the supply and mix of housing in the area and on the character of the Watling Estate Conservation Area (CA); and whether the property is in a suitably accessible location for use as a HMO.

Supply and mix of housing

3. Policy DM08 of the Council's Development Management Policies 2012 (DMP) identifies the Council's dwelling size priorities for market housing as being four bedrooms (high priority), and three bedrooms (medium priority). The appellant identifies the original build of the house as being four bedrooms and so a high priority unit of market housing has been lost by the MCU¹.

¹ The fact that the original build had 3 bathrooms does not in my view preclude it from being considered a family dwelling since this number of bathrooms is relatively common in a larger family house

4. Policy DM09 though permits new HMOs provided that they meet an identified need, would not have a harmful effect on the character and amenities of the area, are easily accessible by public transport, cycling and walking, and meet relevant housing standards for HMOs.
5. The appellant's position is that there is a need for HMOs in the area. Correspondence from a letting agent is submitted which outlines that there is a demand for high end affordable accommodation, and highlights transport links to central London. It is further submitted that Edgware is one of the most requested search areas for tenants, and that the property has always been fully tenanted as a HMO, with tenants generally remaining in situ for some time. The property was apparently even re-let successfully during a period of lockdown due to the COVID-19 pandemic. A property management company has also approached the appellant seeking to take on the property and identifying high demand from local businesses and hospital staff.
6. However, these aspects are evidence of market demand, rather than of housing need. Further, whilst the property may have been fully tenanted as a HMO, there is nothing to suggest that it would not also be fully tenanted if marketed as a family home. I accept that HMOs provide a particular type of affordable accommodation but there is nothing on the available evidence to indicate that the appeal property would not also be affordable as a family home; certainly similar properties in the street appear to be used as such.
7. Additional submissions from the appellant's letting agent seek to demonstrate an urgent ongoing need for this type of accommodation. Whilst I note that the agent has been liaising with the Council's Housing/Homeless team for some 24 years, and that there has never over this period been enough supply, no detailed evidence is put forward to substantiate this. I note observations that homelessness in the area is well documented. However, these aspects do not obviate the need for family housing as identified in Policy DM08 of the DMP.
8. The agent goes on to outline that one bedroom flats have become unaffordable to those in receipt of housing allowance and/or below average salaries. It is argued thus that this sort of accommodation can be a suitable alternative; a tenant in the appeal property is cited as an example. Once again though, no detailed evidence is put forward in support of this position.
9. A search on the Rightmove website by the letting agent seeks to demonstrate the provision of HMOs in the area, with a house-share search showing 7 properties but only one with four available rooms, out of a population of some 66,000. However, this data only indicates provision rather than need, and only at a fixed point in time. It therefore is of limited weight in showing the need for HMOs in the area.
10. Drawing all of these matters together, the evidence put forward by the appellant is primarily showing market demand for HMOs, as opposed to housing need. Submissions related to need are not supported by substantive evidence, and figures in relation to HMO provision are at a single fixed point in time. Evidence submitted is not enough to evidence a housing need for HMOs.
11. I find then that the appeal development has a harmful effect on the supply and mix of housing in the area. A HMO need has not been demonstrated such as to justify the loss of a family home and there is thus conflict with Policy DM09.

Character

12. The CA is a large area with different parts having distinct characters. For example, the part of the CA in the shopping areas at Watling Avenue and Deansbrook Road during daytime have a bustling commercial character created by relatively high pedestrian footfall and vehicular traffic. This can be contrasted with the quieter residential character of Bernhart Close and much of the immediate surrounding area; this generally sees relatively low levels of activity from what is primarily housing in single occupancy.
13. The appellant emphasises that tenants have not to date caused any noise and disturbance, and that the number of occupants has not increased as compared to a family dwelling. Nonetheless, I consider that the use of the appeal property by numerous separate households likely significantly increases comings and goings, including additional deliveries, as compared to a single-occupancy dwelling – even one housing a larger family, potentially with a similar number of adults.
14. There is no change in the external appearance of the property but the pattern of use is likely also different to that of a family occupied dwelling where noise from TVs or music would be expected to cease relatively early in the evening if younger children were resident. Measures in the appellant's tenancy agreements to prevent more than two cars parking in the road would not be enough to overcome these concerns since it is not only activity from cars that is in issue.
15. The appellant has drawn attention to the presence of some 22 HMOs within a half mile radius of the appeal property, including one which is approximately a four minute walk from the appeal site. Nonetheless, I consider the character of the immediate surrounding area to be predominantly one of family housing given the overall low proportion of HMOs. Indeed, Bernhart Close itself has a particularly tranquil residential character due to it being a cul-de-sac. Whilst the appellant may have run the HMO property impeccably, this does not overcome the fundamental concerns identified and, in any event, since planning permission runs with the land, future concerns can be of relevance.
16. The appeal development is therefore an overly intensive residential use which is out of character with this quieter residential part of the CA as referenced in paragraph 2.2 of the Watling Estate Conservation Area Character Appraisal Statement 2007. It would not preserve or enhance the character of the CA and would conflict in this way with Policy DM06 of the DMP. Harm arises also per Policy DM09 which seeks to ensure that HMOs do not harm the character of the area, and with Policy DM01 of the DMP which stipulates that development should be based on understanding of local characteristics and that the loss of houses in roads characterised by houses will not normally be appropriate.
17. There is conflict also with Policy CSNPPF of the Core Strategy 2012 (CS) which requires development to accord with local plan policy in the absence of contrary material considerations, and with CS5 which stipulates that development should respect local context. Principles in the Residential Design Guidance 2016 (RDG) that conversions (to HMOs and flats) will not generally be acceptable in roads characterised by houses, and that consideration should be given to character in conversions, are also not followed.

18. As the development relates to one property within the context of the CA as a whole, I consider the harm to be less than substantial. Nevertheless, the Revised National Planning Policy Framework 2021 (Revised Framework) at paragraph 199 states that great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification. In accordance with paragraph 202 of the Revised Framework, I shall weigh any public benefits as against this harm in my balancing below.

Accessibility

19. As outlined above, Policy DM09 supports new HMOs provided that they, amongst other things, are 'easily accessible by public transport, cycling and walking'. The RDG states that conversions (to flats and HMOs) may be appropriate in certain streets, particularly where they are 'highly' accessible. The appellant draws my attention to Policy DM17(f), which indicates that developments should be located and designed to make the use of public transport more attractive for all users
20. The appellant has commissioned a Transport Statement, along with supporting correspondence which agrees with the Council's PTAL assessment for the site as level three. The Council though emphasises that this represents only a moderate level of transport accessibility and that the appeal site is not 'particularly' accessible via public transport, cycling or walking.
21. The appellant's transport consultant advises that the nearest rail station is some 1.1 miles from the site, with the nearest underground station approximately 0.5 miles from the appeal property, giving access to central and south London. A bus stop is also approximately 0.2 miles away, and car parking is provided at a level which does not promote unsustainable travel.
22. In my view, the descriptor of 'moderate' appropriately describes the overall accessibility of the appeal site. I am mindful of the fact that the alleged MCU intensifies the residential use, and of the use of the wording 'easily accessible' in policy DM09. In my view, the site is moderately but not 'easily' accessible.
23. Thus the property is not in a suitably accessible location for use as a HMO. Since the appeal site does have a moderate level of accessibility, I find that whilst there is conflict with Policy DM09 in this regard, only a fairly low level of harm arises in this respect.

Public benefits

24. The appeal development offers a very high standard of affordable and well managed HMO accommodation, increasing the number of households accommodated by the appeal property and making efficient use of the land in this way in a location which is moderately accessible. Whilst local and national policy support the provision of a wide choice of homes, I have found above that in this location, the provision of a HMO in replacement for a family home does not have a positive impact in terms of the mix of housing in the area.
25. Public benefits identified therefore together weigh modestly in favour of the development and so do not outweigh the great weight that I am required to attach to the heritage asset's conservation.

Human rights and public sector equality duty (PSED)

26. The appellant cites concerns of the tenants being made homeless if planning permission is not granted. The appeal property is home to these tenants and the requirement to cease the use as a HMO represents interference with the residents' convention rights under Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998. Given the harm identified under ground (a) above, I consider this requirement to be legitimate in the public interest and cannot be achieved by any less interfering means.
27. In exercising my function on behalf of a public authority, I have had due regard to the PSED contained in the Equality Act 2010 (EA). The EA sets out relevant protected characteristics which include disability in the form of mental impairment. Since there is the potential for my decision to affect a person with a protected characteristic, I have had due regard to the three equality principles contained in section 149 of the EA. Nonetheless, bearing in mind the legitimate planning policy aims outlined above, in this case I consider that greater weight attaches to the public interest.

Other Matters

28. The appellant has sought to engage with the Council from the outset and conversion works were in full compliance with the requirements of the licence. I acknowledge also that the appellant was not aware of the need for planning permission.
29. Financial and psychological costs to the appellant in complying with the notice are identified as including partial/full reinstatement of the physical works, loss of rent, and potential sale of the property leading to an early repayment charge penalty. In the absence of substantive evidence as to the financial and psychological implications for the appellant, I cannot attribute any significant weight to these personal matters. Concerns as to the Council's handling of the HMO application process are not for me in dealing with this appeal.

Overall Conclusion

30. On the evidence before me, and taking into account all other matters raised, 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 Town and Country Planning Act 1990 as amended (1990 Act).

Formal Decision

31. It is directed that the enforcement notice is corrected by in paragraph 3 the insertion of the word 'material' immediately before the wording 'change of use'.
32. Subject to the correction, 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 as amended.

V Bond
INSPECTOR